

REFUGEE UPDATE

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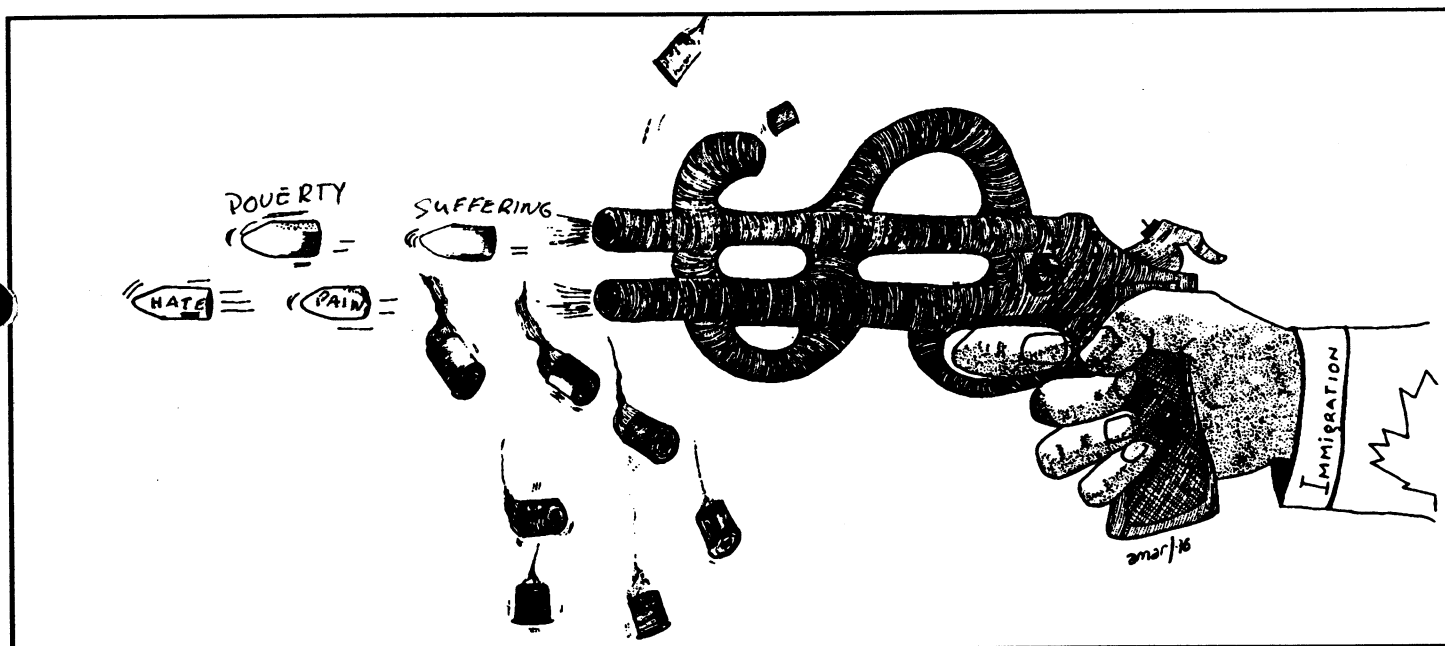
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CANADA'S HEAD TAX: A BY-PRODUCT OF THE GLOBAL ECONOMY

BY TONY COSENTINO

Canada's Immigration policy is made and changed to meet this country's economic and political needs. More than one hundred years ago, Chinese workers were lured here to build our railways. Soon after, Eastern Europeans were given land to farm the prairies. In the 1950s Italians were invited in order to supply labour for the construction industry. A changing "points system" now permits immigrants with skills needed at given times to enter this country more easily than at

others. Investors who promise to be able to create jobs for Canadian workers are also encouraged to settle here.

Sadly to say, our Immigration policy is often written and changed in response to public opinion about the place of immigrants and refugees in Canada. As economic times become more difficult in this country, there is a growing tendency among Canadians to single out immigrants and asylum seekers, particularly those from Southern nations, as a threat to our comfort-

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in the Free Trade Zone along the Mexican-American border, as well as throughout Southeast Asia: in Malaysia, India, Thailand and Singapore. In settings like these, the accompanying misery is often ignored by governments whose hands are tied by debt, or are maintained by repressive political regimes closely associated with these major industries.

