

*Behind  
The  
Headlines*

Volume 52, No. 2 Winter 1994

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Seekers*

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# Behind The *Headlines*

Editor: Gayle Fraser

Canadian Institute of  
International Affairs 1994  
Published quarterly  
\$3.00 per single issue  
\$13.00 per year  
(Canadian addresses add 7% GST)  
GST Registration No. R106861610

Winter 1994  
(Date of issue – December 1994)  
ISSN 0005-7983  
Publications Mail Registration  
No. 2578

Contributions on topical issues in international affairs that will be of interest to members of the Canadian Institute of International Affairs should be addressed to the Editor, CIA, 15 King's College Circle, Toronto, Canada

Submissions, typed double spaced, with a minimum number of endnotes, must not exceed 6,500 words.

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# The Asylum- Seekers

FREDA HAWKINS

The 'eighties and 'nineties of this century have seen a remarkable migration to the affluent countries of Europe and North America: the asylum-seekers. It has been remarkable not only because of its size and extraordinary capacity to accelerate within a very short time, but also because the flurry of international meetings and consultations which it has engendered have led to much more, probably lasting, international communication and collaboration in the migration field than we have known before. It has also drawn attention to serious weaknesses in our international systems of refugee management and asylum. Subdued now, but not ended by tighter legislation in all the major receiving countries, and displaced from the headlines for the time being by events in Africa and eastern Europe, the movement is still with us, warning of the major population movements which may be ahead in the next century unless we devise better international systems of management and control in this vital area.

## *Numbers and reasons*

The asylum-seeker movement began to accelerate seriously in 1984, showing once again what an effective instrument what is known as 'the migration grapevine' really is. The news that claiming refugee status was a good way of getting into affluent countries, and of escaping dismal economic and political prospects in one's own, spread rapidly, not least among immigration and travel agents around the world. Applications shot up from some 200,000 in the mid 'eighties to almost 800,000 by 1991 in the countries most affected (members of the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America

and Australia – a new organization also known as the Informal Consultations: see pp 5-7). At the same time, costs have increased from approximately us \$2.4 billion to \$9.9 billion to keep pace with these numbers.

Asylum-seekers could be seen everywhere in Europe and North America in the late 1980s and early 1990s: in every immigration waiting room, in every airport, railway, and bus station, and even, in some countries, on foot heading for big cities or neighbouring frontiers. Only a small proportion were real refugees in the sense of the Geneva Convention and Protocol which involves some form of political persecution.' What had begun as a major South-North movement of asylum-seekers had now broadened out to include a large East-West component, the outcome largely of conflict and upheaval in the former Yugoslavia. Nor was it confined to the northern hemisphere. Australia, too, was experiencing growing numbers of asylum-seekers.

What were the reasons for this sudden large-scale migration? Briefly, the reasons can be found in the post-Cold War world itself: the growing disparity between rich and poor nations; swifter and cheaper communications; population growth; ethnic conflicts of many kinds leading to political instability, civil wars, and famine; ecological problems bringing desertification and unending poverty. We should also mention a new reluctance on the part of more people to stay put and endure; a new belief that the whole world was open territory. Perhaps it was an inevitable consequence, too, of rising standards of living and of better education worldwide. There have been many hangers-on in this movement and many well-paying operations large and small' which have been very successful.

No country has taken kindly to this invasion once its proportions became evident. Although some countries moved more swiftly than others to curb the flow, there was a near-uniform response on the part of governments, non-governmental organizations (NGOs), and the public itself. Racism, hostility, and violence towards newcomers began to increase. Members of parliament demanded tighter controls, complaints from the public were aired regularly in the press while NGOs strove manfully to defend the new arrivals. Soon there was a flood of new legislation under study in many countries.

It is evident from this and earlier experiences, that however well-intentioned and liberal a country may be, however impressive its record on immigrants and refugees, it cannot be expected to absorb a large influx of newcomers without a great deal of preparation and a great deal of assistance. Today, this kind of development must be seen *and explained to the public* in an international context and in terms of equal burden-sharing among the countries involved. This emphasizes the need to press ahead with and improve, if necessary, the new kinds of international organizations and networks which have emerged as an outcome of the asylum-seeker movement of the last few years. This paper looks at the most important of these organizations and networks, at the new legislation and procedures relating

to asylum in some of the countries involved, and at what may lie ahead in the migration field in the early years of the next century.

### ***International consultation - thirty years on***

A long time ago, a world away, in the late 'fifties, voluntary agencies in Toronto made a plea for regular international consultation relating to immigrants and refugees. In those days, these agencies were a very small voice indeed and no-one paid the slightest attention to them. Anyone involved in immigration at that time, either in government or in a voluntary or academic capacity, will remember the acute angst among some governments (including Canada) at the thought that they might have to hand over a small parcel of sovereignty to the newly created refugee agency — the Office of the United Nations High Commissioner for Refugees? They took great care to avoid this. There was no equivalent international organization to handle immigration or any other aspect of international migration. During the next thirty-odd years, communication between governments on migration definitely improved, but never to the point of regular consultation. The cherished view that immigration was a strictly national concern still prevailed. Refugee policy could be a little more flexible. When the asylum-seeker movement began to escalate in the mid-1980s, there were only five international organizations which dealt with some aspects of migration and refugee management. Today, there are more than twenty organizations, committees, and working groups which are active in this field.

