Chapter 11

THE DILEMMA - HUMANITARIANISM V FOREIGN POLICY

It has been shown in previous chapters that there is a growing negative public opinion in the West concerning refugees and asylum-seekers from the Third World. Many governments in the West have responded to recent influxes of refugees by adopting restrictive practices. Humanitarian principles, so carefully nurtured in the West over recent years, are under threat. The refugee problem concerns not only individuals in their relations with States, but also States in their relations with one another. As long as the emphasis is put on the former, the refugee problem is bound to remain on the periphery of international relations. Today's refugee problem demands that it be brought into the mainstream of international concern so that more attention can be given to solutions, whether they are to be found in the country of final destination, in intermediate countries, or in the country of origin.

Humanitarian interventions on behalf of refugees are no longer sufficient if made without reference to the political situations which have given rise to the refugees' flight. The humanitarian objectives and political will of governments to seek out the root causes of refugee movements must converge. While the High Commissioner for Refugees undertakes the necessary humanitarian action, States must explore political initiatives. This may mean that the interests of a refugee should take precedence over conflicting interests of States. Legislative discussion of who is a refugee should not be seen separate from humanitarianism.

The plight of refugees has prompted some concerted action for humanitarian reasons although humanitarianism is subservient to the force of law. The increase in the number of refugees, however, and the changed ideological and political circumstances since the collapse of communism in eastern Europe and in the former Soviet Union require a renewed commitment and creativity to find a solution to what Pope John Paul II has called in a letter (dated 25 June 1982) to the UN High Commissioner for Refugees "a shameful wound in our times".

POLICY CONSIDERATIONS

The Canadian government has linked the arrival of claimants to the question of national security. In outlining the governments foreign policy priorities, the External Affairs Department stated that:

> "Poor economic prospects, civil strife and environmental degradation will continue to drive irregular migration flows. Significant claimant demands on the asylum-determination systems by such migrants threatens our sovereignty and imposes a significant fiscal burden on government programme and determination procedures" (*Update* 1991-92, 23).

Among foreign policy priorities is the need to "expand national and multinational capabilities to deal with non-military threats to security (e.g. environmentally-unsustainable activities, irregular migration)".

These policy directions were confirmed by former External Affairs Minister Barbara McDougall when she appeared before the Standing Committee on External Affairs and International Trade on 12 May 1992, and affirmed that "co-operative security" was one of the major foreign policy themes for Canada in the coming years.

These statements reveal the substitution of immigration control priorities for humanitarian priorities in the treatment of refugee claimants. These measures include more resources allocated to enforcement, increased detention and removals, cutting back on the number of sponsored refugees (both government and private), and an interdiction programme to prevent people from reaching Canada. There is a need to have rules which regulate the admission of asylum-seekers. This problem has been perceived and handled primarily from a political rather than a humanitarian perspective.

Australia has always been a deeply committed supporter of the United Nations, yet it took seven years to ratify the 1967 Protocol compared with one year for Canada. The reason for this may well be foreign policy based. However, in spite of Australia's commitment to the United Nations and a wide range of international conventions, there has been some inconsistency, some delay and some dishonesty in applying our commitments to individual situations. Harris (1993, 32) pointed out that while "Australia's record on refugees overall is impressive ... its reaction to past internationally recognised refugee flows has been mixed, reflecting in part reactions to

the ideological rivalries involved". After World War II "Chifley broke the political log-jam and permitted Australia's acceptance of large numbers ... of displaced persons". A key point in the foreign policy of Australia is enthusiastic and sustained activity in all aspects of the work of the United Nations including its humanitarian and peacekeeping roles. Canada maintains a similar position. Whilst the Australian Government is keen to become involved in the work of the United Nations particularly in respect of human rights abroad it wants to control the definition and application of human rights at home. Its reaction to the decision of the High Court in Teoh illustrates this.

AID AS A TOOL

The question of aid as a tool is important in the context of developed countries giving material assistance to refugee generating nations. Should conditions be placed on the aid? The United Nations system was mandated with the clear objective of pursuing both social and economic development and personal freedom. The UN Charter states in its Preamble the determination of Member States "to promote social progress and better standards of life in larger freedom".

Western States have since the 1980s focused more intensely on the human rights and social development nexus, as well as on the way they can most advantageously pursue these inter-related issues through their foreign policy. This trend has been especially evident in the increasing scrutiny being placed by donor countries on their provision of overseas development assistance. In particular, some donor States, for example the United States of America, are examining how the relationship between donor and recipient States should be affected by the record of recipient States' adherence to and protection of human rights for their citizens. However, OECD's Development Assistance Committee in its 1992 Annual Report reported "a general feeling that it was not desirable to establish absolute standards or uniform approaches" to the issue of good governance or democratic development in recipients. Nevertheless, a need for broad consistency among donors, and in certain cases, concerted action, was also acknowledged. The World Bank has defined good governance in terms of the manner in which power is exercised in the management of a country's economic and social resources, a definition which has clear human rights dimensions.

It is not possible in the confines of this thesis to thoroughly examine the scope of international resolutions on good governance. There are many. One of the more important pronouncements was that of the USA at the 1993 Vienna World Conference, when it was made clear that respect for human rights and the commitment to democracy building would be major considerations in US determination of the distribution of its foreign aid. Developing countries argue against this policy given its implications for the concept of national sovereignty.

Australia is a donor country and attaches much importance to the promotion and protection of human rights. Its aid policy recognises the importance of integrating human rights and good governance considerations into the institutional and decision-making process which shapes aid programs to recipient countries.

In any aid policy donor countries would need to be careful their rules are not too prescriptive. If they are, unintended consequences could result. For example, cutting off aid could further penalise victims of human rights violations by depriving them of needed help when they have already been deprived of their fundamental rights. In the end, such victims may have to flee their country of origin and seek refuge. What is more effective is to fund specific projects for example, special education for groups such as minorities and children which are often the victims of human rights abuse.

Both Japan and the United Kingdom have stated their determination to use their overseas assistance to promote greater respect for human rights and the peace and security required for development. In a policy speech in March 1990, former Prime Minister Toshiki Kaifu asserted:

> "The new international order that we are seeking must first guarantee peace and security. Second, there must be respect for freedom and democracy. Third, we must work to achieve world prosperity under an open, market-led economic system. Fourth, we must create an environment in which people can enjoy humane living conditions. Fifth, we must establish stable, international relations based on dialogue and harmony" (Quoted in Harrell-Bond 1992, 2).

Aid contributions will be key tools in the achievement of these aims. Indeed, as tensions arising from economic imbalances between the developed and under-

developed worlds supersede the tensions of the Cold War, the role of Japanese overseas development assistance will assume even greater importance.

The United Kingdom has also been explicit in its determination to use aid to promote good government. In a speech in June 1991, the Minister for Overseas Development, Lynda Chalker, outlined British aid policy in relation to the concept of good government. Britain, like Japan, believes that the achievement of economic success requires free and open economies which ensure an efficient use of resources. Second, good government implies the implementation of sound economic policies which provide open, accountable and competent administration and the observance of human rights. Third, Britain seeks to promote pluralist political systems which work and respond to individuals in society, meaning - in political terms - democracy. Respect for human rights and the rule of law also are seen as necessary to allow individuals to play a full role in effective development (Quoted in Harrell-Bond 1992, 2).

Although it is maintained that hosting refugees is humanitarian, not an unfriendly political act, in reality hosting refugees can be a threat to an international State system which has been weakened by its unwillingness to uphold human rights as the basis for co-operation in international relations. Moreover, given the unwillingness of States to take action against States which are guilty of massive abuses of human rights, the maintenance of this State system requires that the refugees created by another 'friendly' State be either neutralised as a political force or, in some cases, manipulated for particular political ends; keeping them confined to camps or settlements, dependent upon relief, has been an effective way to achieve such political goals (Karadawi 1977, KRC 1991).

There are very few governments today which have the confidence or the world power demonstrated in the nineteenth century by the British authorities. Against enormous pressure from the European nations whose policies had produced them, this government received refugees, upheld the concept of asylum and protected them from *refoulement* (Porter 1970). Porter's study of refugee policy in Britain in the nineteenth century found that everyone who claimed political asylum was admitted, that no-one was ever turned away. He explains this liberal policy as resulting from Britain's confidence in its own political stability. Free people cannot be provoked or incited to revolution, only oppressed people can. Neither Australia nor Canada have a similar international status even though they both enjoy a remarkable stability in their legal and political structures.

POLITICAL CONSIDERATIONS

Politics, rather than human rights concerns, have been the major determinants of policies or solutions for assisting refugees. For example, the isolation of refugees in camps or settlements serves political interests by neutralising them as a potential force against the State from which they were compelled to leave. There have been cases where relations with the government of origin are of more importance to the donors than to the host. Wherever the political interest of donor and host States converge with those of refugees, the policy of forcing refugees into camps is not applied.

For example, when the Office of the UN High Commissioner for Refugees was established, the refugees with which it was concerned were Europeans originating from the East, and were welcomed as another vote for liberal democracy (Harrell-Bond 1985; Loescher 1986). For these refugees and many that followed during the Cold War, UNHCR's mandate was to find *permanent* solutions to their plight. In practice, this involved convincing States to respect the rights of asylum and free movement, and arrange resettlement in countries which respected Article 34 of the 1951 Convention, which provides for permanent residence if not naturalisation.

The notion of *temporary* rather than permanent asylum is also an artefact of the political concerns of newly independent States. Temporary asylum became normative when most refugees were the victims of anti-colonial struggles, the assumption being that once independence had been won, everyone would return home. The expectation of the temporary character of exile was presumed in the writing of the Organisation of African Unity Accord on Refugees. While the 1951 Convention does not mention repatriation except in negative terms, that is, no State has the right to *refoule* a refugee the OAU agreement, as pointed out previously, provides for the voluntary repatriation of refugees and for assistance in the reconstruction of their lives upon return. UNHCR can point to some major successes in repatriating groups of refugees, but the failure of governments to resolve the causes of flight has led to most remaining in exile for many years.

Forcing refugees into camps or settlements and denying them a basic human right of freedom of movement is often justified on grounds of State security. This security argument fails on close examination because it is inconsistently applied. There are many cases of refugees who did demonstrably represent a risk to national security, but who were not forced to live in settlements, for example, South African refugees in

neighbouring States, the Ugandans hosted by the Tanzanian Government during Idi Amin's regime or the Hutus hosted by Burundi.

Host governments often find themselves caught in the middle, between demands to uphold human rights and their immediate political priorities. For example, it is reasonable to presume that the policy in Thailand - to place Burmese refugee children in a camp against their will - arises from the Thai government's efforts to balance pressure from human rights advocates to protect these refugees with that from the Burmese Government which is demanding their return.

It is not unusual to find governments using refugees as pawns in international relations (Harrell-Bond 1985; Loescher 1986; Baitenmann 1990) as in former Yugoslavia or as in Zaire, August 1995. The treatment of the Kurdish question during and after the Iraq war shows how hazardous it is for groups struggling for self determination or fighting against an oppressive regime to depend on those who help them out of political expediency.

Recent experience shows that a State, when confronted with a refugee crisis, is apt first to determine its interests under the circumstances (that is, how many newcomers it is willing or able to accept, foreign policy considerations and so on), and then offer or withhold refugee status based on that determination. Subsequent interpretation of the Convention definition to support the ultimate policy of the State then proves to be relatively simple. The weight of foreign policy considerations in the determination of refugee status is felt clearly in Australia and Canada as well as United Kingdom and United States asylum determination process. The United States State Departments' Bureau of Human Rights and Humanitarian Affairs issues an advisory opinion on all petitions for refugee status. According to a 1990 Amnesty International report:

> "Amnesty International USA and other organizations addressing refugee issues have compiled evidence that the Bureau of Human Rights and Humanitarian Affairs, a State Department agency, gives advice to the Immigration and Naturalization Service which reflects United States foreign policy goals and perspectives rather than the documented human rights situation in a particular country. The INS relies heavily on advice from the bureau in reaching decisions on individual asylum claims. The virtually complete INS compliance with the bureau's opinions concerning nationals from certain countries despite the merits of individual claims, is troubling.
>
> "The United States Committee for Refugees reported in 1986, and the Helsinki Watch Committee in 1989, that INS decisions agree with State Department advisory opinions in more than 95 percent of asylum cases" (Amnesty International USA 1990, 25).