The Head Tax, in effect, unjustly paints immigrants as the causes of serious economic and political issues for which governments such as ours bear some responsibility. It is justified by Canadians who point to immigrants and refugees as the problem itself, rather than tag-ic symptom of a very problematic way of doing business on a global market. Canada continues to be a part of the North which has historically been living beyond its means at the expense of the South. The Head Tax becomes simply another way of keeping people out after they have been forced to leave their own countries. The resulting scenario conjures up the image of a globe where Western Europe and North America are surrounded by a large fence permitting the free entry of cash while making human access from outside more and more difficult. The Head-Tax reproduces the exploitative dynamics of the South-North economy within Canada by condemning the most vulnerable sector of the population to long-term poverty and disenfranchisement.

Over the past thirty years, Canada has established itself as a global leader in bringing humanitarian solutions to difficult world issues. Our role in peace-keeping, emergency relief, international development, human rights advocacy and our institutions for international cooperation set an example for the rest of the world to follow. However, our international economic practices leave much to be desired, as do some of the immigration policies that currently follow from them.

Newcomers have always brought growth to this country. Canada's Right of Landing Fee, commonly known as the "Head Tax", is the only fee of its kind in the world imposed on refugees. But more than that, it is an obstacle to newcomer integration and will end up costing this country dearly. It has been shown time and time again that strong immigration is the foundation for our economy's future as a prosperous multi-cultural society. Can we afford to simply put policies like the Head Tax into place without thinking about the causes of immigration and asylum seeking? The revenue the Head Tax will raise is negligible in the face of our own national debt. Its implementation sidesteps larger questions about the kind of society Canada is becoming. Re-thinking the Head Tax might be a good place for us to begin properly addressing these economic and political issues, both timely and crucial to this country's future.

Tony Cosentino is a human and refugee rights activist living in Toronto.

THE HEAD-TAX REPRODUCES THE DYNAMICS OF THE SOUTH-NORTH ECONOMY WITHIN CANADA BY CONDEMNING THE MOST VULNERABLE SECTION OF THE POPULATION TO LONG-TERM POVERTY AND DISENFRANCHISEMENT.

Immigrants and refugees have played a key role in the building of Canada as a nation (recall that Canada's first refugees were the United Empire Loyalists). Yet, anti-immigrant sentiments have always been with us. The unjust treatment of successive groups beginning with the Chinese, Sikhs, Southeast Asians, Ukrainians, Jews, Japanese, Italians, and still others bears this tend out. More pronounced at certain times than others, it continues to rear its head today.

The Right of Landing Fee was supposedly implemented as a means of combating the national deficit. The Federal Cabinet gave the Minister of Immigration a choice: take a large cut in funds, or find a way to raise more money. The Minister and his Department took the latter option, and the Head Tax was born. It was justified as a "small price to pay for the privilege of living in Canada." For business and independent applicants, the price may be more manageable; for refugees and others, however, it is a major obstacle to obtaining Permanent Resident status, better chances of being considered for more dignified work, and being reunited with loved ones through Family Reunification.

The Right of Landing Fee is a kind of band-aid approach to a problem of global proportions. Canada is one of the richest industrialized nations in the world. Our banks and those in other Northern countries hold the mortgage on much of the Southern Hemisphere. The economies of these countries are held hostage by huge payments on debts totalling 1.35 trillion dollars. They are forced to export their best agricultural goods to Northern markets in order to receive funds to make interest payments on these debts. While food in such countries runs short, buyers of exports are assured of a steady supply of cheap produce.

Over time, interest payments from most of the Southern debtor nations have exceeded the sums initially borrowed. While held to ongoing debt obligations, many of them can only look forward to continued poverty, hunger, economic and often political instability. Under the heavy burden of "debt servicing" there is simply not enough money left for them to develop industries at home to compete with high-tech manufacturing at the level of international trade.