The five international organizations were: UNHCR, the International Labour Office, the International Organization for Migration (IOM), the Organization for European Co-operation and Development (OECD), and the Council of Europe. UNHCR had its large Executive Committee' meeting once a year and including a sub-committee on protection. In 1984, a Working Group on Irregular Movements was established. ILO was very concerned with migrant workers and, among other activities, produced a number of valuable studies concerning the economic and labour market effects of emigration for sending and receiving countries. IOM5 continued its traditional role of providing services to member governments, including fast, efficient transportation for immigrants, helping refugees who are outside the mandate of UNHCR, and assisting developing countries, mainly in Latin America, through programmes to facilitate the voluntary repatriation of skilled manpower. Since the 1960s, OECD has had a Working Party on Migration which meets once a year. It also has a migration observation system, SOPEMI, which meets once a year and analyses migration flows and related matters in the OECD region. From time to time, OECD has orga-

nized major conferences on migration issues. Finally, the Council of Europe has had a number of ongoing activities related to migration including a Parliamentary Committee on Migration, Refugees and Demography, a European Committee on Migration (CDMG) meeting twice a year, and CAHAR, a special Inter-governmental Committee for Asylum and Refugees which also meets twice a year. Valuable though all these activities have been, they did not seem to provide an appropriate forum for members to meet regularly and attempt to deal with the asylum-seeker crisis, as well as other migration issues, or to facilitate the necessary swift exchange of information among the governments concerned. The possible exceptions were UNHCR and IOM, and some people thought that one or the other should assume responsibility for asylum-seekers. Neither, however, has the least desire to do so.

When interviewed by the author in 1991, shortly after her arrival in Geneva, Mrs Sadako Ogata, the United Nations High Commissioner for Refugees, was very firm in her belief that asylum-seekers were a *national* concern and that UNHCR had far too much on its plate with the ever-expanding world problem of refugees to take on this extra responsibility. While anxious to co-operate in any way, the director of IOM was equally opposed to the idea of making IOM responsible for asylum-seekers. Nevertheless, the number of asylum-seekers in Europe and North America was growing steadily by the mid-1980s and there was still no regular co-operation or exchange of information among the states affected. In November 1985, therefore, the Swedish government convened a meeting in Stockholm of the six European states most involved (Germany, France, Britain, Switzerland, the Netherlands, and Denmark). The then United Nations High Commissioner for Refugees, Paul Hartling, and other UNHCR officials attended the meeting, the main purposes of which were: 1) to explore ways of achieving closer concrete co-operation between these states in a number of areas, with a view to finding better solutions to the new asylum problems; and 2) to have 'an open and frank dialogue' with UNHCR on the need to develop a constructive approach to the new asylum situation. As we shall see later, there seems to have been a fairly substantive difference of view between UNHCR and some of the states and individuals involved in these and subsequent discussions on the best way to handle the asylum crisis, the structure and authority of the new consultations, and the extent to which established ideas on asylum, of which UNHCR was the guardian, should be changed.

The Stockholm meeting in November 1985 was the first of a series in Europe on these and related issues in which the number of participants steadily increased. At the second meeting, in The Hague in April 1986, there were two new participants: Canada and Belgium. Austria and Australia (as an observer) joined the group (which now numbered eleven) in December 1986. In addition to a number of informal meetings in Geneva,

at the permanent mission level, the Swiss government convened a critical meeting at Gergensee near Berne in February 1987, at which the character and operations of the new consultations began to take practical shape. The aim was to achieve 'informal state to state co-operation in all relevant areas.' There was a major emphasis on the *informality* of all discussions and procedures which seemed to please most participants. No new international institution was envisaged.

As an outcome of the Gergensee meeting, it was decided to appoint a Co-ordinator for the Informal Consultations, as they were now known, and to establish an independent secretariat, financed by participating governments but still housed at UNHCR. (A secretariat had been provided by UNHCR since 1987.) This arrangement did not prove to be very satisfactory, however, and the Informal Consultations soon moved to their own premises in Geneva. At the same time, Jean Pierre Hocke, the new High Commissioner, asked the Swedish Under-Secretary of State for Immigration, Jonas Widgren, to take over the job of Co-ordinator of the Informal Consultations or, to give them their full name, the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia.

By now, Finland, Italy, Norway, Spain, Sweden, and the United States were members of the new organization, which met frequently after the Gergensee gathering. The principle meetings give some idea of the intense activity involved. The Norwegian government convened the fourth full round of consultations near Oslo in May 1988; a fifth at Semmering near Vienna in June 1989 was attended by fourteen states; a sixth in the spring of 1990 established a working group to consider what might be done in the face of considerable increases in the number of undocumented asylum-seekers arriving in all receiving countries: and a seventh was held in Stockholm in June 1991. In addition, there were special seminars and other working groups, including one on Long Term Perspectives and Policies which met at Nyon near Geneva. A critical full round of the Informal Consultations at Niagara-on-the-Lake, Ontario, in June 1992 will be discussed later.

### *European Community*

Meanwhile, the European Community had become concerned about the rising tide of asylum-seekers and about immigration and asylum policy in general. In October 1986, the Ministers of Justice and of the interior met in London for the first time and decided to initiate co-operative action among EC members, in order to handle the frontier-free area coming into effect on 1 January 1987. Following this meeting, they developed a work programme for the 'harmonization of immigration and asylum policies' to be carried out before the end of 1993. This was adopted by the European

Council in Maastricht in 1991. They also created a committee of senior officials, known as the Ad Hoc Working Group on Immigration, with five sub-groups (on visa policies, asylum, data transfer, border control, and removals), which have met frequently in the following years.