In the United Kingdom the Home Office consults with the Foreign Office. The Foreign Office is extremely sensitive to not offending its allies. For example, a Turk would have difficulty in obtaining asylum in the United Kingdom - Turkey is a fellow-member of NATO. The Australian Department of Immigration and Canada Immigration also consult widely with their Departments of Foreign Affairs. As previously stated, an applicant for asylum in Australia, Canada, the United States and United Kingdom has to prove fear of persecution in the mind of the refugee. The refugee's fear is evaluated objectively to determine if there is a valid basis for that fear. It is this objective component that enables foreign policy to be considered. Discussions with NGOs indicate that they rely on newspapers for their information in preparing a case to prove the valid basis of fear of persecution (Personal Communications). In this regard the Canadian case of *Saddo v Immigration Appeal Board* (1981), 126 D.L.R. (3d) 764 (Fed. C.A.) is relevant. The decision of the Board that the applicant was not a Convention refugee was set aside because the Board decided, incorrectly, that extracts from newspapers had no evidentiary value. It was incorrect for the Board to say that a claimant must establish, other than by the production of newspaper articles, that he has a well-founded fear of persecution. The Court held that newspaper articles have evidentiary value and that they must be weighed by the Board with all the other elements of proof submitted in support of the applicant's claim. Relying on this case, newspaper reports can be submitted. However it is submitted that such evidence will often be considered of less weight when compared with official reports prepared by Foreign Office or State Department Officials.

INTERNATIONAL RELATIONS

It has been a long observed convention that one government refrains from interfering in another country's internal matters. The plea from two Republican members of the United States Congress, Henry Hyde and Chris Smith, entitled "Don't Do It, Australia" (*Asian Wall Street Journal*, 2 March 1995) was therefore interesting. The plea related to Australian government plans to forcibly repatriate some 800 Chinese asylum-seekers whose claims were based on persecution for resistance to China's coercive population control program. The Congress members wrote:

> "After a relentless campaign of misinformation, the U.S. has now abandoned that principle [campaign of mass detention and repatriation of Chinese boat people in order to 'send a message' to other asylum-seekers].

" ... As United States lawmakers who have heard too many arguments about the unfortunate necessity of forcing innocent people back to brutal regimes, we can offer a few useful hints to our Australian parliamentary colleagues considering legislation now:

"1) *Get the facts right* ... The truth is that the real number of undocumented Chinese immigrants to the U.S. has never been more than a tiny fraction of the 100 000 estimate [of illegal Chinese per year].

The total number of Chinese given asylum in the last year of the Bush administration was only 654, and no more than 200 of these had based their claims on forced abortion or sterilization ... Yet the news media repeated the larger figures so often that they became canonical. In the end, the 85,000 imaginary Chinese refugees loomed so large in the public consciousness that they became one of the assumptions upon which government policy was made.

"2) *Punish criminals, not victims.*

"3) *Avoid non-solutions.*"

Reference was previously made to the fears of large numbers of Chinese boat people coming to Australia and the effect this would have on control. The advice of the U.S. Congress members brings the matter into the realm of foreign policy and highlights the need to consider humanitarianism, foreign policy and refugee policy together.

"Measures to prevent abuse of refugee programs must distinguish between toughness and meanness. But Australia and the United States must bear in mind that the national attributes of which they are justly proud-liberty, decency and fairness - are not free goods. And one of the costs they impose is that we may not return people, even inconvenient people, to dangerous places, for subjection to unspeakable acts" (Hyde and Smith).

The Australian Government is so concerned with its message to asylum-seekers not to come to Australia that it fails to be concerned with a message to the Chinese Government regarding human rights namely, forced sterilisation.

The foreign policies of Australia and Canada are very similar in relation to refugees. Both countries fully support the objectives of the 1951 Convention and 1967 Protocol. It is policy that the provisions of the Convention and Protocol are paramount and are

not to be tainted. Both countries want to be "good neighbours" and "good international citizens". Both countries will not refuse to trade with a nation with poor human rights. They have a more practical approach to international relations. Canadian Policy was made quite clear in a recent report (*Globe* and *Mail*, 12 May 1995). Foreign Relations Minister Ouellet was reported as saying the link between human rights and trade in Canada's foreign policy had been severed, trade should take precedence regardless of a country's poor record on rights. He said the best way to promote democratic development was through developing trade irrespective of whether they had dictatorships or political governments that do not espouse our own beliefs about human rights. Isolation, contrary to some beliefs was not conducive to helping the populations of repressive regimes. A logical progression of such a policy would be to give more assistance to solving the root causes of forced migrations.

Accepting a refugee from another State can cause problems in international relations. In effect, it is accusing the other State of not being able to protect its citizens. How does that other State react? It is known that China has not reacted kindly to the number of Chinese granted refugee status in Australia. On the other hand, it has not embargoed Australian exports either. The Australian DFAT has never been inundated with complaints or hostile representations or ultimatums when countries of origin learn that Australia has given refugee status to their nationals (Personal Communication, DFAT). Other nations, for example Iran, are not so communicative, mainly because it has been under international scrutiny for its human rights record in the Committee on Human Rights. Being host to some four million refugees itself, it probably understands refugee movements better than Australia. The Canadian Government was faced with a very difficult situation when a number of Israeli citizens sought asylum and the Refugee Board granted it. The Israeli Government pointed out it did not make refugees out of its own citizens. It saw the episode as anti-Semitism. The Australian Government has faced similar uncomfortable situations after citizens of Bougainville and East Timor have been granted asylum. Those granted refugee status from Malaysia have not caused a ripple despite a difficult bilateral relationship on other issues (Personal Communications).

Trade relations are the central pillar of foreign policy. There are those who allege that trade is paramount. The Foreign Affairs and Trade Departments of Australia and Canada both maintain trade is subservient to humanitarianism. If a country threatened a trade embargo if its nationals were granted asylum then that country would grant asylum and suffer the consequences.

Critics of Australian refugee/foreign policy claim policy considerations rather than humanitarianism are the overriding driving force. They point to statements by Minister McPhee on the arrival of six Irian Jayanese in Torres Strait that no-one from Irian Jaya would get refugee status because the Australian Government did not want to upset Indonesia. They also stress that the detention of the Cambodians was driven by foreign policy namely, the initiatives of Foreign Minister Evans to return Cambodia to democratic government. (In relation to the Cambodian criticism, this seems to be unfounded as the issue was totally insulated from normal foreign policy considerations (Personal Communication, DFAT)). At that time Prime Minister Hawke stated that the Chinese students would not be sent back but the Cambodians would be (even before the individual determinations had been made). In a television interview (6 June 1990) Mr Hawke said: "... These people are not political refugees ... there is obviously a combination of economic refugeeism ... We're not going to allow people just to jump that queue by saying we'll jump into a boat here we are ... I'll be forceful in ensuring that that is what's followed".

In spite of Prime Minister Hawke's seemingly humanitarian intervention the substance of the above chapters leaves no doubt that both Australia and Canada apply a narrowly defined interpretation of the definition and the Convention. It has also been demonstrated that a much wider, and more internationally responsible approach is called for in refugee determination.

The Australian Department of Foreign Affairs and Trade plays a different and unique role. At the peak of the RSRC process it staffed six Committees and provided information on request to other Committee members. When the RSRC was abolished on 30 June 1993 the role that DFAT had played was of particular ongoing interest to DIEA case officers as well as to the new RRT. DFAT had Embassies in some eighty countries and had excellent local contacts and access. This led to DFAT continuing to provide information in response to requests from decision-makers at both the primary and review stage as well as to DFAT publishing Refugee Country Profiles on specific countries. This service emerged in response to a need to ensure the highest possible quality in decision-making on peoples lives. In so doing it has supplied 2500 cables to the database on decision-makers so they that are able to "get it right" more often.

Decision-makers are free to use or not use the information provided. So far the Australian courts have not dismissed information provided from Australian Embassies. Decision-makers weigh DFAT information against that of other sources like Amnesty International and the U.S. State Department and Canadian information

and that provided by applicants. DFAT is the only foreign service in the world which provides such a service to a domestic refugee determination process (Personal Communication, DFAT).

Unlike the directive approach described above in relation to the U.S., DFAT does not attempt to pre-judge whether or not "persecution" exists, or to prescribe refugee priorities to DIEA. It does provide authoritative information on the degree or extent of harassment of particular vulnerable groups while protecting sources and being mindful of the ADJR, Freedom of Information and the Privacy Acts. Such information usually ends up being quoted to applicants for comment whether or not it supports or is adverse to their claims.

More widely, DFAT has other roles to play. It leads Australian delegations to EXCOM. It has taken a lead role with Australian NGOs (AUSTCARE and RCOA) to ensure that they are part of our EXCOM delegations. No other western country does this. It understands foreign passports better than most, and participated in the training of RRT members. It monitors sovereignty and dual nationality issues. It issues Certificates of Identity and Convention Travel documents. It is required to examine and respond to resolutions in UN organisations on the global and regional movements of people. It states Australia's case in relation to peacekeeping, human rights, humanitarian affairs. It monitors UN arms embargoes on Bosnia and Herzogovina and Rwanda, and landmines issues. It deals bilaterally and multilaterally with the countries of origin. Can it wear two hats in relation to refugees? Could its impartial information service be compromised by the desire of its geographic areas to ensure harmonious bilateral relationships? So far this has not been the case, despite attempts by RACS two years ago with its discovery order, on Cambodia, to prove that DFAT's involvement was partial. It is therefore important that DFAT continue its policy monitoring and assistance roles to ensure that there is impartial advice available on refugee situations.

Chapter 12

WHITHER NOW - A NEW REFUGEE POLICY

The above analysis has shown the evolution of the international setting on the contemporary refugee dilemma and, at times, crises. Examination and comparison of policy processes of Australia and Canada has exposed major weaknesses, exposing the inadequacies of past and present approaches.

The world community has attempted to deal with massive refugee flows in a variety of ways, seeking to ease the plight of the refugees to relieve the pressure on countries of settlement while searching for solutions to deal with the root causes as well.

The approaches used can be categorised simply as follows, although to do so does not exclude the possibility of several methods overlapping in any one response:

* Settlement:	in countries of first asylum; in countries of resettlement; repatriation; final destination.
* Financial assistance:	to aid refugees directly; to foster economic development in refugee camps; to foster long-term economic development in source and asylum countries.
* Deterrence:	to restrict refugees' access to asylum; to prevent the "magnet effect"; to prevent refugees reaching asylum.
* International co-operation:	international protection; international assistance; "burden-sharing".

The questions for refugee policy are: Where can refugees be most effectively settled? Is refugee policy adequate? Is legislation adequate? We must bear in mind that often the situation of asylum is not a solution for the refugee but for the refugee's children. This often applies to immigration as a whole. Certainly, the refugee will have a

refuge amongst us. Some will thrive but for many others the fuller life is postponed for the next generation; and sometimes not even for them.

Contemporary discussions by policy makers about how to respond to refugee emergencies invariably include one or more of the following three approaches:

(1) refugee containment, such as by organising internal safety zones like those devised in 1991 for Kurds in northern Iraq, and by initiatives like the humanitarian assistance programs in Somalia and the former Yugoslavia, or by summary return programs like that imposed on the Haitian boat people;

(2) burden sharing, such as by imposing regional screening arrangements like those devised in 1989 for Vietnamese and Laotian asylum-seekers in Asia, and

(3) collective deterrence, such as by promoting various techniques to limit asylum, like those currently pursued in Australia, Canada and Western Europe.

While above it has been argued that as goes Europe (including the United Kingdom) so go Australian and Canada, the social dynamics in the latter drove policy and law in a different way. Essentially, racism is not a deep malaise in Australia and Canada.

RACISM

An immigration policy based on racial discrimination - on differentiating certain groups of people, usually from Third World countries, and defining these as unwanted and unwelcome - panders to popular racism and has the effect of undermining attempts at combating racial discrimination.

The current level of racially motivated violence in many countries directed against people seen as ethnically or racially different is a clear example of the extent to which racist sentiment has now been appeased by restrictive immigration policies. The reason for this is clear. A racially, discriminatory immigration policy defines certain people as a problem and puts considerable resources into keeping them out, is in contradiction to policy statements and laws which state that everybody is to be treated without regard to their racial or national origins. Moreover, a racially discriminatory

immigration policy legitimates racist sentiment and does so from the highest authority within the country. Because Australia and Canada have very firmly adopted non-discriminatory policies, their regimes are very different.

Since the mid-seventies there has been increasing competition for access to and control of limited and dwindling resources. The widening divide between North and South, East and West has helped contribute to the explosions of racism and xenophobia which Europe is witnessing at present. This crisis reinforces permanent features of human nature which are expressed in feelings of fear and prejudice against all those who are perceived to be "foreign".