The only other way to enter these markets is to either keep borrowing and go deeper into debt, or invite foreign investors to come in and set up factories. Foreign investment in poor Southern nations does create employment. However, the working conditions that it brings are often very unsafe and oppressive. Many foreign-owned plants demand twelve hour work days and quickly repress any attempts made by workers to form unions. To stay competitive, their salaries tend to be inadequate to support a family with even the bare necessities of life: food, shelter and clean water. There are many such factory locations

THE BACKLASH

AGAINST IMMIGRANTS IN THE USA AND THE CANADIAN-US MEMORANDUM OF AGREEMENT

BY ELIZABETH FERRIS

These are tough times for refugee and immigrant advocates in the United States. Major immigration reform is likely to pass in this year's Congress which will sharply limit legal immigration by 38-40%, further militarize the southern border, cut refugee admissions by half, impose much more restrictive procedures for asylum (summary exclusion, 30 day time limits on filing for asylum), decrease flexibility on humanitarian parole, deny benefits to legal immigrants and a host of other measures. The House of Representatives' version of the bill is over 350 pages long and there is precious little to report from either the House or the Senate versions which is positive.

The mood in Congress is quite hostile towards immigrants and refugees. For example, an amendment to the Senate State Department Authorization bill would prevent further resettlement of Iraqi refugees to the United States - even though the refugees are opponents of the Saddam Hussein regime and the UNHCR has determined that resettlement is the only feasible option for this group of refugees. This amendment, sponsored by Hesse Helms, has passed the Senate. Refugee advocates are hard-pressed to find members of Congress willing to speak up on behalf of Iraqi refugees.

Meanwhile, the US government continues to interdict boats of Cubans and Haitians seeking to enter the United States, returning them to Cuba and Haiti with minimal screening. Measures which might offer some hope at addressing the cause of uprooting are being cut right and left. Foreign aid is being slashed, particularly assistance to Africa. There is little political support for meeting US obligations to the United



With the courtesy of Human Rights Internet.

Nations; rather, politicians compete with each other to lambaste the United Nations and to restrict US participation in peace-keeping activities.

In November 1994, voters in California passed Proposition 187 by a 60% vote. This measure, which would deny social and educational benefits to undocumented migrants and would place the burden of verifying immigration status on public school teachers and health care workers has not yet been imple-

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The MOA sets out procedures for ensuring that asylum-seekers have access to a full refugee determination procedure and specifies that if an applicant has spent more than 30 days in either Canada or the US, his or her application for asylum should be considered by that country unless there are compelling circumstances (such as close family members in the

community. received the attention it deserves from the US advocacy community. But given current developments in the USA, the agreement has not the US immigration and refugee advocacy community. But believe, the MOA would engender substantial opposition from Agreement (MOA) has been introduced. In "normal" times, I against this backdrop that the Canadian-US Memorandum of include against immigration and refugee advocates seem slim. It is This being an election year, prospects for overturning the financing, consumer protection and a host of other areas.

More over, the budgetary impasse, government shutdown and Congressional efforts to eliminate and reorganize government departments has meant that many federal officials who could normally be expected to defend programs benefiting refugees and immigrants are devoting energy to protecting their programs and their jobs. The broader context of course is that progressives in areas such as welfare, affirmative action, children's rights, environmental protection tax reform, campaign

will resurface again in the coming months. Amendment was defeated last fall, but indications are that it from the Red Cross to legal services for the poor. The Istook profit agency in the country which receives federal funds - as those in the defence industry, but would apply to every non-official. The Amendment would not apply to contractors, such advocacy to mean any contact with any level of governmental than 5% of their private funds to advocacy and would redefine organizations which receive federal funds from devoting more serving. The Istook Amendment, for example, would prohibit difficult for NGOs to advocate on behalf of the people they are (cuts), they are also introducing the measures to make it more course, impossible given draconian nature of the proposed ermental organizations can pick up the slack (which is, of programs and explaining that the private sector and non-gov-

At the same time that US politicians are cutting federal South. debate is focused on controlling illegal immigration from the mainly from European countries, virtually all of the public grants coming to the United States are visa overstayers, private and other people of color. Although half of the illegal immigrants is almost exclusively focused on *latino* migration which the US shares with Canada. The public backlash against However, there are few references to the 4,000 mile border that the US government has lost control of its borders. ty of Americans feel that immigration should be reduced and Wisconsin and New York. Polls continue to show that a majority of Americans feel that immigration should be reduced and 187-like initiatives in places as diverse as Florida, Oregon, mented because of court challenges. However, this has not pre-