In addition, the Commission addressed the Council and the European Parliament on immigration and asylum policies in 1991 and 1994. A 1994 Communication recognized that failure to tackle these issues on a co-operative basis held real dangers for the European Union (as the EC was now called). In the Commission's view, the key components of a co-operative approach were: action on migration pressure, particularly through co-operation with the main countries of would-be emigration to Europe; action on controlling immigration in order to keep it within manageable structures; and action to strengthen policies for legal immigrants (as an essential element of the wider need to promote solidarity and integration within the Union).<sup>6</sup>

Two other important developments within the EU should be noted: the Schengen Accords and the Dublin Convention. The Schengen group, so called after the village in Luxembourg where it first met, initially included Belgium, the Netherlands, Luxembourg, France, and Germany. In an accord signed in 1985 and in a formal agreement arrived at five years later, they committed themselves to a European Union with no internal borders. Italy joined in 1990, Spain and Portugal in 1991, and Greece in 1992. Austria is to become a member when it joins the EU in 1995. The convention applying the Schengen agreement has been ratified by all EU members except Greece.

The full title of the Dublin Convention, signed in Dublin on 15 June 1990 but not yet ratified by all signatory states, is the Convention Determining the State Responsible for Examining Applications for Asylum in One of the Member States of the European Communities. It is intended to deal with the problem of multiple applications for asylum in which a resourceful (or desperate) asylum-seeker applies to one country after another, or to several countries at the same time. The 1990 Schengen Agreement covers the same subject matter. It is a comprehensive treaty of 42 articles, including eleven articles under the heading Responsibility for Examining Applications for Asylum.

There has been a new development in the saga of the Informal Consultations. It seems that some states and individuals felt that the precise relationship of UNHCR and the Informal Consultations had never been satisfactorily defined. Should the secretariat report to the High Commissioner or to the participating states? Some states thought that UNHCR should play a very important role – as a guiding hand in fact – others that co-operation was best served by direct state-to-state communication. At a special meeting, convened by Switzerland at Kloten (Zurich) in May 1991 and attended by the 16 participating states only, a delegation consisting of Britain, Canada, France, and Sweden was appointed to make a joint

approach to the new High Commissioner, Mrs Ogata, urging that a special agreement be concluded with UNHCR under which the secretariat of the Informal Consultations would report, for a trial period of eighteen months, to the participating states only, but would continue to enjoy United Nations diplomatic status and administrative support. The secretariat would also act as an independent entity with respect to other international forums and to other non-participating states. The agreement, drawn up under British chairmanship, was signed by UNHCR at the end of June 1991 and was due to expire in December 1992.

It did not last, however, or not without substantial alteration. At the next full round of consultations at Niagara-on-the-Lake in June 1991, UNHCR made it known that it would not prolong the agreement unless the Co-ordinator of the Informal Consultations, Jonas Widgren – perhaps the most convinced supporter of full independence for the Informal Consultations, and the most doubtful of the wisdom of a close connection with UNHCR - was replaced by someone who was acceptable to UNHCR. This move apparently caused much confusion and debate among the participating states. Five 'crisis meetings' were held in Geneva under Canadian chairmanship through the fall of 1992. Eventually, however, the UNHCR proposal was accepted, and it was agreed that a secretariat function for the Informal Consultations would be provided jointly by UNHCR and IOM. The new Co-ordinator was to be Hendrik Olesen of Denmark, an experienced international civil servant.

But that was not the end of the matter. As an outcome of these events, the Swiss and Austrian governments, later joined by Sweden, decided to create a new international organization concerned with migration, based in Vienna, to be known as the International Centre for Migration Policy Development. Its director would be Jonas Widgren. In an agreement signed in June 1993, which is to last initially for three years, the two governments undertook to act as sponsors for the new organization with Switzerland responsible for staff financing and Austria providing the premises and office infrastructure. The objectives of the Centre are described as 'the elaboration and implementation of long-term strategies to cope with the migration phenomenon – strategies (aiming at) facilitating early warning, combating root causes, harmonizing entry control measures and co-ordinating alien, asylum and refugee policies.' The agreement also aims at promoting international co-operation in the area of migration policies, as well as relevant research in these areas.

These are confusing developments. It appears that the Informal Consultations are continuing to function in Geneva as before with 15 members now (Austria has gone but Switzerland remains), and in a rather more comfortable relationship with UNHCR. Only time will tell how these two organizations will develop or relate to each other, but no doubt the events recorded here are simply a beginning of what will be a major search for

appropriate institutions in international migration – both internationally and regionally – in the coming years.

### *National Policies and Attitudes*

We will now look briefly at the very similar responses of a group of seven countries in Europe and North America to the asylum-seeker crisis.

#### **Germany**

Germany's experience with asylum-seekers is probably better known internationally than that of any other country, first, because the numbers have been so large, far exceeding those of its EU partners; and second because the international media have concentrated so heavily on the growth of right-wing opinion and acts of violence against migrants in Germany, as a result of the asylum-seeker movement.

Asylum-seekers poured into Germany from the mid-'eighties on, drawn by its central location, liberal asylum laws, high standard of living, and generous social security. The numbers increased dramatically from 19,737 in 1983 to a high of 438,191 in 1992. A substantial increase from 1991 on is due to the disintegration of the former federation of Yugoslavia. UNHCR estimated that 2.3 million former Yugoslavs fled from that point on, Germany admitting the largest number. There were other large movements into West Germany in the late 'eighties making a staggering total of newcomers. In 1989, until the fall of the Berlin Wall, 340,000 East Germans had arrived in West Germany. People of German origin from Central and East European countries with a constitutional right to return to Germany arrived also – 203,000 in 1988 rising to 400,000 in 1990.