Migrants, including refugees and asylum-seekers, are particularly vulnerable to being regarded as scapegoats. Prejudices against these groups are already latent in European culture and, of course, they are also to be found in Australian and Canadian cultures. These prejudices arise from internalised, eurocentric views of non-European cultures. Nationalism and concepts originating in developments that parallel the rise of the Nation-State continue to influence the perception of "foreigners". These prejudices come to the fore in everyday language, legal discrimination and institutional discrimination and are escalated at times of high unemployment. They are transmitted by the mass media thereby acquiring an "air" of acceptability and normalcy. It seems to me that there is a correlation between racist and xenophobic violence and the way in which political and social elites - as well as the mass media - have influenced the perception of and attitudes towards foreigners in general and asylum-seekers in particular.

Being a refugee in Europe today is especially dangerous given recent attacks on refugees. I certainly would not want to be a refugee in Europe today. I would be living in fear of being attacked. In 1993, there were at least 75 racially motivated killings, up 13 per cent from the 66 such deaths in 1992. In France, attention was drawn to the tidal wave of racial attacks sweeping the continent, accompanied by a surge in political support for far-right organisations and a sharp shift in public opinion against immigrants and refugees. The far-right parties like Jean Marie Le Pen's National Front, and the Republican Party in Germany, define themselves by a hatred of foreigners and a belief that the continent is being swamped by refugees and illegal immigrants.

The extreme right has whipped up a mood of xenophobia by claiming that Europe is about to be overrun by foreigners. Anti-immigrant sentiment has not been affected by

the number of deaths across Europe and, if anything, has spurred mainstream politicians to go on the offensive against immigrants. In the lead-up to the June 1994 elections for the European Parliament, France's Interior Minister Charles Pasqua claimed there could be a flood of immigrants from Eastern Europe and another from Africa. "By the end of the decade there will be 130 million North Africans, including nearly 60 million aged under 20 with no prospects, and further south one billion Africans," Pasqua foretold (Doyle 1994, 16). This is reminiscent of Australian politicians in the 1950s and 1960s warning of the "yellow peril". Despite the theme of immigrant invasion by immigrants the facts reveal a different story. Aggregate figures across the EU show a decline in the numbers of immigrants since 1980, but this has not stopped the attacks on foreigners. At a time when unemployment is heading towards 20 million and many are suffering severe economic hardship because of cutbacks in social welfare program it is easy to blame foreigners for a nation's ills. The immigration issue was a key issue in the June 1994 European Parliament elections. Openly racist and far-right candidates have advocated forcible repatriation. This was again proposed in the 1995 French Presidential elections.

Refugees in Australia and Canada have not suffered the same degree of racism that those in Europe have. In Vancouver some Hong Kong Chinese have not been made very welcome. At the other end of the economic scale there is concern that newcomers generally take jobs in spite of detailed studies arguing the opposite. However, there has not been violence. A similar situation exists in Australia.

Racism does not exist in government policy in Australia or Canada. However, even with the best intentions structures may operate in a racist way. Australia and Canada have endeavoured to offset this eventuality by enacting Racial Vilification, Anti-Discrimination and Equal Opportunity legislation. This has been supported by equal employment opportunity, affirmative action and access and equity educational programs.

Both countries have now experienced some two decades of multiculturalism. Most Australians and Canadians have been exposed to other cultures. Both societies have become more tolerant of other cultures. A part of the answer to overcome racism is through education. Anti-racial vilification laws are not the solution. They are too broad. It is, however, a matter of considerable concern that racist posters have been distributed in Northern Territory centres during July 1995. According to the *Northern Territory News* (20 July 1995) the posters were headlined "Sink Them!" and referred to ethnic Chinese boat people as "human trash". They called on Australian authorities

to "shoot them out of the water". These posters seem to have been confined to the Northern Territory. Their presence was not reported in the southern States. Organised by Australian National Action they have the potential to whip up anti-refugee sentiments. Anti-vilification laws in New South Wales and the Australian Capital Territory would prevent distribution in those jurisdictions.

This view is supported by a Saulwick Poll (*SMH*, 8 June 1994). Of the 1000 respondents 65 per cent said Australia was a better place now that people from so many countries lived here. Only 28 per cent of those polled disagreed with the "better place" assertion. The highest rate of respect for different ways of living came in the 18-24 (44 per cent) and 25-39 (40 per cent) age groups. The older the age group, the less supportive it was of different ways of living. Only 26 per cent of over-55's, for example, had a respect for other ways of living.

A comprehensive refugee policy adequate to the present situation has to be composed of a number of measures. There may be a need to widen the interpretation of refugee or asylum-seeker in the light of current realities. The Geneva Convention was framed in the context of the Cold War and is inadequate to deal with the present situation. However, it was never meant to address every human right violation. A new definition and new approach must recognise that people may flee their countries of origin for a great many reasons other than individual persecution as defined in the 1951 Convention. They may, for example, be fleeing famine, natural disaster, civil war, endemic poverty and so on. Australia has regrettably, unlike Canada, persisted with a restrictive scope of the definition.

A NEW DEFINITION?

UNHCR raised the possibility of a new convention in its "Note on International Protection" late in 1994, canvassing the idea of broadening the scope of the convention to include displaced persons. However, it came swiftly to the conclusion that very few countries were in favour of expanding their responsibilities freely entered into in the early 1950s. At the UNHCR Sub-committee on International Protection in 1994, Australia noted that the answer to larger and more complex movements of people was not to stretch the existing definition or formally widen it. Australia argued that the concept of persecution remained the core element. It would therefore not be helpful, for those whose real claims to persecution are recognised, to be entitled to no greater rights than those who are merely seeking better economic circumstances for themselves.

As Aleinikoff has argued in support of the above analysis (1992, 125): "In a deep way, the Convention fails to solve the problem that refugee status poses for the State system."

> "Although refugee status is grounded in the idea of loss of membership of a State, refugee law does not guarantee attainment of membership elsewhere. Recognizing the fundamental international law norm that States have complete control over the entrance of aliens into their territory, the Convention carefully fails to establish any duty upon States to admit refugees. Its central protection is the guarantee of *non-refoulement* - the right of refugees not to be returned to a country in which they would suffer persecution. Subsequent attempts to conclude an international treaty on territorial asylum have failed" (Aleinikoff 1992, 124).

The European Consultation on Refugees and Exiles (ECRE) (1993, 14) proposed that the refugee definition include the following:

> "a. persons who have fled their country, or who are unable or unwilling to return there, because their lives, safety or freedom are threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (this is an amended version of the Declaration of Cartagena, III, 3; the amendment is necessary in order to include post-flight reasons and refugees *sur place)*;
>
> "b. persons who have fled their country, or who are unwilling to return there, owing to well-founded fear of being tortured or being subjected to inhuman or degrading treatment or punishment or violations of other fundamental human rights."

According to ECRE (1993, 14) "Ways of achieving this would include: a) bringing situations which are a threat to international peace and security promptly before the UN Security Council, b) addressing other situations through existing human rights mechanisms and human rights treaty monitoring committees, c) debate and action by the UN Commission on Human Rights, and d) use of the 'Good Offices' of the UN Secretary-General."

However, in reality, no country will agree to an expansion of the refugee definition. If the 1951 Convention were today opened for ratification it is doubted if there would be many signatories. The chances for amendment to the current definition are therefore remote. A new convention would be limited to the lowest possible denominator of contemporary interpretation. European States would like to reopen the definition but

only to restrict it further, for example, to delete categories from the UNHCR Handbook such as "non-State agents of persecution". France would be the first to do this. Why give the EU an opportunity to do this? Would this benefit refugees worldwide? Alternatively, member States could agree on a new Protocol to the existing Convention; or a Declaration by all States Parties broadening the definition; or a Declaration by a limited number of like-minded States Parties to expand the definition.

Any discussion of the problem of refugees must sooner or later address the question of why there are refugees and in so great numbers, and from there go on to take action to avert mass migrations whatever their causes - environmental disasters, war, famine. This is something that can be done only on an international level and with extensive international co-operation.

There must also be discussion on the measures which States have adopted to prevent refugees from reaching their shores and availing themselves of the *non-refoulement* protection. These measures - visa requirements, carrier sanctions, border controls, including detention, off-shore indiction and airport exclusion zones - represent the armoury which States have developed to prevent the entry of refugees.

Just as too many official statements portray immigrants as constituting a social problem or as facing States with a crisis, so too many statements in recent years have portrayed Australia, Canada or a European Community as under threat from vast numbers of refugees, many of whom are said to be "bogus" or economic migrants. It is important that a sense of proportion be maintained. While the numbers of asylum-seekers arriving in European Union countries has increased in recent years, the burden of accepting refugees is not borne solely by the developed countries. It is borne by Third World countries, countries close to the conflicts and other situations giving rise to refugees. It is an essential part of any fair and humane refugee policy that it challenges such depictions and present the truth to the public about the plight of refugees and the conditions which gave rise to them.

To date no legal instrument has put into binding form the protection of wealth or private property as a human right. Neither the ICCPR nor the ICESCR, which do enshrine protection of life and freedom from torture, cover the purely economic act of possessing private property. Importantly, therefore, economic hardship must be distinguished from economic oppression. Oppression occurs, when property or privilege is limited to a select group or class. If a government discriminates as to who

receives jobs, food, housing or medical care on the basis of such criteria as race, religion, nationality or political opinion - that discrimination could well qualify as oppression - oppression of the sort amounting to persecution and therefore qualifying a person as a refugee. However, the mere existence of social injustice in terms of economic opportunity or distribution of wealth does not mean that oppression is evident and thus under the current Convention definition cannot provide a basis for a refugee claim. The rightness or wrongness of this situation influences the direction of Human Rights Law.

The civil wars in the Horn of Africa are among the most tragic of ongoing humanitarian crises facing us today. The battles began out of clan and tribal rivalries and have deteriorated to a stage where it seems that each person, with a gun, is a sovereign unto himself. Previous super power rivalry has also had its effect. The explosion and expansion of violence from what was previously a more or less clearly defined source, now can be attributed to a multitude of ill-defined sources. This is the hallmark of the current situation. Chaos prevails and the very concept of authority or prospect of centralised power capable of providing protection is becoming less and less imaginable to those whose lives have now for so many years been traumatised. Our instincts tell us that those people are refugees. However, others say they are the victims of civil war. They have no fear of persecution but only of the pervasive violence and chaos which surrounds them. In this case, the distinction between victims of civil war and victims of persecution has no real basis. What is required is a careful analysis of the situation itself and a more effective international agreement about intervention. As the conflicts in the Horn of Africa have their roots and effects along ethnic national lines, despite the fact that it is a war, it is nevertheless in my view, a form of treatment that comes within the Convention definition of a refugee as it is based on race.

On the other hand, consider a conflict that is fundamentally about economic wealth and power. If the holders and takers of that wealth and power be a heterogeneous group - that is a situation in which the wealth is well distributed among various ethnic and/or religious group - then the mere battle for that power, economic or otherwise, would not be considered to produce refugees as they are defined in the Convention insofar as human rights do not yet include a right to wealth. It is stressed that it is the actual or feared deprivation of the economic wealth or power that is not a protectable human right interest. If, on the other hand, the depriving forces or persons injure people, or more specifically torture them or take their lives, this raises other issues - such as the fundamental right to life. Thus, persons fearing imprisonment, death or

injury because they were the ruling or upper classes can be called refugees under present standards - but those who fear nothing but the loss of private property would not be. Simply, economic deprivation can qualify a person as a refugee if that deprivation significantly differs from others in the society due to political, racial or religious bias. Otherwise, it is not persecution.

There is a need to clarify status determination procedures. As the minimum, each State's procedures should meet the following standards:

(a) Every asylum-seeker should be referred immediately to the competent authority responsible for examining and making decisions on asylum claims. This authority should be staffed with specially trained adjudicators who have access to accurate information on conditions in countries of origin or transit countries and who are trained in refugee law.

(b) Applicants for asylum should be informed in a language they understand, of their rights and the procedures to be followed to process their application.

(c) All applicants, including those detained at seaports and airports, should have access to legal advice and a competent interpreter, if necessary, to assist in presenting an asylum claim.

(d) Asylum-seekers should have access to UNHCR and non-governmental organisations for assistance in presenting a claim.

(e) There should be a right of appeal in all cases. Asylum-seekers must be allowed to remain in the country until the appeal is decided. Such a procedure should not be summary in form unless the hearing in the first instance results in a finding that the asylum claim is clearly fraudulent or not related in any way to the criteria for granting refugee status. Such a hearing must include a right for the applicant to be heard in person.

(f) Negative decisions should be in writing and supported by reasons communicated to the person affected in a language which the person understands.

Canada meets these procedures. Indeed Canada is now considering humanitarian and compassionate factors upfront. The aim is to keep people out of the determination system which is very expensive. It would be in Australia's national interests, including financial to follow suit.