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teaching and deserve our full attention. Although the attention of most US immigration and Canadian government or to negotiate other issues.

other factors such as the desire to improve relations with the US an agreement with Canada at this time must be based on difficult for INS to tackle the backlog. US willingness to pursue the INS by adding new asylum claims and thus making it more of asylum applicants, there are still over 400,000 asylum cases Immigration and Naturalization Service to reduce the backlog and more cumbersome procedures. In spite of efforts by the US would seem to lead to more asylum claims being filed in the US US government. On the contrary, implementation of the MOA the MOA), no similar argument can be made on the part of the many of these would be returned to the US under the terms of Canadian refugee claimants pass through the United States and reduce the number of refugee claimants (as at least one-third of Canadian government may well see this as an opportunity to willing to enter into such an agreement at this time. While the I am also a bit puzzled about why the US government is more troubling is the prospect of an MOA with Mexico.

deportations of rejected asylum-seekers is not reassuring. Even no country is safe for all refugees and the record of European of these countries may well be safe for most refugees, however, between the United States and a dozen European countries. Some An MOA with Canada could well be a precedent for MOAs

THE PRECEDENT OF SAFE THIRD COUNTRIES.

established communities of their ethnic group or compatriots. where they have family members or friends or where there are also human beings with the natural desire to live in countries Although refugees are seeking protection and security, they are

DENIAL OF THE RIGHT OF ASYLUM-SEEKERS TO CHOOSE WHERE TO APPLY FOR ASYLUM/REFUGEE STATUS.

While several of the provisions are troubling (particularly if US legislation requiring summary exclusion and a 30 day time limit for filing of asylum applications is passed), there are several fundamental concerns with the MOA: The fact is that Canada has different standards in its refugee determination process than the US process. Canadian approval rates are around 60%, compared with 20% in the USA. We know of many cases where asylum-seekers have been denied asylum by the US authorities but approved for admission into Canada. Denying these individuals the opportunity to process their claims in Canada will undoubtedly mean that individual asylum-seekers will be denied protection.

PROTECTION ISSUES.

While several of the provisions are troubling (particularly if US legislation requiring summary exclusion and a 30 day time limit for filing of asylum applications is passed), there are several fundamental concerns with the MOA:

NGO-GOVERNMENT ROUND-TABLE

DISCUSSIONS ON THE MOA

On February 26th, 1996, NGO representatives from different parts of the country met with government officials in Ottawa to discuss the draft Memorandum of Agreement (MOA) between Canada and the U.S. Among NGOs represented were Amnesty International, the Canadian Council for Refugees, Table de Concertation des Organismes de Montréal au Service des Réfugiés, Jesuit Refugee Service-Canada, Toronto Coalition Against Racism, Osgoode Hall Law School, Montreal Refugee Coalition, and the Iranian Community Association of Ontario.

Mr. Georges Tsai, Assistant Deputy Minister of Citizenship and Immigration, opened the meeting. He reiterated his Department's Commitment to seek outside input on MOA. He first summarized the goal of an MOA as protecting genuine asylum-seekers, safeguarding public confidence and defending the integrity of the national asylum system. CCR President, Sharry Aiken, re-stated CCR's opposition to the MOA as offering solution to a non-existent problem. She emphasized that the U.S.A. is not a safe country. Professor James Hathaway, of the Osgoode Law School, York University and an internationally recognized authority on refugee law, challenged the Department's argument that the deal would stop "asylum-shopping" and would put an end to "duplicate claims." He argued that these concerns could be addressed without an agreement.

While there was consensus among NGOs that, under various EXCOM conclusions, asylum-seekers have the right to choose their country of asylum, CIC officials insisted that asylum-seekers should apply in their first country of arrival. NGOs highlighted concerns about U.S. refugee policies and practices, her poor record of compliance with the principle of *non-refoulement*, and observance of human rights standards. They

therefore warned the government not to sign a hasty agreement with our Southern neighbour especially when an anti-refugee bill is awaiting approval by the U.S. Congress.