The critical factor in the control or otherwise of the asylum-seeker movement in Germany was Article 16 of the 1949 German constitution which states that 'persons who are politically persecuted have a right to asylum in Germany.' This came to have considerable symbolic significance as part of Germany's recovery from the Nazi era, and many Germans became very attached to it. The Social Democratic party was a fierce defender. But Article 16 meant that almost anyone could gain entry or at least a hearing in Germany and, in a very judicial system, manage to stay through prolonged appeals. Huge backlogs developed and the whole asylum system became seriously overburdened. Argument over Article 16 continued in the Bundestag, and for several critical years it seemed as if political parties would never agree. Eventually, however, a compromise was reached. On 6 December 1992, the parliamentary groups of the CDU/CSU, SPD, and EDP agreed on a Joint Concept regarding Asylum and Migration

Issues. A Draft Act Amending the Basic Law was submitted on 1, January 1993. This left Article 16 alone but added another article (Article 16a) which imposed some severe limitations on its implementation. This legislation, which came into effect in July 1993, provided that a person arriving in Germany via another state of the EU, or one in which the 1951 Geneva Convention and the European Convention on Human Rights were applied, was safe and had no need of or right to asylum in Germany. All EU and European Free Trade Association states, as well as Poland and the Czech Republic, were considered safe third countries. The new legislation also introduced the concept of 'safe country of origin.' Asylum applications from citizens of these countries were to be considered as 'manifestly unfounded' and accepted initially only in special circumstances. In addition, readmission agreements were negotiated with Poland, Switzerland, and the Czech Republic. As a result of these measures and further administrative reforms which we cannot explore here, the total number of new asylum-seekers arriving in Germany from 1993 onwards has been substantially reduced.

## **Sweden**

Sweden is another country which has been very attractive to and useful for asylum-seekers, although the numbers have of course been much smaller. Since conflict erupted in the former Yugoslavia, more than 100,000 persons have sought asylum in Sweden. The number of asylum-seeker arrivals increased from 14,500 in 1985 to 83,200 in 1992 before declining in 1993 to 37,600, largely as a result of tightened asylum procedures. A new Aliens Act which determines the right of aliens to enter, remain, and work in Sweden, as well as the right of asylum, came into force on 1 July 1989. One of its objectives was to speed up asylum processing. A 1993 amendment provides that people assisting aliens to enter Sweden illegally can be sentenced to two years' imprisonment and confiscation of the means of transport used. An asylum applicant who consciously gives false statements or withholds relevant information can be fined or sentenced to six months' imprisonment. In order to streamline the appeal process then subject to long delays, an Aliens Appeal Board was established in January 1992 as the body to make a final decision on asylum cases. As part of this speeding-up process, the Swedish Immigration Board (SIV) took over from the police in July 1992 responsibility for investigating asylum cases.

During the winter of 1991-2, there were several serious crimes of violence against individual immigrants in Sweden, as elsewhere in Europe. According to the Swedish Ministry of Culture: 'A strong body of popular opinion developed, and manifestations against xenophobia and racism and for solidarity with Sweden's immigrants took place all over the country' There

was some evidence too of a hardening of attitudes towards aliens, particularly among the young. In 1992 and 1993, the Riksdag (to which the Swedish government reports annually on immigration and refugee policy) voted that considerable sums be spent on measures to combat xenophobia, racism, and anti-semitism. In 1993, the government appointed a parliamentary commission to review immigration, refugee, and asylum policy (the latter in an international context). The commission was also asked to make suggestions for improving ways in which the integration of immigrants into Swedish society could be achieved and to consider how Sweden might become a more culturally pluralistic society. Commission deliberations are to conclude by 1 March 1995.'

## **France**

As a former colonial power bordering on the Mediterranean, France (with Italy and Spain) has been exposed to a very large movement of asylum-seekers from the turbulent Maghreb (Morocco, Algeria, and Tunisia), as well as from elsewhere. Traditionally, France has had a positive attitude towards immigration, particularly from its colonies, and generous naturalization laws. During the de-colonization period, over two million people from the former French colonies migrated to France. Today immigrants (foreign-born and aliens born in France) number about 8 million, or 14 percent of the total population.

At both the national and local level, these positive attitudes towards immigration and migrants in general have been changing. The third survey of the French Human Rights Commission, conducted between 21 and 23 November 1991 with a sample of 9,0 persons, confirmed the rise of racism and xenophobia among the public. The deepening of racist attitudes mainly reflect hostility towards North Africans and their French-born offspring (although refugees and asylum-seekers from eastern Europe were not very welcome either). Seventy per cent of the respondents thought that 'there were too many Arabs in France' and sixty per cent thought that immigrant workers were a burden on the economy.<sup>8</sup>

France has been particularly concerned about Algeria (which it ruled for 132 years), where the strength of fundamentalism and recent attacks on foreigners give cause for alarm. Until Algeria's independence from France in 1962, all Algerians were French citizens, and most of its 27 million people speak French. It is estimated that between one and three million Algerians live in France, legally or illegally. What the French fear is a mass exodus of Algerians to France, although this has not occurred yet. The French government has promised to accept all French citizens living in Algeria, as well as the 25,000 others who have dual nationality, but not many more. Both Interior Minister Charles Pasqua and Foreign Minister Alain Juppe have stated plainly that France will not accept a flood of Algerian refugees.

In view of the 12.7 per cent unemployment rate and the support given to the fiercely anti-immigrant National Front of Jean-Marie Le Pen, it is feared that this would cause widespread unrest.<sup>9</sup>

There was a rapid rise and eventual decline of asylum-seeker arrivals in France from 15,900 in 198<sub>4</sub> to a high of 60,000 in 198<sub>9</sub>. By 1993 the numbers were down to 26,500. Measures to control the flow have included removing the right to work of asylum-seekers, enlarging the list of visa requirements, intensifying fingerprinting, strengthening border controls, and introducing sanctions against those who employ asylum-seekers. Substantial additional resources were also allocated to OFPRA (Office Francais de Protection des Refugies et Apatrides) to improve and speed up asylum-seeker processing.