WORLD CHALLENGE

The challenge in all parts of the world is to maintain asylum as an option for those in need, by seeking where possible to address the basic causes of potential new forced migration flows, by creating durable solutions for those who are currently displaced and by discouraging abuse of the asylum system. There is a need for continued burden-sharing by the international community and for political leadership to increase public understanding and tolerance of the asylum process among the host populations.

Many countries which shelter large numbers of refugees are among the poorest in the world, yet they contribute considerable resources to maintaining these populations in asylum over long periods of time. If developing countries are to remain open to those in need of a safe haven, it will be essential that the developed countries continue to provide material resources for the upkeep of asylum populations. They must also assist with repatriation and resettlement programmes and keep their borders open to genuine asylum-seekers.

The increasingly stringent measures being adopted to control unfounded asylum applications through the safe home country concept, and to put some or much of the asylum and refugee determination burden on safe third countries, have put several additional concerns on the policy agenda. First, it will be necessary to monitor carefully the application of these concepts to ensure the protection of bona fide asylum-seekers from *refoulement*. Second, there will be a need for generous burden-sharing with economically weak host third countries. The new measures will create considerable economic strain on a country like Poland.

When emergencies occur the system of individual asylum adjudications is too complex. There is need for a temporary asylum category requiring refugees to return when conditions in their countries have improved. This classification would be similar to the B status in Europe, exceptional leave to remain in the United Kingdom or Temporary Protected Status in the USA. Although (Argeant 1992, 17) reported for 1992 that "many [European countries] are willing to permit entry of persons from Bosnia and Herzegovina as part of a mass influx searching for temporary protection, rather than as individuals in search of permanent asylum" the responses were ad hoc:

> "Some countries, such as Norway and Sweden, are keeping Bosnians out of the formal asylum process. Others, such as Denmark, prefer not to act on the asylum application, and thus permit Bosnians to enter and remain by default or, as with Belgium, to reject a first application and

> postpone any re-examination, thus allowing the Bosnians already in the country to stay" (Argeant 1992, 17).

Beyer (1987) and the Refugee Policy Group (1989) have argued for more effective means of providing temporary protection in Western industrialised countries. One such approach would be for host countries to introduce a six-month or one-year "temporary permit to stay" which would be granted to a member of a specific group defined, for example, by ethnicity or religion (such as Bosnians) or as specific social groups at risk (such as certain groups of women, young males fearing conscription in rebel groups). The host countries would admit these groups outside the established asylum process, thus avoiding additional strain on the asylum system. A general introduction of such an approach should help to spread the border amongst affected countries. If the situation in the temporary asylee's home country improved within a specified period (say, three years) the forced migrant's permit would not be renewed and the person required to leave. If it did not improve the permit could be renewed or the person could apply for permanent residence. There are very good reasons for Australia and Canada not being keen to adopt the temporary protection approach.

VOLUNTARY RETURN

Considerable attention needs to be given to voluntary return. Policy makers need to promote self-repatriation. At the beginning of 1992, UNHCR anticipated repatriation operations to 21 countries, involving three million expected returnees at a projected cost of $US405.5M (*Going Home* 1992, 9-10). However, the political and economic obstacles have proven to be considerable and only 1.5 million refugees returned home during 1992 (Ogata 1992, 3). Refugees generally will return home by themselves once they realise that the condition in their country is safe and stable. Like every other human being, refugees would rather prefer to have control over their own lives. Accurate information on the country of origin is essential in repatriation. Repatriation and reconstruction must go together.

In every case the repetitive process was more difficult than anticipated primarily for two reasons. First, peace is being rebuilt only slowly and haltingly - in some instances with considerable setbacks - which means that those who return do so at substantial personal risk. Second, even where peace has been achieved, there is a need for reconstruction of the war-torn areas. Although there is optimism that large numbers of refugees will be able to return home by the turn of the century, the international community must recognise that voluntary reparation is a costly and risky process.

When voluntary return is not feasible or at best remains a distant hope UNHCR is charged by virtue of Article 1 of the Statute with seeking for refugees the opportunity of "permanent assimilation within non national communities". Integration into the country of first asylum is preferable to resettlement to a third country which often takes refugees out of their region of origin. However, the refugees may prefer third-country resettlement to integration with the first asylum country.

Local integration has been an important solution for forced migrants throughout history. The historical pattern is similar to what is true today for persons granted asylum in Western Europe, the United States, Canada or Australia where refugees usually have the option of remaining permanently and becoming full members of the asylum country. However, there are variations in the Western industrialised countries' conceptions of citizenship and, consequently, in their naturalisation policies. Some countries see citizenship as facilitating the immigrants' or refugees' integration into the host society and therefore grant it as a right after only a few years of residence (the United States, Canada, Sweden), other countries see citizenship as the culmination of a successful integration process and consequently require longer periods of residence before granting it and allow an element of discretion to enter into the award (Australia, Switzerland, Germany). Even more important are differences in the way children of non-citizens who were born in the host country become members of that society either by ascription (jus soli) or by naturalisation (jus sanguinis).

Third-country resettlement entails the planned removal of refugees from an asylum country for permanent resettlement in another country. It is valuable resource when used to help those for whom other options are unlikely to become available in the foreseeable future or who need urgent protection in the asylum country. Ten countries announce yearly resettlement quotas (1993 Canada 13 000, Australia 4800) but refugee resettlement is a scarce resource.

TABLE 7

REFUGEES RESETTLED AND PERSONS GRANTED ASYLUM
IN RELATION TO TOTAL POPULATION

Resettlement Country	No. of. Refugees and Resettled Persons granted asylum		Total population (M)	Ratio of refugees/asylees to total population
	1975-91	1991 only		
Australia	196 014	1 300	17.8	1:91
Canada	370 970	35 470	27.4	1:74
United Kingdom	18 597	3 700	57.8	1:3108
United States	1 593 695	115 511	255.6	1:160

SOURCE: COMPILED FROM UNHCR STATISTICS

In 1991, the UN High Commissioner for Refugees stated that 76 000 persons desperately needed resettlement. This is not a great number, yet, places were found for less than half of these people. UNHCR estimated that some 58 860 refugees required resettlement in 1994.

Resettlement countries used to consider offering more places to long-stayers for whom neither return nor local integration seem likely options in the foreseeable future. Certain refugee groups in Africa are in this category, yet that continent has consistently ranked last in the resettlement programmes of the major receiving countries. The explanation of these policies may lie in several misperceptions that are prevalent in the resettlement countries. On the one hand, traditional "African hospitality" is allowing long-term asylum to become effective local integration, and on the other hand, we are dealing with rural refugees who would not integrate well in the industrialised countries (Kibreab 1990, 7-9).

TRAFFICKING

Reference was made previously to concern in Canada about smuggling immigrants including refugees. The full implications of such trafficking, for the individuals and the societies involved are not clear. As refugee status becomes more difficult to

achieve and migration from Third World countries almost impossible, it is understandable that desperate people would seek out the services of traffickers to help them slip into the country of choice. The problem of trafficking is serious. Spectacular failures of trafficking schemes are about all we learn from the media: people drowned; filthy, overcrowded ships intercepted; groups of "tourists" detained.

Participants in an Informal Exchange of Views on Trafficking in Migrants held on 23 July 1993 at IOM Headquarters in Geneva stressed that gathering and exchanging information is one way concerned governments and organisations can devise appropriate policies which address the true causes and effects of migrant trafficking. The 48th United Nations General Assembly (Agenda Item 110, A/c. 3/48/L. 9/Rev. 2) recognised that socio-economic factors have an impact on alien smuggling; it called for improved bilateral and multilateral co-operation to address the many aspects of the alien smuggling issue; and it invited member-States, specialised agencies and other international organisations to report on their activities to combat alien smuggling and requested the Secretary-General to report on those activities. UNHCR (1993b, 5) pointed out that traffickers were smuggling refugees as well as migrants. "Denied passports or exit permits, people in flight from persecution may have little choice but to turn to rings of organisers who arrange their departure for profit."

The extent of the problem can be seen from the attention devoted to it in various Councils. The conclusions of the Fifth Conference of European Ministers Responsible for Migration Affairs, held in Athens 18-19 November 1993 highlighted "the need to strengthen international co-operation in combating clandestine immigration networks, especially when they are linked to organised crime". The Ministers also called for stepped-up measures against employers of clandestine workers and the "criminals" who exploit the "situation" of clandestine migrants (Council of Europe Document MMG-5(93)4). At its 29-30 November 1993 meeting on Justice and Internal Affairs, the Council of the European Union backed five recommendations, addressed to its member-States, to intensify regional efforts against the trafficking of persons to work as prostitutes. The recommendations called for enhancing police training on anti-trafficking legislation and police work in other countries; improving the collection and exchange of relevant information nationally and internationally; finding ways to expand awareness among diplomatic, consular and border officials of trafficking for prostitution so as to stem this traffic by examining visa requests; and strengthening the Councils' work on trafficking for prostitution in terms of administrative, police and judicial co-operation as well as understanding its migration elements.

The extent of trafficking seems to be very extensive. The *Migration News Sheet* (September 1993 to May 1994) gives details of numerous incidents - China to Belgium, China to Romania, Iraq/Turkey to Romania to the "West", Haiti to United States of America , China to Austria. Indeed, the International Centre for Migration Policy Development in Vienna believes smuggling migrants and asylum-seekers will be bigger business than smuggling drugs.

How does this affect refugees? If I were desperate to escape persecution, could not find a country to accept me as a refugee and was promised entry into a western country upon payment of a fee, of course I would accept that offer. We must remember these people are desperate to escape penalty, persecution and so on. However, trafficking cannot be sanctioned. Affected governments will be concerned about losing control of their borders but more important is the welfare of the victims of immigrant trafficking and an anticipated upsurge in crime associated with migrant trafficking. Little is known about trafficking - volume, motivations, routes taken and prices paid. No agency at the international level is systematically gathering information on migrant trafficking or facilitating its exchange although IOM is compiling information from the media, governments, and international governmental and non-governmental organisations. Resources are not available nor are they ever likely to be. This information being compiled is new incidents, trends and policies. This information needs to be published regularly in a readily useful form.

This is one area of refugee policy and law that needs urgent attention. Countries of destination - and this includes both Australia and Canada - must aim to prevent trafficking. Border controls will prove ineffective. In the first place, governments must criminalise trafficking and harmonise their anti-trafficking legislation, particularly in terms of penalties. Second, countries at both ends of the migrant trail should work together to confront the causes which undertake trafficking. In my view, returning trafficked persons who have been detained to their countries of origin is essential. Failure to return people not only fails to discourage trafficking but it represents a threat to asylum, as such.

This is, of course, a contravention of article 31 (Refugees unlawfully in the country of refuge) and article 33 (non-refoulement). The drafters of the Convention clearly did not foresee trafficking. Whilst article 31 applies to refugees who have entered the country without authorisation, it merely requires that they present themselves without delay and

show good cause for their illegal entry - an action persons involved in trafficking are unlikely to make. Furthermore, Contracting States are required to allow such refugees a reasonable period and all the necessary facilities to obtain admission to another country.

As pointed out, trafficking must be regarded as a criminal act. To apply article 31 to a "refugee" engaged in trafficking must be regarded as rewarding the person in so far as that person is found settlement. In my view such a person should be returned to the country of origin, irrespective of article 33.

Trafficking has the potential to completely undermine the Convention. Throughout this thesis I have shown that States everywhere are enacting legislation to keep persons claiming refugee status out. A person refused refugee status in the United States of America may not apply for status in Canada and vice versa. A person involved in trafficking should not be entitled to protection under the Convention and, therefore, not entitled to the protection afforded in article 33.

At present refugee flows are so massive that States, particularly in the developed world, are looking for alternatives to asylum. Of course, they are also giving serious attention to the underlying reasons for transnational flight, whereas, in the past they had been content to respond, well or badly, to the symptoms. Their motives are by no means essentially altruistic or humanitarian. Protection must be offered to the people in fear of persecution. This usually involves peacemaking and peacekeeping. Peacekeeping can only work when a political solution has been reached. In terms of these massive refugee flows three questions are posed. What is the aim of protection? Is asylum actually a solution? Is asylum actually best for the refugee?

In considering these matters, again the question is asked, who would want to be a potential refugee faced with these problems?

Protection is non-negotiable. However, it is not an end in itself. Protection is not contingent on solutions such as return but neither does it rule out questions on ways and means. Protection by the international community, substituted for national protection that is absent or denied, is the key. Protection, unlike asylum, is not restricted by definitional constraints. It is free of all jurisdictional limitations such as flight, alienage or nationality. It is not confined by content restrictions but readily

defined by reference to human rights. The human need to survive is unlikely to conform to the desires of managers and law-makers, so long as the economic, political, humanitarian and environmental push from below continues. For this reason, a protection policy oriented towards peace, social justice, development and self-sufficiency is likely to be the only means capable, not of stopping the movements of people, but of exercising long-term influence over the causes of larger migrations.