Immigration officials emphasized that standards of protection need to be judged against international standards, not comparatively. They stated that they were monitoring legislative changes in the U.S.A. They therefore refused to change their position on the issue nor did they agree to change their schedule on signing the MOA in April 1996.

NGOs raised concerns that the MOA idea had come from the top with inadequate feedback from front-line workers. No consideration was given to implementation problems. They argued that an MOA would lead to more problems for asylum-seekers, who would be bounced from one country to another, resulting in a bureaucratic nightmare for the Immigration Department.

The following are other concerns expressed by NGOs on the draft MOA:

- ◆ uses a narrow approach in its definition of family.
- ◆ lacks clarity on the issue and period of transit.
- ◆ makes no provision for the confidentiality of claimants.
- ◆ makes no reference to any other international human rights standards except the Convention.
- ◆ does not provide for the involvement of UNHCR in monitoring operational aspects of the MOA nor gives UNHCR a consultative role.

The meeting ended with NGOs frustrated by the concluding remarks of the Mr. Tsai, who made it explicit that the government intended to go ahead with the MOA. He stated that asylum-seekers should not be granted the right to choose their destination and that any comparison between U.S. and Canadian systems should be made in the context of international harmonization.

LACK OF ACCESS TO INFORMATION

In the last two issues of the Refugee Update, we have failed to provide our readers with statistics on refugee arrivals, acceptance, interdictions, removals, etc. This has been mainly due to the fact that Immigration Department and the IRB have virtually stopped releasing timely, meaningful and relevant statistics. We have frequently asked for facts and figures under access to information legislation, but with less and less suc-

cess. Statistics do not come on time; most of them are not relevant; some figures are not available. Immigration usually asks for lots of money to make certain information available, and this is obviously not affordable by NGOs. The IRB has recently released its Statistical Summary for the third quarter of 1995. This, unfortunately, is not presented in the easy and readable format previously used by the IRB.

Inadequate access to information erodes the practice of accountability and is a blow to public scrutiny.

RACISM AND XENOPHOBIA AGAINST REFUGEES AND IMMIGRANTS IN CANADA

(OCCASIONAL PAPER NO. 1, FALL 1995)

BY JESUIT REFUGEE SERVICE-CANADA, REFUGEE PROGRAM OF THE JESUIT CENTRE FOR SOCIAL FAITH AND JUSTICE

ORDER IT FROM THE REFUGEE UPDATE

KHOI TIEN BUI

In the obscurity of the night, a refugee cries
 His tear of woe flooded on his eyes
 He sobs for homeless life, the uncertainty of tomorrow
 Each second brings to him the painful sorrow....
 Violence after violence and brutality
 Forcing him to leave his native country
 He is alone in the darkness of the night
 In the obscurity there is no hope, no light....
 Who on earth hears his cry
 No one but God who rests on high.
 No longer with his motherland under sunshine
 To brighten up each day
 No longer with his home lifetime
 In any kind of way....
 The refugee cries in great despair
 All his life dreams fall
 His cry echoes when the hostile sky is fair
 This message to the world, he will mail....
 In the darkness, suddenly he prays, he cries
 His belief lights up his eyes
 He cleans bitter tears and joins his hands
 Behind each refugee God stands ...

THE REFUGEE

A P O E M

use of the term "Asylum Shopping," accentuated their lack of sensitivity to the plight of refugees. With a view to refresh memories, Mr Collet pointed out that "refugees are normal people like anyone else, whose only crime was that they stood up to their rights in their own country and have been punished for it by their oppressive governments. Their so-called "Asylum Shopping" is none other than an effort to find the best possible second chance for normal life and to regain some degree of dignity. The MOA condemns them for that."

Responding to the argument that the MOA does not reduce Canada's obligation to provide protection for refugees, Mr Collet explained that "providing protection to a refugee is not giving that person a house and putting him/her on welfare, but rather giving that person a renewed identity and a renewed conviction of being useful and whole again."

On the whole, the Immigration Department has been unable to provide any degree of rational argument as to why the Canada/USA agreement for "cooperation in examination of refugee status claims from nationals of third countries" has to exist. The Coalition is of the opinion that there is a certain element of hysteria in all of this.