### **The Netherlands**

The Netherlands has a long history of immigration, mainly reflecting its status as a colonial power which it still is, but not, of course, on the same scale as in the past. The largest group of immigrants from its former colonies are from Surinam. They number about 240,000 and nearly all are Dutch citizens. They have not done very well in the Dutch labour market and have a high unemployment rate. The Dutch Antilles accounts for an additional 80,000 immigrants. Some 692,000 foreign citizens live in the Netherlands, half of whom are Turks and Moroccans mainly recruited as foreign workers.

Asylum-seekers have been the subject of vigorous debate in recent years. There has been a fairly steady increase in numbers from 2,603 in 198<sub>4</sub> to 20,346 in 199<sub>2</sub> and a large increase to 35,399 in 1993. By far the largest number of requests for asylum filed in 199<sub>2</sub> and 1993 have been from the former Yugoslavia and from Somalia. The new Immigration and Naturalization Service (INS) of the Ministry of Justice estimates that approximately 83 per cent of the total number of asylum-seekers travel to the Netherlands via other countries, mainly from Germany

A number of measures have been taken in the last few years to control the flow of asylum-seekers and to make asylum law and procedures more effective, but we will concentrate here on the most recent only. On 23 December 1993, the Dutch parliament passed a draft bill to revise the Aliens Act (196<sub>5</sub>), the basic legislation affecting asylum-seekers. With the exception of certain articles which depend on other acts coming into force, the revised Act became law on 1 January 1994. According to the Immigration and Naturalization Service, 'the amendments to the Aliens Act were inspired by far-reaching changes in the national and international field of immigration policy over recent years. The greatly increased flow of asylum applicants in 1993 (35,399), a rise of 75% in comparison to 1992, was a major factor in this.' The main principles underlying the revised Alien's Act are described as swift and brief application procedures, effective

monitoring and expulsion of illegal immigrants, and measures to stop illegal residence.

One of the other objectives of the Act was to bring Dutch legislation in line with German legislation in order to prevent the phenomenon of 'asylum shopping' between the two countries. The revised Aliens Act also contains amendments to the Penal Code: for example, by creating penalties for carriers responsible for a vehicle or aircraft bringing immigrants into the Netherlands whose lack of travel documents would otherwise deny them access. In line with the Implementation Agreement to the Schengen Accord, a penalty was introduced for employers hiring illegal immigrants, and a fee of 50 guilders was imposed before an application for admission to the Netherlands can be processed. Further changes to the Aliens Act are now being prepared.<sup>10</sup>

The INS, described as a 'largely autonomous agency linked to the Ministry of Justice,' was opened on 1 January 1994. It replaces the former Directorate of Alien Affairs in the Ministry, and its responsibilities include the processing of asylum applications under the revised Aliens Act. In the very near future, it is expected that all asylum applications will have to be submitted on arrival at one of three centres – Amsterdam's Schiphol airport or at either of two registration centres near the Belgian and German borders. In these centres, the INS will decide within twenty-four hours whether the asylum-seekers may proceed to a regular investigation and reception centre or not. If not, the application will be rejected within the same twenty-four hour period.

Several other administrative measures have been introduced recently in the Netherlands in an attempt to deal with the continuing high inflow of asylum-seekers. These have included the recruitment of an additional 500 police to monitor illegal aliens, the use of mobile police groups (popularly known as flying squads) in areas close to the German and Belgian borders, and bilateral talks with Germany and Belgium about co-operation in various fields, including exchange of information and joint efforts to achieve the expulsion of rejected asylum-seekers."

## **Britain**

As in France and the Netherlands, Britain's colonial past has had a profound effect on its immigration policies and its attitudes to migrants of all kinds. It, too, has had large 'invasions' of would-be immigrants from the Caribbean in the 1950s and from India in the 1960s. The generous immigration and citizenship policies and programmes introduced after World War II have been progressively narrowed as threatening new flows of migrants and their relatives have been perceived: asylum-seekers are the most recent of these. Churches and voluntary agencies have always formed a strong and vocal lobby in favour of migrants and still do. Recently,

as in other receiving countries, many asylum-seekers have contrived to stay in Britain partly by the usual method of prolonging appeals, but mainly because it was so difficult and troublesome to expel them.

The Immigration and Nationality Department of the Home Office reports that for most of the 1980s the number of asylum-seeker applications was steady at around 45,000 a year. Then came a steep rise to 11,500 in 1989, 22,000 in 1990, and 45,000 in 1991. Three-quarters of the applications are apparently made by people already in Britain and the other quarter at ports of entry, although the pattern differs amongst nationalities. It is reported that the proportion found to be genuine refugees has declined steeply in recent years – from some 50 per cent in the early 1980s to 25 per cent in the late 1980s to 10 per cent in 1991 and 5 per cent since then.<sup>12</sup>

Like other governments, Britain's Conservative government obviously decided to make a determined attack on the asylum-seeker problem. A new Asylum and Immigration Appeals Act became law on 26 July 1993, the second of two major asylum bills presented to parliament. The first, described by the *Independent* newspaper as 'this mean-minded little bill,' was dropped in February 1992 mainly due to bad timing in the run-up to a general election. But it had also aroused great wrath among the churches, voluntary agencies, lawyers, and others. The second Asylum bill did not have an easy ride either. The main focus of cross-party criticism was the removal of the appeal rights of short-term visitors and students refused entry to Britain and the tightening of appeal procedures for asylum-seekers in general. The government claimed that it had been forced to tighten the rules because at that time (January 1993) it was faced with backlogs of 56,000 undecided asylum cases and 26,000 immigration appeals. After acrimonious debates, the second bill was approved in the Commons by a majority of 50 votes and in the Lords. The *Guardian* head-line ran 'Asylum bill clears Commons under fire.'<sup>13</sup>

According to the Immigration and Nationality Department in Britain, the new legislation is part of a wider strategy designed to control the major increases in asylum seeking in recent years. This included increases in staff, detention facilities, and other resources. The principal aims of the strategy were: 1) to process 'post-asylum applications' much more quickly, hoping eventually that initial decisions would be taken within three months; 2) to streamline procedures and reduce complex judicial reviews, reflecting the benefits of the extension to all asylum applicants of the in-country right, in the new Act, to appeal against initial refusal to an independent special asylum adjudicator; and 3) to continue to recognize genuine refugees but to remove a higher percentage of persons with unfounded claims.