During the 1980s and 1990s, countries in Western Europe (including the United Kingdom), Australia, Canada and the United States of America have resorted to a veritable catalogue of restrictive measures against asylum-seekers. As has been pointed out, these included strict treatment of refugees and claimants; sanctions against carriers; the fiction of the international zone in airports in an attempt to avoid international obligations; detention; accelerated procedures; the "safe country" concept as a way of denying access to the determination process, the notion of "safe third country", to like effect and whether guaranteed or not; restrictive interpretation of the refugee definition in the 1951 Convention.

Did the number of asylum-seekers moderate under the influence of these measures? No! On the contrary the number of applications has increased as has been shown in previous chapters. Why? Because policies of reaction and control leave to one side the fundamental causes for flight. This shows the dilemmas Australia and Canada face on these complex issues. They deny equally a solution to the thousands who have left their countries involuntarily for reasons that even States themselves accept as valid - armed conflict; lack of personal security; denial of respect for protection of basic human rights. The cycles of violence, repression and uprooting continue to drive individuals, families and whole communities to seek refuge somewhere or other. While border control and administration have their place in the order of things, recent European experience merely confirmed the clear link between increases in the arrivals of asylum-seekers and patterns of violence in the Middle East, the Horn of Africa and South Asia. States have their own particular perspective based on national self interest. They have obvious practical concerns - the numbers of persons arriving on their territory; the impact of arrivals on resources and on communities within the State; the numbers of so-called non-returnables, that is, people who cannot be sent back to their countries of origin because of prevailing conditions; as well as those who it is just impractical to return. The pressure on national systems may also have serious repercussions on both political will and public opinion especially in times of persistent economic recession.

At the obligations level, States are concerned not to widen the refugee definition, so far as that definition is perceived as coterminous with a duty to allow people to remain. At the same time, they also seem anxious to find appropriate mechanisms to resolve and prevent refugee flight and to complete the equation by finally involving other States more fully, especially the country of origin. There is also an emerging sense of the need to find both solutions and a coherent response for those non-Convention refugees who nevertheless have valid reasons for not being required to return to their countries at least in the interim.

Three issues stand out: the procedural issue - providing protection at the national level; the interstate co-operation issue, especially on protection and assistance at regional levels; and finally, the institutional mandates issue. People in flight are not new problems and migration and refuge are not new issues. Minimum standards, in particular, have emerged over the last half century. There is a wealth of untapped non-governmental, governmental and international experience which has not been focussed on policy development. There is now some political will to move towards a coherent, integrated, institutional system to deal with movement and flight - one that will promote and facilitate regular migration, not excluding return; that will promote mediation at the individual or case level; and mediation at the level of inter or intrastate conflict; that will come to grips with the inherent relationship between large-scale movements and large-scale deprivation, denial and dispossession.

If nations are to adopt a holistic approach to the refugee problem the limits of domestic jurisdiction in the context of the country of origin and the treatment of people within its own borders must be considered. As a result, the development of international refugee law has become a part of the broader ongoing debate on intervention.

The principle prohibiting direct or indirect intervention in the internal affairs of States continues to be consistently affirmed. General Assembly resolutions 2131[XX] and 2625 [XXV] quite clearly indicate that "no State may use or encourage the use of economic, political, or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind". This provision was upheld by the International Court of Justice in the Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States of America* (1986) ICJ Rep. 14). Moreover, the threat or use of military force in international relations is proscribed by Article 2(4) of the United Nations Charter (unless, of course, regulated by the Charter itself), and

unilateral military interventions have been usually condemned outright by the UN majority, despite efforts by a few powerful States to the contrary.

Article 2(7) of the Charter, which states that "nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State", is often confused with the principle of nonintervention but is entirely different. The principle of nonintervention prohibits unilateral State interventions into the discretionary domain of another State. Article 2(7), however, delimits international jurisdiction, that is, defines relations between the United Nations and its member States. The narrow approach of Australia and Canada to the UN Charter severely limits their involvement in international crises except under the aegis of the United Nations. The United Nations cannot act swift in such crises because its member States will not act flexibly.

FUTURE PROTECTION POLICY

What then might be the elements in a future national and international protection policies?

At the national level, consideration needs to be given to the extent to which either we or refugees as a community need complex and protracted procedures, based upon a highly individualised definition agreed to in extremely different circumstances nearly half a century ago. What the last decade shows is the inadequacy of definitions, interpretations and legal constructs in the face of human problems. "First country of asylum" is not the answer to any country's numbers problem; neither is the early rejection of so-called manifestly unfounded claims; nor the identification of so-called safe countries; nor the imposition of time-limits. None of these responses actually solves anything.

It is easy enough, for example, to refer to accelerated procedures; however, implementation is less successful. For many States, including Australia and Canada, such procedures are primarily intended to permit the speedy rejection and removal of non-refugees. In the Canadian Law Reform Commission's Study of Refugee Determination (1991), expedition was most commonly tied to positive determination: unburdening the system by moving forward the refugee and others clearly in need of protection. ..... policy requires that the Australian and Canadian systems could be revised to incorporate the positive lessons of the last few years, for example, by:

* substituting an informed administrative process for the wasteful excess of quasi-judicial procedures, allowing expedited protection for those in need, and leaving case by case determination for the difficult or ineligible case;

* in the interests of protection, erring on the side of inclusion through an open procedure for identifying groups and categories at risk and for cessation of risk at large;

* providing flexible and simplified decision-making, thus permitting positive decisions at any time in the process;

* sharing responsibility with other States, through international and internationally-supervised agreements on the determination of claims to protection;

* promoting improved decision-making by way of accurate and up-to-date information;

* improving the process for appointment and evaluation of decision-makers.

States should consider generally supplementing or replacing the luxury of case by case determination with a groups and categories approach, founded on protection needs rather than any formal institution, such as asylum, driven by a sound information base and oriented towards multilaterally generated solutions. National systems must link into the broader picture. This will not happen unless there is more flexibility at the national level. The experience of Rwanda has shown how necessary such an approach is.

Australia and Canada have interests in the future of regional issues, sometimes even the same issue. Of course, regional co-operation is not just compliance, the best way to solve issues is information sharing and trade development through foreign policy. To achieve this, political will is needed. Countries will get a better picture if they sit down together. It might also be advantageous to expand the quantity and quality of fora. The annual Four Country Immigration conference is such a forum. It involves senior officials of the immigration services of Australia, Canada, the United Kingdom

and the United States of America. Discussions usually cover compliance, onshore asylum, policy directions and technological developments.

If the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) is not successful, the effects will be felt in both Australia and Canada. Whatever position is taken on implementation, CPA is an instructive model of the achievable and of the international dimensions to the processes of peace and development. The mechanisms of international protection will necessarily confront traditional claims for the reserved domain of domestic jurisdiction and territorial sovereignty. After Iraq (1991) a re-evaluation of the concept of the sovereign State may be necessary. The fact of membership in the organisation of the United Nations implies certain consequences. Three States - Cuba, Yemen and Zimbabwe - voted against Security Council Resolution 688 (April 1991). This is the somewhat incomplete and ambiguous resolution which remains the only "authority" for the allies' humanitarian operations in northern Iraq. These three States voted "No", for fear of a new form of imperialism, dressed up as humanitarianism.

While taking account of exceptional violations of international standards, and on the basis of modalities and guarantees that have yet to be developed, the new regime of protection will need to acknowledge a realm of legitimate interests of State members of the international community. For these reasons, there is probably more to be gained from less grandiose operations, such as the gradual evolution under the supervision of the international agencies of the "Open Relief Centres" in Sri Lanka. There is more scope for the kinds of sharing arrangements somewhat unsatisfactorily symbolised by the Dublin and Schengen agreements or the assistance provisions of the Fourth Lome Convention. What is lacking in the Dublin and Schengen agreements, however, and what is essential if these arrangements are to conform with international standards, is the essential component of international supervision, without which the non-negotiable element of protection will be lost.

It is significant that in Europe today, both in refugee and other matters, the processes of union and integration are characterised by reference to the "democratic deficit". Both Australia and Canada have an obligation to use international fora both to achieve international co-operation and to reshape their policies and laws. Part of Australia's and Canada's roles, with their European partners, will be to redress that balance, to promote and ensure that measures for resolving or ameliorating the plight of the refugee, meet the standards of justice and equity. If this means putting aside alliance for the time being, and protesting breaches of international law such as the summary

refoulement of Haitian asylum-seekers by the United States as a result of President Bush issuing an executive order in May 1992, so be it.

On 3 March 1995, Senator J. McKiernan issued a statement that Australia would have to consider implementing a policy of interdiction and turning boats around at sea if the Bill relating to China's one child policy was defeated. Such a policy would clearly breach international law and take policy backwards rather than towards effective international co-operation. The Senator claimed that hundreds of thousands of people from China and other Asian countries would shortly be making plans to get to Australia. The Senator said:

> "Irresponsible decisions in our Courts, and I refer particularly to Mr Justice Sackville's decision of November last year, which expanded the definition of Refugee Status, has embellished the view that Australia is an easy target for those who profit by providing passage for boat people.
>
> "The mixed messages coming from the Australian Representative of UNHCR in Australia is also of great concern.
>
> "How can Australia stop illegals blocking up our Court system (after they have failed to gain refugee status), if there is an array of lawyers prepared to give them FREE legal advice and representation?"

The statement raises a number of concerns. The Senator is Chair of the Joint Standing Committee on Migration Regulations. As such he occupies a position of considerable importance in the area of policy formulation. Generally Chair of such a Committee is a rung up the ladder to a Ministerial appointment. It, therefore, might be assumed that before issuing such a statement the Minister would have been consulted. The Minister has not distanced himself from the statement. One must question whether or not such a practice is under consideration. If it is, this suggests yet another move away from the Convention. It is noted that Indonesia refuels the boats of "boat-people", gives them food and water and tows them out to sea. McKiernan raised a number of emotional issues, the fear of hordes of Asians descending on Australia, backlogs in the Courts, legal aid, all of which suggest policy drift. Was McKiernan "testing the water" for such a policy? There is growing support for the political party known as Australians Against Further Immigration as evidenced over the past 12 months in by-elections for the Commonwealth Parliament and the NSW General Elections. It is not considered there are votes in espousing refugees or, for that matter, immigrants. A similar situation exists in Canada where there is growing concern regarding the percentage of asylum-seekers granted refugee status. In both countries, the picture

emerges of Governments, which have failed to deliver effective policies and laws on refugees.

It is increasingly clear that in this present decade States will have to co-operate on a multiplicity of issues arising out of the phenomenon of mass movements. With their strengths as countries of immigrants and of immigration Australia and Canada are well-placed to encourage greater international co-operation on the movements of people, and on combating related exploitation. In the development of external protection policy, Australia and Canada will need to forge and maintain the link between development assistance, sustainable levels of life and livelihood and the attainability of viable alternatives to flight. This all suggests greater international approaches, rather than the prevalent clerical systems.

Accepting also a proportion of the inevitable, of which the bloodshed in Bosnia and Herzegovina and Rwanda are daily reminders, Australia and Canada should promote a comprehensive review of the concept of persons entitled to international protection, not excluding those displaced or threatened within their own countries, and the strengthening of the structures to mediate their plight, thereby bringing international protection and assistance to the root causes.

There are few glimmers of hope for the refugee. Economic hard times and racism have fuelled anti-immigrant sentiments. Countries have closed their borders. They are forcibly repatriating refugees, holding refugees in detention centres and restricting asylum laws in their interpretation. Both Australia and Canada, which have substantial experiences with refugees, are failing mankind in their unwillingness to achieve international co-operation.

Yes, no one would want to be a refugee!

BIBLIOGRAPHY

Books and Journal (including Sourced Newspaper) Articles

Abella, I. & Troper, H. 1986, *None Is Too Many,* Lester and Orpen Dennys Ltd, Toronto.

Adelman, H. (ed) 1994, *Immigration and Refugee Policy: Australia and Canada Compared,* Oxford University Press, Melbourne.

Adelman, H. (ed) 1990, *Refuge or Asylum?: A Choice for Canada,* York Lanes Press, Toronto.

Adelman, Howard. (ed) 1991, *Refugee Policy: Canada and the United States,* York Lanes Press, Toronto.

Administrative Review Council 1991, *15th Annual Report 1990/1991,* Australian Government Publishing Service, Canberra.

Administrative Review Council 1986, *Review of Migration Decisions,* Report no. 25, Australian Government Publishing Service, Canberra.