MONTREAL REFUGEE COALITION'S RESPONSE TO MOA

APPEAL TO OUR READERS

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Update as a unique research and alternative community journal of refugee advocacy for more than seven years. Refugee Update has served as an effective analytical and information tools for refugee rights workers in Canada, U.S. and other countries.

Due to severe financial restraints, we had to reduce the publication of the journal from 4 to 3 issues this year. We need your financial support in order to continue with this useful project. You can help us by:

- ◆ renewal of your subscription;
- ◆ getting new (including bulk) subscriptions for the journal;
- ◆ paying a donation above your subscription fees.

We cordially thank you for your generous and ongoing supports.

In the MOA meeting held in Ottawa on Monday 26 February 1996, the Montreal Refugee Coalition was represented by its President, Jimmy J. Collet. The Coalition is made up of over a dozen refugee groups and associations based in Montreal, Quebec. Being comprised entirely of refugees dedicated to the defence of Refugee Rights, it is one of the unique institutions of our society.

During the MOA meeting, Mr Collet underlined the concerns of the Coalition regarding Article 6, which clearly deprive the claimant of the freedom to choose where to seek asylum. He said that "if the primary purpose of refugee protecting countries is to provide for emotional and physical support and security, then Article 6 is clearly a blatant violation."

"A refugee should seek asylum at the first opportunity where he feels really safe, not where the State assumes he would. The State cannot or should not dictate this choice to another human being, nor should it assume responsibility of deciding what is best for that person. The very assumption of this, violates the fundamental freedom of the mature individual."

Representatives of the Immigration Department's frequent



INTERDICTION:

CANADA'S EFFORTS TO BLOCK THE ROUTE TO SAFETY

BY ALEX NEVE AND JOEL SANDALUK

Interdiction has gained prominence in the past few years as the means by which States seek to avoid the responsibilities and obligations of protecting refugees. Through interdiction, states pursue policies which block refugees' journeys before they are able to reach their chosen destination. We might term it a policy of "out of sight - out of mind."

Canada is a vigorous and effective interdicting state. It is becoming increasingly difficult for refugees to reach Canada and access our refugee determination system. The draft Canada/U.S. agreement is the most recent proposed addition to the range of interdiction tools at the disposal of the Canadian government. Others include requiring visas from the nationals of refugee producing countries, imposing substantial fines on transportation companies when they allow refugee claimants to travel to Canada without proper travel documents, and increasing immigration control outside Canada.

As part of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies ("Informal Consultations"), Canada regularly provides information about our refugee and immigration policies to the U.S., Australia and European states. An October, 1995 publication provides an overview of those policies in the fifteen states involved in the Informal Consultations. Information on interdiction is found under a section rather innocuously entitled "pre-entry measures".

Canada requires visas from 133 countries. No visa-exempt country is a major source country of refugees, no major source country is visa-exempt, and there is no exception for individuals who are fleeing human rights violations who may want to obtain visas so as to make refugee claims. This compares to Australia, which requires visas of everyone but New Zealanders, and the U.S., which requires visas of the nationals of 172 countries and territories; and to Norway (107), Sweden (113) and the United

Kingdom, which requires visas from the nationals of only 93 countries. Visas act as a tremendous obstacle to refugee protection. There has often been a clear connection between an increased refugee flow in a particular country and a Canadian decision to impose a visa, blocking escape at the time it is most needed.

Canada imposes fines of up to \$3200 on transportation companies carrying undocumented travellers to Canada. Again, there is no exception for refugee claimants or even those individuals who are eventually granted refugee status. In early 1993, an "administration fee system" was introduced, under which transportation companies are encouraged to enter into agreements with the Canadian government. Companies commit themselves to conducting detailed screening (primarily pre-departure document checks) of individuals destined for Canada. In consideration for carrying out this screening, the Canadian government reduces the applicable fines (now termed "administration fees") by 25%, 50% or 100%, according to "specified performance standards." It begins to sound frighteningly like Canada Immigration is dealing with corporate profits and sales quotas, rather than human beings fleeing dangerous situations.