The major provisions of the Act and subordinate legislation were:

1) The act introduced an in-country right of appeal for all asylum-seekers before removal from Britain. 2) It provided for the rapid handling, including tight appeal time limits, of clearly unfounded cases such as frivolous or

vexatious applications and those where the claimant went initially to a safe third country where asylum could have been claimed. 3) It introduced a power to fingerprint all asylum-seekers to deter 'fraudulent multiple applications.' 4) It allowed an existing leave to enter or remain to be curtailed, and a deportation decision to be served when an asylum claim is rejected. The act also amended the Immigration (Carriers' Liability) Act 1987 and provided that if the Secretary of State was satisfied that there was a safe country to which an applicant could be sent, his application will normally be refused without substantive consideration of his claim to refugee status."

The Immigration and Nationality Department reports that, on the whole, the implementation of the Act went smoothly, and the new procedures are proving more efficient than the previous ones. The new system is being closely monitored and adjustments will be made where necessary.

We turn finally to North America where Canada and the United States have experienced the same sharp increases in the number of asylum-seekers but have retained some of their well-known characteristics as countries of immigration. They too, however, have tightened or are tightening their asylum laws and procedures to limit the flow.

## **Canada**

Canada has experienced a milder public reaction to asylum-seekers than some of the countries discussed and has not appeared to feel particularly threatened or overwhelmed by them. Canadians are, after all, used to large numbers of immigrants and refugees (the official target for 1995 is 190,000 to 2.15,000); and Canada does have the saving grace of immense spaces, even though immigrants rarely settle there, much preferring to live comfortably in Toronto, Montreal, or Vancouver. Canada, according to the former Chairman of the Immigration and Refugee Board, 'is one [of the] few countries committed to receiving newcomers as a welcome and valued resource,' although that may not always be the case.

Until very recently, public concern about asylum-seekers in Canada focussed on whether they were getting a fair deal before the Immigration and Refugee Board which is responsible for asylum-seeker hearings, and whether the (generally very capable) Board members who conduct these hearings were behaving responsibly towards them. Recently, however, the press and the public have become very agitated about a small group of violent crimes committed in Ontario by former immigrants due for deportation but still in Canada. This is seen as a failure on the part of immigration officials to deport, or to deport quickly enough, rejected immigrants and asylum-seekers with criminal records.<sup>16</sup> As always in time of recession, from which Canada is now emerging, there is also fairly serious discussion in the press from time to time about Canada's high intake of immigrants

and refugees, and whether or not this should be cut in light of continuing high unemployment (10.3 per cent in September 1994).

Despite a lack of obvious public concern and although ministers and politicians have rarely discussed the asylum-seeker problem in its international context, the present Canadian government and its officials have been very interested in the Informal Consultations described here and have done their best to support their growth and development. In recent years, all Canadian governments have had a close and co-operative relationship with UNHCR. Today, the Canadian government is taking a keen interest, as an observer, in the Dublin and Schengen agreements.

Perhaps the major problems for Canada today and in the near future are whether its present system of refugee status determination is still appropriate, whether its acceptance rate is too high and seriously out of line with rates in other countries, and whether it all costs too much – raising the question of whether in today's world this is the right way to spend money on refugees (from whatever cause).

Canada's excellent Immigration Act of 1976, which made profound changes in its immigration, refugee, and asylum policies, created a Refugee Status Advisory Committee to recommend decisions on refugee status to the minister. But there were many stages through which claim to refugee status could pass, sometimes taking up to three years or more. Consequently, as numbers began to mount, the committee and all its works were swamped, and by the end of 1988 there was a backlog of 60,000 undecided cases. From then on, the numbers of claimants increased as dramatically as elsewhere to a high of 37,700 in 1992.

It was all clearly too much for the Refugee Status Advisory Committee, and, after several studies and reports, a new system of refugee status determination was devised. The government acted quickly. On 5 May 1987, the Minister of Employment and Immigration tabled a bill in the House (bill C<sub>55</sub>) to establish a new system for Canada and to amend the 1976 act accordingly. It came into force on 1 January 1989. Its immediate effect can be seen in the reduction in 1993 claims to 20,500.

The amended act created a new, independent body – the Immigration and Refugee Board – with two divisions, an Immigration Appeal Board to deal with immigration matters and a Convention Refugee Determination Board to deal with refugee claims. (The act also strengthens the law in relation to companies transporting illegal immigrants.) With some minor changes mainly designed to speed up the process, the Convention Refugee Determination Board operates in the same way today. It is a very civilized system, one of the best created recently on the international scene. It provides a reassuring legal framework for asylum-seeker hearings conducted by board members. It protects the legal rights of the claimant, and it creates an atmosphere which encourages a careful and informed examination of the case. The only problem with it is that the acceptance

rate or refugee recognition rate has been very high (70 per cent in 1990, 64 per cent in 1991, 57 per cent in 1992, and 51 per cent in 1993). Some countries (including the United States whose acceptance rate was 4.8 per cent in 1991) have claimed that the whole system is 'too lenient,' that it lets the side down, just when the members of the European Union and the other participating members of the Informal Consultations (whose acceptance rates are much lower) are trying, each in their own spheres, to harmonize their asylum policies and procedures. Other critics have argued that the Canadian system is not a refugee status determination system at all. It is a parallel immigration process which provides an easier way of getting into Canada for self-selected individuals than the regular immigration programme.<sup>17</sup> So far the Canadian government, while co-operating with the Informal Consultations, seems unmoved by these criticisms and has just made 57 appointments to the Immigration Board (including 18 re-appointments), which seems to indicate that at least its short-term future is reasonably secure.