Aleinikoff, T. A. 1992, 'State-centred Refugee Law: From Resettlement to Containment', 14 *Michigan Journal of International Law* 120.

Amnesty International USA 1990, R*easonable Fear: Human Rights and United States Refugee Policy,* New York, March.

Anon. 1994, Canadian Foreign Policy Review, *Libertas,* International Centre for Human Rights, vol. 4, no. 1, January, pp. 1-2.

Anon. 1985, Conclusions and Recommendations of the Colloquium on International Protection of Refugees in Central America, Mexico and Panama, held in Catagena, Columbia from 19 to 22 November, 1984 under the auspices of the Government of the Republic of Columbia, *1985 Yearbook of the International Institute of Humanitarian Law,* San Remo 183.

Argeant, Tom. 1992, *Croatia's Crucible: Providing Asylum for Refugees from Bosnia and Hercegovina,* Washington D.C., U.S. Committee for Refugees, Issue Paper, October.

Arnaout, G. M. 1987, *Asylum in the Arab-Islamic Tradition*, UNHCR/International Institute of Humanitarian Law, Geneva.

Arnold, R. 1985, 'Aliens', in 8 *Encyclopedia of Public International Law* 8.

Australia, Department of Immigration and Ethnic Affairs 1994, *Annual Report 1993/94*, Australian Government Publishing Service, Canberra.

Australia, Department of Immigration and Ethnic Affairs 1993, *Annual Report 1992-1993*, Australian Government Publishing Service, Canberra.

Australia, Department of Immigration and Ethnic Affairs 1993b, *The 1 November 1993 Decisions*, Canberra, 2 November.

Australia, Department of Immigration and Ethnic Affairs 1977-1987, *Review '77-'87*. Australian Government Publishing Service, Canberra.

Australia, Department of Immigration, Local Government and Ethnic Affairs 1988 -, *Review '88-*, Australian Government Publishing Service, Canberra.

Australia, Joint Committee on Foreign Affairs, Defence and Trade 1992, *A Review of Australia's Efforts to Promote and Protect Human Rights*, Australian Government Publishing Service, Canberra

Australia, Joint Standing Committee on Migration 1993, *Inquiry into detention practices*, Submissions and Evidence, Canberra.

Australia, Joint Standing Committee on Migration Regulations 1992, *Australia's Refugee and Humanitarian System* Australian Government Publishing Service, Canberra.

Australian Catholic Bishops Committee for Migrant Affairs 1992, 'Proceedings of the "Welcome Stranger", National Forum on Refugees held 19-21 June, 1992', Sydney.

Australian Council of Churches 1994, *A Submission to the Minister for Immigration and Ethnic Affairs on Australia's Migration and Refugee Intake 1994-95*, Sydney, February.

Australian Council of Churches 1993, *A Submission to the Minister for Immigration and Ethnic Affairs on Australia's Migration and Refugee Intake 1993-94*, Sydney, April.

Australian Council of Churches 1992, *A Submission to the Minister for Immigration and Ethnic Affairs on*

Australia's Migration and Refugee Intake 1992-93, Sydney, March.

Australian Council of Trade Unions 1994, *Submission on the 1994-1995 Immigration and Humanitarian Intake*, Melbourne.

Australian Catholic Social Justice Council 1991, *I am a stranger: Will you welcome me?* Collins Dove, Melbourne.

Avery, Donald. 1979, *Dangerous Foreigners: European Immigrant Workers and Labour Radicalism in Canada,* McClelland and Stewart, Toronto.

Bailey, P. 1990, *Human Rights: Australia in an International Context*, Butterworths, Sydney.

Baitenmann, Helga. 1990, 'NGOs and the Afghan War: the politicisation of humanitarian aid', *Third World Quarterly,* vol. 12, no. 1.

Bauer, William. 1994, 'Refugee from the IRB', *The Globe and Mail* (Toronto), 12 November, Section D. pp. 1-2.

Baxter, R. R. 1966, Multicultural Treaties as Evidence of Customary International Law, *41 British Yearbook of International Law 275.*

Bayefsky, Anne F. 1992, *International Human Rights Law: use in Canadian Charter of Rights and Freedom Litigation,* Butterworths, Toronto.

Bayne, Peter. 1993, 'Reasonableness, Proportionality and Delegated Legislation', 67 *Australian Law Journal* 448.

Beyer, Gregg. 1987, *Improving International Response to Humanitarian Situations,* Refugee Policy Group, Washington D.C.

Blackburn, Robert. (ed) 1993, *Human Rights for the 1990s*, Mansell Publishing Ltd, London.

Bloed, Arie. (ed) 1993, *Monitoring Human Rights in Europe*, Kluwer Academic Publishers, Dordrecht.

Brennan, Sir Gerard 1986, 'The Purpose and Scope of Judicial Review', in *Judicial Review of Administrative Action in the 1980's: Problems and Prospects,* ed. M. Taggart, Oxford University Press, Auckland.

Brewer, C. 1978, *The Dictionary of Phrase and Fable*, Avenel Books, New York.

Brochmann, G. 1992, 'Control at What Cost?' paper prepared for the workshop on '*Migration into Western Europe: What Way Forward?*', Royal Institute of International Affairs, London, November, 1992.

Brownlie, Ian. 1990, *Principles of Public International Law*, Clarendon Press, Oxford.

Brownlie, Ian. 1983, *Basic Documents on International Law*, Clarendon Press, Oxford.

Brownlie, Ian. 1981, *Basic Documents on Human Rights*, Oxford University Press, Oxford.

Campbell, Rod. 1994, 'Move to stop refugee compensation claims', *Canberra Times*, 29 August, p. 5.

Canada Citizenship and Immigration 1994, *Immigration Plan 1995*, Quebec.

Canada Citizenship and Immigration 1994, *A Broader Vision: Immigration and Citizenship Plan 1995-2000, Annual Report to Parliament*, Hull, Quebec.

Canada, Employment and Immigration 1987, *Refugee Perspectives 1987-1988.*

Canada, Employment and Immigration 1986, 'Reform of the Refugee determination process to follow Plaut report consultations', *Immigration*, vol. 1, no. 7, (Winter) 3.

Canada, Employment and Immigration 1982, *Indo-Chinese Refugees: the Canadian Response, 1979 and 1980*, Supply and Service, Ottawa.

Canada, External Affairs and International Trade 1991, *Foreign Policy Themes and Priorities: 1991-92 Update*, Ottawa, December, 1991.

Canada, House of Commons, *Debates*, Ottawa.

Canada, House of Commons 1991, Minutes of Proceedings and Evidence of the Standing Committee on Labour, Employment and Immigration, Ottawa, 3 October, 1991, 2. 9 October, 1991, 3. 30 October, 1991, 4. 21 November, 1991, 5. 25 November, 1991, 6. 27 November, 1991, 7.

Canada, Immigration 1994, *Immigration Plan 1994*, Quebec.

Canada, Immigration and Refugee Board 1995, *Refugee Status Determination Process: Specialized Board of Inquiry Model*, Ottawa.

Canada, Immigration and Refugee Board 1994, *Refugee Claims Statistics for 1993*, Ottawa, Mimeo, February 28.

Canada, Immigration and Refugee Board 1992, *Membership in a Particular Social Group as a Basis for a Well-Founded Fear of Persecution*, Ottawa, March.

Canada, Immigration and Refugee Board 1990, *Annual Report*, Supply and Services, Ottawa.

Canada, Immigration Canada, *Managing Immigration: A framework for the 1990s*, Hull, Quebec.

Canada, Law Reform Commission 1991, *The Determination of Refugee Status in Canada* (1991 Draft), Ottawa, February 1991.

Canada, Manpower and Immigration Department 1974, *Canadian Immigration and Population Study* (The Green Paper), Information Canada, Ottawa.

Canada, Minister for Citizenship and Immigration 1994, *The Declaration on Refugee Protection for Women,* Ottawa, 1 June.

Canada, Minister of Immigration 1991, *Annual Report to Parliament - Immigration Plan 1991-1995*, November, 1991, Ottawa.

Centre for Refugee Studies 1989, *Refuge*, York University, vol. 9-.

Charlesworth, H. 1986, 'Individual Rights and the Australian High Court' (1986), 4 *Law in Context* 52-62.

CIMADE et al. 1986, *Africa's Refugee Crisis*: *What's to be Done?*, Zed, London.

Coles, G. 1992, 'Changing Perspectives on Refugee Law and Policy', in *Problems and Prospects of Refugee Law*, eds. V. Gowland & K. Samson, The Graduate Institute of International Studies, Geneva.

Coles, G. J. L. 1984, 'Temporary Refuge and The Large Scale Influx of Refugees', 8 *Australian Yearbook of International Law* 189.

Collins, T. 1962, *The White Australia Policy*, The Australian Catholic Truth Society, Melbourne.

Collinson, Sarah. 1993, *Beyond Borders: Western European Migration Policy Towards the 21st Century*, Royal Institute of International Affairs, London.

Commission of the European Communities 1991, *Commission Communication to the Council and the European Parliament on*

Immigration, Commission of the European Communities, Brussels, 23 October.

Commission of the European Communities 1989, *Racism and Xenophobia*, Special issue of Eurobarometer: Public Opinion in the European Community. Commission of the European Communities, Brussels, November.

Committee to Advise on Australia's Immigration Policies 1988, *Immigration: A Committment to Australia*, Australian Government Publishing Service, Canberra.

Conybeare, C. 1991, 'Administrative Law - the State of Play; Commentary, Fair and Open Decision-Making', 66 *Canberra Bulletin of Public Administration* 69.

Council of Europe 1988, *Human Rights Information Sheet no. 21*, Strasbourg.

Council of Europe 1985, *Human Rights in International Law*, Strasbourg.

Council of Europe 1984, *Digest of Strasbourg Case-Law relating to European Convention on Human Rights*, Carl Heymanns-Verdag, Köln.

Cranston, Ross. 1987, *Law Government and Public Policy*, Oxford University Press, Melbourne.

Crawford, James. (ed) 1992, *The Rights of Peoples*, Clarendon Press, Oxford.

Crawford, James. & Hyndman, Patricia. 1989, 'Three Heresies in the Application of the Refugee Convention', *International Journal of Refugee Law,* vol. 1, no. 2, 155-178.

Crock, Mary. (ed) 1993, *Protection or Punishment? The Detention of Asylum-Seekers in Australia*, Federation Press, Sydney.

Danish Refugee Council 1991, Seminar on the effects of Carrier Sanctions on the Asylum System, Copenhagen, 28 November.

Deng, Francis M. 1993, *Comprehensive Study Prepared by Mr. Francis Deng, Representative of the Secretary-General on the Human Rights Issues related to Internally Displaced Persons, Pursuant to Commission on Human Rights Resolution 1992/73, United Nations Economic and Social Council E/CN.4/1993/35*, Geneva.

Dirks, Gerald. 1977, *Refugee Policy: Opportunism or Indifference?*, McGill Queens University Press, Montreal.

Dorfman, Marc B. 1975, 'Implementary Article XI of the Convention on the Reduction of Statelessness: international legal aid', *Harvard International Law Journal*, 16(3), pp. 657-669.

Doyle, Leonard. 1994, 'Racism: Europe's Mounting Death Toll', *The Indpendent* (London), 13 January, p. 16.

Drost, P. N. 1951, *Human Rights as Legal Rights*, A. W. Sijthoff, Leiden.

Dutch Centre for Immigrants 1993, *A New Immigration Law for Europe?*, Utrecht.

Dworkin, R. 1977, *Taking Rights Seriously*, Duckworth, London.

European Consultation on Refugees and Exiles 1995, *Safe Third Countries; myths and realities*, ECRE, London

European Consultation on Refugees and Exiles 1994, *A European Refugee Policy in the Light of Established Principles*, ECRE, London.

European Consultation on Refugees and Exiles 1993, *Asylum in Europe*, ECRE, London.

European Consultation on Refugees and Exiles 1993, *Working Paper on the Need for a Supplementary Refugee Definition*, ECRE, London.

Farnsworth, Clyde H. 1993a, 'Anti-Woman Bias May Bring Asylum', *New York Times*, Feb. 2, p. A8.

Farnsworth, Clyde H. 1993b, 'Saudi Woman Who Fled Predicts Crackdown', *New York Times*, Feb. 7, p. 19.

Feliciano, F. P. 1985, 'International humanitarian law and coerced movements of peoples across state boundaries', *Australian Year Book of International Law*, vol. 9, pp. 113-129.

Feliciano, F. P. 1982, 'The Principle of Non-Refoulement: A Note on International Legal Protection and Displaced Persons', 157 *Philippine Law Journal* 598.