In order for this system to operate with the utmost efficiency, Canada has expanded its foreign network of Immigration Control Officers. Twenty-six officers are stationed at embassies or consulates abroad and work with transportation companies to provide training and technical aid to assist in the detection of undocumented travellers. Of course, again, this does not refer to any special provisions for refugee claimants. Many transportation companies have apparently improved documentation inspection procedures on their own initiative, through such measures as "enhanced training", "new technologies" and the use of "security employees

CONTINUED ON PAGE 8.

or private sector security contractors." These measures sound disturbingly Orwellian.

How does the Canadian government measure the success or failure of all this? All

that seems to be important is to keep track of how many undocumented travellers do arrive in Canada - in effect, the failures of the system. In 1994, there were 3,461 improperly documented arrivals at Canadian airports. There is no reference made as to how many of those individuals made refugee claims or were granted refugee status, which would of course suggest a very valid reason for having made the journey without documents. But that would mean injecting the refugee reality into the immigration control framework, and there very clearly is no room for that.

It is impossible to know how effective interdiction is in blocking the refugee journey. Interdiction operates away from public scrutiny, away from legal help, and beyond the reach of NGOs. We do not know who gets turned away before reaching our borders. We do not have the chance to know what they might have been escaping. Interdiction poses perhaps the greatest challenge yet for refugee advocates. It takes us beyond our borders into a murky world of visa offices, ticket counters, transit lounges, and inter-state agreements. It is here that the real battle for strong refugee protection must now be waged.

Alex Nove is Legal programmes Coordinator at York University's Centre for Refugee Studies and Joel Sandulak is a student at Osgoode Hall Law School.

UPDATE ON THE BOARD OF INQUIRY MODEL

The Refugee Board has implemented its Board of inquiry model, and lawyers are beginning to have some experience with this new system. Refugee Update asked Raoul Boulakka to give some of his initial impressions. What follows are Raoul's reflections.

An initial difficulty has been scheduling problems since the model was brought in. The Front Street office (in Toronto) already had an enormous backlog of cases prior to the new model. Under the new model, scheduling is supposed to take place only after a Board member and Refugee Claims Officer (RCO) have reviewed the file and decided on their research plans. In practice, how this is applied varies. Some RCOs delay until they have completed their research. Others set the hearing down and do their research in the meantime. Some hearings are also being slowed down as the RCOs and Board members are trying out their new investigative powers. This can result in long delays when an issue occurs to them at a hearing.

For the largest groups of refugees, such as Somalis and Sri Lankans, there is generally not much that is specific to the claim which the Board wants researched. Often the same sort of basic issues and country documentation are relied on. As a result, in many cases there is not a major difference in previous and current hearing practices.

The Board has begun a practice of holding meetings with lawyers who have a large volume of cases from one country, to have pre-hearing discussions about their research plans and schedule the cases. The hearings are generally being scheduled with the same members. An unintended effect of this is that lawyers who deal with a smaller number of claimants from a country are left behind in scheduling. One lawyer complained to me that he had cases from last March that still haven't been set down.

Often, lawyers who do a large volume of cases do minimal research on each individual case. The Board often develops incorrect perceptions of country conditions - particularly with respect to unusual fact situations or claimants - after hearing many cases where inadequate research was done. This can make it more difficult to persuade them when a lawyer who is more attentive to individual clients presents a case with better corroborative research. I think the Board and claimants would be better served if cases were prioritized based on readiness to proceed rather than volume.

For example, many Tamil-speaking Muslims have been victimized by state security forces in Sri Lanka. However, since most lawyers dealing with Sri Lankans deal with a large volume of Hindu or Christian Tamils, the Board rarely receives information from human rights workers dealing with Muslims. Many of these claimants have appeared without any evidence being led discussing their situation, and were rejected. This creates perception that such cases should be difficult to win.

The Board is continuing to use highly biased and inaccurate reports on country conditions for some nationalities. Canadian embassies have become involved in writing reports to generally repudiate claims. They are quite glib about making sweeping statements. In a recent address to the Board, the Canadian High Commissioner to Sri Lanka claimed generally that both the LTTE and the Sri Lankan government are truly committed to the human rights of civilians! He also



noted that he is not an expert, and admitted that state security forces have been torturing and killing lots of civilians.

When asked what he thought of the numerous stranglings of Tamils in Colombo last summer, he admitted that it would surely happen again. Yet the written reports we receive blow off concerns for civilian safety. Unfortunately, we do not normally get to cross-examine government sources on their reports.