### **The United States**

Of the seven highly developed, industrialized states discussed here, the United States probably faces the most difficult task in managing the vast numbers of visitors and migrants arriving at its borders each year. Whether it is Cuban refugees trying to cross the Straits of Florida in makeshift rafts, or boatloads of Chinese asylum-seekers appearing in American waters, or Mexicans who succeed in crossing the Rio Grande despite the efforts of the Border Patrol, or simply the millions of tourists, temporary visitors, business people, students, and prospective immigrants who arrive annually at its ports of entry, the task is daunting.

The United States admitted about 22 million foreigners in 1993. An additional 800,000 were admitted as legal immigrants or refugees. Illegal immigrants are estimated at 200,000 to 300,000 per year, although many think the number is far higher. Between October 1993 and June 1994, 104,417 applications for asylum were filed, the largest numbers coming from Guatemala and El Salvador.

Legal immigration to the United States is governed by the Immigration and Nationality Act, as amended in 1965, 1976, and 1978. Many will remember the 1965 amendments which abolished the national origins quota system in use since the 1920s. At present, legal immigrants are admitted to the United States under two broad categories: immediate relatives of United States citizens and special admission groups; and others admitted for family reunification or on the basis of their employment profile. Immediate relatives include spouses, unmarried minor children, and parents of adult citizens. They are exempt from numerical restriction. The second category of potential immigrants is subject to a worldwide ceiling of

270,000 and a single country ceiling of 20,000. It is also subject to a preference system which further limits the numbers allowed entry within the prescribed categories.

A formal United States refugee policy is a fairly recent development. The Refugee Act of 1980 was designed to provide permanent authority both for the admission of and assistance to refugees. The act incorporated into law a definition of a refugee similar to the one in the United Nations Convention on Refugees. As far as numbers are concerned, the President, in consultation with the Judiciary Committees of the House of Representatives and the Senate, can decide the number of refugees to be admitted in any given year.

The administration of the Immigration and Nationality Act is the responsibility of the Immigration and Naturalization Service (INS), an agency of the Department of Justice which is responsible for both immigrants and refugees. It determines the admissibility of all immigrants and non-immigrants seeking entry to the United States. It adjudicates asylum claims and processes refugees for admission, deciding whether an individual meets the statutory definition of a refugee. It is also responsible for apprehending, detaining, and deporting illegal aliens if necessary. But major changes are now under way in the enforcement area.

On 27 July 1993, after the February bombing of the World Trade Center in New York, President Clinton asked Congress for more money and new laws to tighten United States borders against illegal immigrants, to speed interviews of people seeking political asylum, and to let the government have the same tools it uses against organized crime to fight foreign gangs promoting illegal immigration. Part of his speech read as follows:

(My) decision to push for this legislation was prompted in part by the World Trade Center bombing which showed how porous the American immigration system is, but it was also an attempt to meet what is likely to be one of the biggest domestic challenges the country will face in the 1990s: how to stem the increasing flow of illegal immigrants while maintaining the fundamental American commitment to legal immigration and legitimate political refugees ... the kind of practices that are manifest in who can get into this country on an airplane, what kinds of illegal smuggling can go on, and the fact that our borders leak like a sieve: those things cannot be permitted to go on in good conscience."

Several months later, on 2 February 1994, Attorney General Janet Reno announced at a special news conference a comprehensive two-year plan to increase immigration enforcement, streamline certain procedures, and encourage aliens to naturalize. An increase of over 1,000 border patrol agents at the southwest border was planned by the end of 1995. The INS plans to focus the new agents along the border where the greatest number of undocumented aliens cross. During the first year the new agents will be

stationed at the border alongside San Diego, California, and El Paso, Texas, where 65 per cent of apprehensions now occur.

Accompanying the Attorney General at the news conference were the newly appointed Commissioner of the INS, Doris M. Meissner, and several members of Congress. Later Ms Meissner gave details of the proposed regulations which INS would be issuing in the near future to reform the asylum application and adjudication system. They were designed, she said, to deter spurious asylum claims while preserving protection for legitimate refugees. She noted that the most serious problem now facing the asylum system was the substantial backlog of pending cases which had grown exponentially over the past three years. At the end of 1993, it stood at 330,000 and was growing at a rate of about 10,000 a month. It might reach 450,000 cases by September 1994 (the end of the financial year in the United States). The INS does not expect to eliminate the backlog completely until the year 2000, assuming no new crises occur to divert asylum resources.