Fensterheim, G. David. 1981, 'Toward an International Law of Human Rights Based Upon Mutual Expectations of States', *Virginia Journal of*

International Law, vol. 21 (1981) 185 and 197-8.

Fonteyne, J. P. L. 1984, 'Burden-Sharing: analysis of the nature and function on international solidarity in cases of mass influx of refugees', *Australian Year Book of International Law*, vol. 8, pp. 162-188.

Fragomen, A. 1970, 'The Refugee: A Problem of Definition', *Case Western Reserve Journal of International Law,* vol. 2, no 1.

Frohock, Fred. M. 1979, *Public Policy - Scope and Logic*, Prentice-Hall, New Jersey.

Fromm, Erich. 1978, *The Anatomy of Human Destructiveness*, Holt, Rinehart & Winston, New York.

Frost, Bill. 1994, 'Church demands amnesty for illegal immigrants', *The Times*, 22 February, 1994, p. 11.

Fullerton, Maryellen. 1993, 'A Comparative Look at Refugee Status Based on Persecution Due to Membership of a Particular Social Group', *Cornell International Law Journal*, vol. 26, no. 3, 505-563.

Galligan, B. 1990, 'Australia's Rejection of a Bill of Rights', 28 *J. Commonw & Comp. Pol.* 344.

Galligan, D. J. 1986, *Discretionary Powers,* Clarendon Press, Oxford.

Gilad, Lisa. 1990, *The Northern Route,* Institute of Social and Economic Research Memorial University of Newfoundland.

Glenn, H. P. 1992, *Strangers at the Gate*, Les Editions Yvon Blacs Inc., Quebec.

Goldman, R. K. & Martin, S. M. 1983, International Legal Standards Relating to the right of Aliens and Refugees and United States Immigration Law, *5 Human Rights Quarterly 302*

Goodwin-Gill, Guy S. 1992, 'Safe Country? Says Who?', *International Journal of Refugee Law*, vol. 4, no. 2, p. 248.

Goodwin-Gill, G. 1988, 'Non-Refoulement and New Asylum Seekers', in *The New Asylum Seekers: Refugee Law in the 1980s,* ed. D. A. Martin, Nijhoff, The Hague.

Goodwin-Gill, G. S. 1983, *The Refugee in International Law*, Clarendon Press, Oxford.

Gordenker, Leon. 1987, *Refugees in International Politics*, Croom Helm, London.

Gordon, Paul. 1989, *Fortress Europe*?, Runnymead Trust, London.

Grahl-Madsen, A. 1966, *The Status of Refugees in International Law*, Sijtholl, Leydon.

Greene, Ian.& Shaffer, Paul. 1992, 'Leave to Appeal and Leave to Commence Judicial Review in Canada's Refugee-Determination System: Is the Process Fair?', *International Journal of Refugee Law*, vol. 4, no. 1, 71-83.

Greig, D. W. 1984, 'The Protection of Refugees and Customary International Law', 8 *Australian Yearbook of International Law* 108.

Hailbronner, K. 1993, 'The Concept of "Safe Country: and Expeditious Asylum Procedures - A Western European Perspective', *International Journal of Refugee Law*, vol. 5, no. 1, p. 32.

Hanna, S. A. 1993, 'Sexual orientation grounds for asylum', *Georgetown Immigration Law Journal*, vol. 7, no. 4, December, 1993, pp.873-4.

Harrell-Bond, B. E. 1992, Refugees and the reformulating of international aid policies, background paper for UK-Japan 2000 Group, Refugee Studies Programme, Oxford.

Harrell-Bond, B. E. 1989, 'Repatriation: under what conditions is it the most desirable solution for refugees?,An agenda for Research', *African Studies Review*, vol. 32, no. 1, pp. 41-69.

Harrell-Bond, E. 1986, *Imposing Aid*, Oxford University Press, Oxford.

Harris, Stuart. 1993, 'Immigration and Australian Foreign Policy', in *The Politics of Australian Immigration*, eds. James Jupp & Marie Kabala, Australian Government Publishing Service, Canberra.

Hathaway, James. 1995, Immigration and the Politics of Need: The Adequacy of the International Law

Definition of "Refugee", paper presented at The University of Sydney, 1 August.

Hathaway, James C. 1993, 'Labelling the "Boat People": The Failure of the Human Rights Mandate of the Comprehensive Plan of Action for Indo-Chinese Refugees', *Human Rights Quarterly* 15 (1993) 686-702.

Hathaway, James C. 1993, *Rebuilding Trust: Report of the Review of Fundamental Justice in Information Gathering and Dissemination at the Immigration and Refugee Board of Canada*, York University, December 31.

Hathaway, James C. 1991, 'Reconceiving Refugee Law as Human Rights Protection', *Journal of Refugee Studies*, vol. 4, no. 2, 113-131.

Hathaway, James C. 1991, *The Law of Refugee Status*, Butterworths, Toronto.

Hathaway, J. C. 1988, 'Selective Concern: An Overview of Refugee Law in Canada', *McGill Law Journal*, vol. 33 (4). pp. 676-715.

Hawkins, Freda. 1991, *Critical Years in Immigration: Canada and Australia Compared*, McGill Queen's University Press, Montreal.

Hawkins, Freda. 1973, 'Uganda Asians in Canada', *New Community*, 11 (3) 268-275.

Hawkins, Freda. 1972. (rev. ed.) 1987, *Canada and Immigration: Public Policy and Public Concern*, McGill Queens University Press, Montreal.

Helton, Arthur C. 1992, 'The Detention of Asylum Seekers in the United States and Canada', in *Asylum Law and Practice in Europe and North America*, eds. Bhabha & Colls, Federal Publications Inc., Washington.

Henkin, Louis J. 1990, *The Age of Rights*, Columbia University Press, New York.

Henkin, Louis J. 1981, 'International Human Rights as "Rights"', in *Human Rights*, eds. J. Roland Pennock & John W. Chapman, New York University Press, New York.

Higgins, Rosalyn. 1978, 'Conceptual Thinking about the Individual in International Law', *British Journal of International Studies*, vol. 4, (1978) no. 1.

Holborn, L. W. 1956, *The International Refugee Organisation; A Specialised Agency of the United*

Nations, Its History and Work: 1946-1952, Oxford University Press, London.

Holborn, L. W. 1938, 'The Legal Status of Political Refugees, 1920-38', *The American Journal of International Law* 32 (1938) 680.

Hollenbach, David. 1979, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition*, Paulist Press, New York.

Human Rights Commission 1986, *Human Rights and the Migration Act 1958*, Report No. 13, Australian Government Publishing Service, Canberra.

Hyde, Henry. & Smith, Chris. 1995, 'Don't Do It, Australia', *Asian Wall Street Journal*, 2 March.

Hyndman, P. 1987, 'The 1951 Convention Definition of Refugee: An Appraisal With Particular Reference to the Case of Sri Lankan Tamil Applicants', 9 *Human Rights Quarterly*, no. 1, 49.

Hyndman, P. 1986, 'Refugees Under International Law With a Reference to the Concept of Asylum', 60 *Australian Law Journal* 148.

Hyndman, P. 1982, 'Asylum and Non-Refoulement - Are These Obligations Owed to Refugees Under International Law?', 57 *Philippine Law Journal* 43.

Intergovernment Committee on Refugees 1944, Document, 25 July, 1944: Report submitted by the Director.

Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia 1993, *Asylum Statistics*, Intergovernmental Consultations, Geneva.

International Organisation for Migration 1994, *IOM News,* Geneva, January, 1994 -.

International Organisation for Migration 1993, *IOM in Facts*, International Organisation for Migration, Geneva.

Jackson, I. C. 1991, 'The 1951 Convention Relating to the Status of Refugees: A Universal Basis for Protection', 3 *International Journal of Refugee Law* 403.

Jenks, C. Wilfred. 1958, *The Common Law of Mankind*, Stevens, London.

Jennings, R. Y. 1939, 'Some International Law Aspects of the Refugee Question', *British Yearbook of International Law* 98-114.

Jesuit Refugee Service, *Refugee Update*, Toronto.

Johnston, Douglas & Sampson, Cynthia (eds) 1994, *Religion, the Missing Dimension of Statecraft*, Oxford University Press, Oxford.

Jolis, Alan. 1993, 'Children of the Damned', *Vogue*, March, 361-363, 430-431.

Joly, Daniele. 1992, *Refugees: Asylum in Europe?*, Minority Rights Publications, London.

Jupp, James. 1994, 'Don't Panic: our influx is not huge by world standards', *Canberra Times*, 31 December, p. 8.

Jupp, James. & Kabala, Marie. (eds) 1993, *The Politics of Australian Immigration*, Australian Government Publishing Service, Canberra.

Karadawi, A. 1977, Political refugees: a case study from the Sudan, 1964-1972, M. Phil, Thesis, Department of Politics, University of Reading.

Kennedy, D. 1986, International Refugee Protection, *8 Human Rights Quarterly 1*.

Kepel, Gilles. 1991, *La Revanche de Dieu: Chiétions, Juifs et musulmans à la reconquête du monde*, Seuil, Paris.

Khan, Sadruddin Aga. 1981, 'Study on Human Rights and Massive Exoduses', 38 UN ESCOR *Commission on Human Rights*, UN Doc E3 on 4/1503.

Kibreab, Giam. 1990, 'Why do OECD Countries Discriminate Against African Refugees in their Resettlement Policies?', Mimeo.

Kingston, Margo. 1994, 'Tougher law to keep out boat people', *Sydney Morning Herald*, 30 December, p. 1.

KRC Research and Consulting Inc. 1991, A Communications strategy for the Office of the United Nations High Commissioner for Refugees, paper prepared for UNHCR, September, 1991.

Lauterpacht, H. 1950, *International Law and Human Rights*, Stevens, London.

Leduc, F. 1977, 'L'Asile Territorial et Conference des Nations Unies de Genève Janvier 1977', XXIII *Annuaire Francais de Droit International* 210.

Legomsky, Stephen H. 1992, *Immigration Law and Policy*, Foundation Press, Westburg, N.Y.

Lewis, Daniel. 1995, 'UN attacked for failing to act on boat people', *Sydney Morning Herald*, 3 January, p. 1.

Lind, C. & Miherc, J. (eds) 1994, *Coalitions for Justice*, Novalis, Toronto.

Loescher, G. 1986, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*, with J.A. Scanlan, The Free Press, New York.

Lowi, Theodore. 1964, 'American Business, Public Policy, Case Studies, and Political Theory', *World Politics*, July.

Marrocco, F. N. & Goslett, H. M. (ed) 1993, *The Annotated Immigration Act of Canada*, Carswell, Toronto.

Martin, D. A. 1991, The Western response to asylum seekers: Barriers and screening filters, unpublished paper to the Law and Society Conference, Amsterdam, 26-29 June, 1991.

Matas, David. 1989, *Closing the Doors: the failure of refugee protection*, Summerhill Press, Toronto.

Mayhew, Patrick. 1990, 'Can Legislation Ever be Simple, Clear and Certain?', 11 *Statute Law Review* 1.

McDonald, David C. 1989, *Legal Rights in the Canadian Charter of Rights and Freedoms*, Carswell, Toronto.

McGeough, Paul. 1995, 'UN rejects refugees' claims', *Sydney Morning Herald*, 5 January, p. 1.

McHugh, M. H. 1995, 'The Growth of Legislation and Litigation', *The Australian Law Journal*, vol. 69, no. 1.

McRuer, J.C. 1969, *Royal Commission: Inquiry into Civil Rights*, Report no. 2, vol. 4, Ottawa.

Mecham, Frank. 1991, *The Church and Migrants 1946-1987*, St Joan of Arc Press, Haberfield.

Meijers, H. (ed) 1993, *A New Immigration Law for Europe?*, Dutch Centre for Immigrants, Utrecht.

Miers, D. R. & Page, A. C. 1990, *Legislation*, Sweet and Maxwell, London.

Meron, T. 1989, *Human Rights and Humanitarian Norms as Customary Law*, Clarendon, Oxford.

Minority Rights Group, 1990, *Refugees in Europe*, London.

Moore, R. I. 1987, *The Formation of a Persecuting Society*, Blackwell, Oxford.

Morgenstern, F. 1949, 'The Right of Asylum', 26 *British Yearbook of International Law* 327.

Murray, Brian. 1990, 'Australia's New Refugee Policies: A Practitioner's Point of View', *International Journal of Refugee Law*, vol. 2, no. 4, 620-624.

Nash, A. 1989, 'International refugee pressures and the Canadian public policy response', *Studies in Social Policy*, Institute for Research on Public Policy, Ottawa.

National Council of Churches in Australia 1995, A submission to the Minister of Immigration and Ethnic Affairs on Australia's refugee and humanitarian intake 1995-1996.