Other proposed changes included: twice as many asylum officers by early 1995 to enable the six and a half hours now spent on each case to be reduced to two and a half; more immigration judges; additional automation of the asylum processing system and better electronic identification procedures. The INS also plans to begin to crack down on 'unscrupulous preparers of so-called boilerplate asylum applications' which do not contain sufficient information to establish eligibility for asylum. Ms Meissner noted that the INS is seeing many 'carbon copy' applications containing virtually identical information, except for the applicant's biographical data. According to one news report, in one month in California the INS received almost 1,000 identical applications prepared in storefronts. In addition, the INS and Justice Department plan to boost funds, allotted to identify and deport criminal aliens, by over \$55 million. As in Canada, there is much anxiety about criminal aliens who should have been deported, but contrive in some way or other to stay. The numbers in the United States are, of course, much larger. The goal is to deport up to 20,000 additional criminal aliens each year, primarily through an expanded institutional hearing programme, in which immigration judges will conduct deportation hearings of criminal aliens while the aliens are still in federal or state prisons.<sup>19</sup>

### *: Some Conclusions*

Several useful conclusions can be drawn from this short examination of the effects of the asylum-seeker movement in Europe and North America. We can also get some idea from this experience of the shape of things to come in international migration in the early years of the next century

Most of those who have been professionally involved with asylum-seekers in the countries discussed here seem to believe that, with a growing world population and ever faster travel, international migration will simply get more complex and difficult in the next century, and more people will want to move for economic reasons. Princeton N. Lyman, when director of the Bureau for Refugee Programs at the State Department, said:

the distinction between refugees and migrants will be ... one of the most difficult issues to address. Already in Europe, Canada and the u.s. the asylum process has become entwined with the movement of people from desperately poor as well as repressive countries ... It is also becoming clear that those of us who are charged with the protection of refugees cannot address adequately the major refugee issues of the next decade, if we do not take into account the pressures and direction of general migration. The refugee population that has characterized the international scene since World War II is likely to change radically in the next few years. We will be moving into a different era with new root causes and a different political framework.<sup>20</sup>

This surely means that we must enlarge our long-debated but never developed definition to cover the full range of persons of 'potential international humanitarian concern.'" Do we need a category now for refugees from poverty?

As migration movements converge, as they are doing today, do our traditional ideas of refugee protection need developing too? It is certain that population movements of various kinds are now a matter not just for immigration departments but for foreign and economic policy, and must be related to development aid, economic development, and international trade. Do we want and would it be feasible to have a world in which population movements are forbidden and all those who attempt to change countries are regarded as fraudulent or dangerous? The lessons of immigration do not show that a fortress mentality on the part of governments is desirable. They do show that sensible controls, good management, and public consultation are the only way to achieve liberality and peace of mind for the public.

Consultation should be emphasized. Current intergovernmental and bilateral consultations are very important and must be continued. They have taken a long time to achieve, but today, with greater enthusiasm for multilateralism on the part of many governments, they are seen as serving a very useful purpose. It should be said, however, that so far this has been a government exercise exclusively. The public has been left out and, in many countries, has not even been made aware that these international consultations exist. In the main, ministers and politicians have discussed international migration in very limited national terms, bearing only local political considerations and precautions in mind. But this has meant that

the public so easily sees itself, with consequences that we know only too well, as the main victim of unexpected migration and refugee movements, not as one country among many dealing with the same situation. Means should be found now to bring the public, or some elements of it, into these consultative activities, thereby enabling them to understand the realities of international migration in our changing world.

## Notes

- 1 The number of refugees, too, has increased at a phenomenal rate. UNHCR's estimate of world levels today is close to 23 million, excluding an estimated 26 million 'internally displaced' people driven from their homes by war, massacre, and famine. *Globe and Mail* (Toronto), 8 September 1994.
- 2 The shipping of illegal emigrants to the United States was described recently as 'among China's thriving export businesses.' *Economist*, 25 June 1994, 33.
- 3 UNHCR was established under a statute adopted by the United Nations in 1950 and opened its headquarters in Geneva in January 1951 at a time when almost all refugee activity was centred in Europe. The Canadian office of UNHCR was opened in Toronto in 1961 and moved to Ottawa in 1971.
- 4 Canada has been a member of this Committee since 1951.
- 5 IOM, formerly known as ICEM (the Intergovernmental Committee for European Migration) and later as ICM (the Intergovernmental Committee for Migration) was founded in Brussels in 1951. It is located in Geneva and has always worked closely with UNHCR. For a fuller discussion of IOM and Canada's relations with it, see Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared* (Montreal and Kingston: McGill-Queen's University Press 1989), 160-4.
- 6 COM (94), 23 final, Brussels, 23/02/1994.
- 7 Swedish Ministry of Culture, *Immigrant and Refugee Policy* (Stockholm 1993), 23.
- 8 *Manchester Guardian Weekly*, 31 March 1992.
- 9 *Economist*, 6 July 1994, 41.
- 10 The Immigration and Naturalization Service, *The Asylum Procedure the Netherlands*, The Hague, 1994.
- 11 The Immigration and Naturalization Service, 25 July 1994.
- 12 Immigration and Nationality Department, The Home Office, Britain, 9 June 1994.
- 13 *Guardian*, 12 January 1993.
- 14 Immigration and Nationality Department, The Home Office, 9 June 1994.
- 15 R.G. Fairweather, Conference of the Intensive Program in Immigration and Refugee Law, Osgoode Hall Law School, North York, 27 April 1990.

- 16 New regulations have been introduced to deal with those with serious criminal records, as well as failed refugee claimants who are still in Canada – now thought to be about 25,000.
- 17 See Daniel Stoffman, 'Pounding at the gates,' Toronto Star, 20 September 1992.
- 18 *New York Times*, 28 July 1993.
- 19 *Interpreter Releases*, Report and Analysis of immigration and nationality law, 71: 6 and 7 (7 and 14 February 1994), Washington, DC.
- 20 Princeton N. Lyman, Conference on the New Foundation for the U.S. Immigration System, Department of Labor, Washington, DC, 20 September 1991.
- 21 See Gregg A. Beyer, *Improving International Response to Humanitarian Situations*, Refugee Policy Group, Washington, DC, December 1989.

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The author would like to thank the Informal Consultations in Geneva, the International Centre for Migration Policy Development in Vienna, the European Union, and the Benelux Union, as well as the countries whose asylum policies are described here, for kindly supplying information for this paper.

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