National Population Council 1991, *The National Population Council's Refugee Review*, Australian Government Publishing Service, Canberra.

Nettlebeck, Colin. 1993, 'An Intellectual Prelate. Cardinal Lustinger and the New Europe', *Meanjin* 1/1993, Melbourne.

Nundy, Julian. 1994, 'Pasqua in new war on immigrants', *Independent* (London), 7 January, p. 3.

Ogata, Sadako. 1992, Refugees: A humanitarian strategy, statement by Mrs Ogata, Royal Institute of International Relations, Brussels, November 25.

Ott, D. H. 1987, *Public International Law in the Modern World*, Pitman, London.

Pereira, C., Adams, B. N. & Bristow, M. 1978, 'Canadian Beliefs and Policy Regarding the Admission of Ugandan Asians to Canada', *Ethnic and Racial Studies*, 1:3:352-364.

Plaut, Gunther W. 1985, *Refugee Determination in Canada: Proposals of a New System*, Submitted to the Minister of Employment and Immigration, Supply and Services, Ottawa.

Pontifical Commission "Justitia et Pax" 1989, 'The Church and Racism: Towards a More Fraternal Society', *Origins* 18, pp. 613-626.

Pontifical Council for the Pastoral Care of Migrants and Itinerant People and the Pontifical Council "Cor Unum" 1992, *Refugees: A Challenge to Solidarity*, Libreria Editrice Vaticana, Vatican City.

Pope, S. 1987, 'Sanctuary: The Legal Institution in England', *University of Puget Sound Law Review*, vol. 10, Spring 1987.

Pope John XXIII. 1963, *Pacem in Terris*, Libreria Editrice Vaticana, Vatican City.

Pope John Paul II. 1992, 'Annual Address to the Diplomatic Corps credited to the Holy See', *Origins* 21 (February 6, 1992) 570.

Pope John Paul II. 1990, 'Refugees Are Neighbours', *The Pope Speaks: The Church Documents Quarterly*, 35 (1990), pp. 161-163.

Pope John Paul II. 1985, 'The Church and Migrants', *The Pope Speaks: The Church Documents Quarterly*, 30 (1985), pp. 347-350.

Porter, B. 1970, *The Refugee Question in mid-Victorian Policies*, Cambridge University Press, Cambridge.

Price, Charles A. 1986, 'Refugees and Mass Migration: Australia', *International Migration Review*, 20(1), pp. 81-86.

Raphael, D. D. 1967, 'Human Rights, Old and New', in *Political Theory and the Rights of Man*, ed. Raphael, Macmillan, London.

Ratushny, Ed. 1984, *A New Refugee Status Determination Process for Canada*, Submitted to the Minister of Employment and Immigration, Supply and Services, Ottawa.

Refugee Council of Australia 1992, *Annual Report 1991/92*, Sydney.

Refugee Policy Group 1989, 'Temporary Safe Haven: The Need for North American-European Responses', in *Refugees and International Relations*, eds. Gil Loescher & Laila Monahan, Oxford University Press, Oxford, pp. 333-354.

Refugee Review Tribunal 1994, *Annual Report 1993-94*. Australian Government Publishing Service, Canberra.

Refugee Studies Programme 1989, The Refugee Crisis, British and Canadian Responses, International Symposium, Oxford, 4-7 January, 1989.

Refugees. 1987-, *Journal of UNHCR*, Geneva.

Richmond, A. H. 1967, *Postwar Immigrants in Canada*, University of Toronto Press, Toronto.

Riding, Alan. 1991, 'Europe's Growing Debate over Whom to Let Inside', *The New York Times*, 1 December.

Riley, Mark. 1995, 'Asylum-seekers: China blames us', *Sydney Morning Herald*, 5 January, p. 3.

Riley, Mark. 1995b, 'Deal on 700 boat people', *Sydney Morning Herald*, 3 February, p. 7.

Riley, Mark. 1994, 'Stop flow of boat people, China told', *Sydney Morning Herald*, 31 December, p. 1.

Robertson, A. H. 1982, *Human Rights in the World*, Manchester University Press, Manchester.

Robinson, N. 1953, *Convention Relating to the Status of Refugees - Its History, Contents and Interpretation*, Praeger, New York.

Robinson, V. (ed) 1993, *The International Refugee Crisis*, Macmillan Press, London.

Rogers, R. & Copeland, E. 1993, *Forced Migration: Policy Issues in the Post-Cold War Period*, Tufts University, Medford Mass.

Rutland, Suzanne D. 1984, 'Australian Government Policies to Refugee Migration 1933-1939', in *Journal of the Royal Australian Historical Society*, 69(4), pp. 224-238.

Ryan, W. C. 1987, 'The Historical Case for the Right of Sanctuary', *Journal of Church and State*, vol. 29, Spring, 1987.

Schnyder, Felix. 1965, Extracts from Lectures given on 26 to 30 July 1965 by Mr Felix Schnyder, United Nations High Commissioner for Refugees, at The Hague Academy of International Law, UNHCR, Geneva.

Scott, Keith. 1994, 'Bolkus to push on for retrospective law', *Canberra Times*, 8 September, p. 1.

Shacknove, Andrew E. 1985, 'Who is a Refugee?', *Ethics* 95 (January 1985), 274-284.

Sharma, V. D. & Wooldridge, F. 1974, 'Some Legal Questions Arising From the Expulsion of the Ugandan Asians', 23 *International and Comparative Law Quarterly* 397.

Sharpe, R. J. (ed) 1989, *Charter Litigation*, Butterworths, Toronto.

Sherstack, J. J. 1984, 'The Jurisprudence of Human Rights in Human Rights', in *International Law*, ed. Meron, Clarendon Press, Oxford.

Shutter, Sue. 1993, *Immigration and Nationality Law Handbook*, Joint Council for the Welfare of Immigrants, London.

Singer, Peter & Renata. 1988, 'The Ethics of Refugee Policy', in *Open Borders? Close Societies? The Ethnical and Political Issues*, ed. Mark Gibney, Greenwood Press, New York.

Sinha, Prakash S. 1971, *Asylum and International Law*, Nijhoff, The Hague.

Sohn, L. B. & Buergenthal, T. 1962, 'International Protection of Human Rights', in *The Position of the Individual in International Law*, ed. C. A. Norgaard, Munksgaard, Copenhagen.

St Vincent de Paul Society 1994, *Vision*, vol. 3, no. 1, June.

Stenberg, Gunnel. 1989, *Non-Expulsion and Non-Refoulement*, Iustus FÖrlag, Uppsala, Sweden.

Stoljar, Natalie. 1986, 'Discrimination and the Papuan refugees in Australia', *Australian International Law News*, December, pp. 256-279.

Sztucki, Jerzy. 1989, 'The Conclusions on the International Protection of Refugees adapted by the Executive Committee of the UNHCR Programme', *International Journal of Refugee Law*, vol. 1, (3), pp. 285-318.

Tabori, P. 1972, *The Anatomy of Exile*, Harrap, London.

Takkenberg, Lex. 1992, 'Detention and Other Restrictions on the Freedom of Movement of Refugees and Asylum Seekers: The European Perspective', in *Asylum Law and Practice in Europe and North America*, eds. Bhabha and Coll, Federal Publications Inc., Washington.

Tarnopolsky, W. S. 1982, *The Canadian Charter of Rights and Freedoms,* Carswell Co. Ltd, Toronto.

Tendler, Stewart. 1994, 'Gardner death ends gagging of deportees', *The Times* (London), 13 January, p. 5.

Thompson, Henriette. 1994, 'The Inter-Church Committee for Refugees' in C. Lind and J. Miherc (eds), *Coalitions for Justice*, Novalis, Toronto.

Tomasevski, K. 1988, *Development Aid and Human Rights*, The Danish Centre for Human Rights, Copenhagen.

Travel Loan Network 1995, *A Report to The Minister for Immigration and Ethnic Affairs on The Impact of the Humanitarian Migration Program's Travel Costs on Entrants, Community Groups and Non-Government Organisations*, Sydney, March.

Tsamenyi, B. M. 1983, 'The Boat People: Are They Refugees?', 5 *Human Rights Quarterly*, no. 3, 348.

Tsamenyi, B. M. 1981, 'The position of non-parties to the refugee convention', *Melanesian Law Journal*, 9 (1 and 2), pp. 57-73.

U.K. Home Office 1992, *Legal Services for Asylum Seekers. Proposals for the Role and Function of the New Refugee Legal Centre: Report of the Planning Group*, HMSO, Basildon, October.

U.S. Committee for Refugees 1993, *World Refugee Survey 1993*, Washington D.C., American Council for Nationalities Service.

U.S. Committee for Refugees 1987, *World Refugee Survey. 1986* in Review. Washington D.C., American Council for Nationalities Service.

UNHCR, 1995 (a), *The State of the World's Refugees*, Geneva

UNHCR, 1995 (b), *Information Package on The Comprehensive Plan of Action on Indo-Chinese Refugees*, Canberra.

UNHCR 1993a, *UNHCR Activities Financed by Voluntary Funds: Report for 1992-1993 and Proposed Programmes and Budget for 1994*, Geneva.

UNHCR 1993b, *The State of the World's Refugees: The Challenge of Protection,* Penguin Books, London.

UNHCR 1992, *Going Home - Assessment of Global Resettlement Needs for Refugees in 1993*, Geneva, UNHCR, September.

UNHCR 1991, *Refugee Policy to 1992 and Beyond*, Brussels, June, 1991.

UNHCR 1990, *Canadian Statement to the Plenary Session of the 42nd Executive Committee of the UNHCR*, Geneva.

UNHCR 1979, *Collection of International Instruments Concerning Refugees*, Geneva.

UNHCR 1979, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva.

United Nations 1993. *Human Rights - A Compilation of International Instruments*, United Nations, New York.

United Nations 1987. *Human Rights - Status of International Instruments*, United Nations, New York.

United Nations Economic and Social Council 1995, *Report of the United Nations High Commissioner for Refugees* Doc. E/1995/52, 25 April.

United Nations Economic and Social Council, Commission on Human Rights 1992, 'Analytical report of the Secretary General on internally displaced persons', Doc E/CN/4/1992/23, February 14.

United Nations High Commissioner for Refugees 1993, *Information Paper*, UNHCR, Geneva, March.

United Nations 1948, *Universal Declaration of Human Rights*, Dec 10, Unga Res 217 A(111), UN Doc A/810.

Valcourt, The Hon. Bernard. 1992, 'Notes for address to The Legislative Committee Studying Bill C-86', 27 July, Ottawa.

Van der Veen, J. 1980, 'Does Persecution by Fellow-Citizens in Certain Regions of a State Fall Within the Definition of 'Persecution' in the Convention Relating to the Status of Refugees of 1951?, Some Comments Based on Dutch Judicial Decisions', XI *Netherlands Yearbook of International Law* 167.

Vernant, Jacques. 1953, *The Refugee in the Post-War World*, Allen and Unwin Ltd, London.

Vincent, R. J. 1991, *Human Rights and International Relations*, Cambridge University Press, Cambridge.

Vincent, R. J. 1974, *Nonintervention and International Order*, Princeton University Press, Princeton.

Walters, F. R. 1960, *A History of the League of Nations*, Oxford University Press, London.

Warner, D. & Hathaway, J. C. 1992, 'Refugee Law and Human Rights: Warner and Hathaway in Debate', *Journal of Refugee Studies*, vol. 5, no. 2, 162-171.

Weis, P. 1979, 'The Draft United Nations Convention on Territorial Asylum', 50 *British Yearbook of International Law* 151.

Weis, P. 1969, 'The United Nations Declaration on Territorial Asylum VIII', *Canadian Yearbook of International Law.*

Weis, P. 1966, 'Territorial Asylum, 6 *Indian Journal of International Law* 173.

Weis, P. 1960, 'The Concept of the Refugee in International Law', 89 *Journal du Droit International* 928.

Wickham, Schmidt P. 1987, 'Detention of Aliens', *San Diego Law Review*, vol. 24, p. 310.

Working Group on Arbitrary Detention 1993, Principles E/CN. 4/1992/20 21 January, 1993.

Young, Margaret. 1987, A *Critique of Bill C-84*, Research Branch, Library of Parliament, Ottawa, 17 August.

Zolberg, A. R., Suhrke, A. & Aguayo, S. 1989, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*, Oxford University Press, Oxford.

NEWSPAPERS

Australian Financial Review.
Canberra Times.
Daily Telegraph Mirror (Sydney).
Northern Territory News (Darwin).
Sunday Observer (London).
Sydney Morning Herald.
The Age (Melbourne).
The Australian.
The Catholic Weekly (Sydney).
The Globe and Mail (Toronto).
The Guardian (London).
The Times (London).