For Sri Lankans in particular, most of the Board's research in the past year has relied on unqualified and biased sources. The Board's Documentation Centre is placing heavy reliance on a report by a Canadian professor who specializes in studying Sinhala religion and movements, as well as a group of Sri Lankan lawyers who only assist Sinhala victims of human rights abuses. There are inter-racial human rights groups that study abuses against all ethnicities. Previously, the Documentation Centre had more balanced reporting, interviewing human rights experts and relying on reports from such groups.

It seems that while there are many members who are sympathetic to Sri Lankan claimants, the national office is using its new research style to drive down acceptance rates. Despite this, the Board reports that many Sri Lankans are being accepted. Much depends on chance. As the Board deliberately puts in misleading evidence that could be the basis for rejecting that there are any serious human rights abuses in the country, members are left with the option of claiming this if they

wish. The role of Canadian embassies both in interdiction of refugees and in doing the dirty work of nay-saying any objective evidence of human rights abuses so that refugees get rejected if they make it past the interdiction gauntlet should be more thoroughly researched and exposed by refugee advocacy groups.

Unless lawyers are able to question the authors of reports that do not come from recognized human rights organizations, the current trend of placing more emphasis on information from other sources will continue to lead to decisions that are based on inaccurate reporting, attitudes, and guesswork. The hearing system ought to provide for non-traditional self-proclaimed experts to be tested through cross-examination.

The Board is automatically receiving port-of-entry notes in all cases. These are notes taken by an Immigration Officer generally while he or she is interviewing a claimant at the airport, a border or an immigration office. The conditions people are interviewed under are not conducive to getting a fair explanation of a case.

Now that officers realize they can influence the Board, many are deliberately putting in reasons to reject the claimant, making sarcastic remarks on the credibility of the person, or butchering what she/he has to say to the point where it makes little sense.

Officers at Pearson Airport (Toronto) are now having refugees complete a form that is essentially identical to a personal information form (including a written statement of the claim and the legal grounds for

it) at the airport without a lawyer. The form requires them to answer whether there are humanitarian reasons to allow them to stay in Canada, but only explains this as "do you have H&C, yes or no?" The form also requires the refugee to sign that she/he has not been coerced in any way into signing - despite the fact that the refugee would not have her/his claim processed and could be detained if she/he did not co-operate.

The conduct of authorities at Pearson Airport is in keeping with our worst fears about the motives of the Ministry in requiring port-of-entry notes to be entered. It is precisely opposite to the assurances the Board's Deputy Chairperson gave us when the model was brought in that officers would be discouraged from putting in evidence that goes to the credibility of the claim. The Refugee Lawyers Association is taking up the issue with the Board, but other refugee rights groups should be challenging the practice of refugees being questioned by Immigration officers on the merits of their claims.

Since the model is new, there is still a lot of room for Board members to learn from experience to be more discerning in what they choose to have researched, and for the Board to iron out some of the administrative problems they are having. Refugees themselves need representation of how they feel about this system. Some of the more unfortunate aspects of the system can be addressed directly by refugee groups just as well as lawyers. To refugees, some things that Canadians treat as reasonable are obviously irrational. For example, an informed Sri Lankan wouldn't listen to someone claiming to be an expert on the country without figuring out what his political tendencies or institutional ties are.

As someone working with refugees for many years, I think the most unfortunate tendency of the new system is to marginalize the refugee in the entire process. This makes his/her own voice far less relevant than that of Immigration bureaucrats mistating what the refugee has to say, than checks on the most trivial details in his/her story and increasing reliance on non-experts.

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FROM PERSECUTION INTO THE MIDDLE OF NOWHERE

BY MOHAMED TARIQ

States, for instance, if a Convention refugee fails to submit documents establishing identity and nationality, then an affidavit explaining unsuccessful attempts to obtain the document and the reasons for unavailability of consular process would be acceptable as the proof of identity.

Somalis are particularly affected by this legislation. The problem of delayed or denied family reunification is the most severe consequence of section 46.04(8). Refugees often leave family members behind in dangerous conditions where they are subject to violence and disease. Delays in family reunification have resulted in depression, a deep sense of isolation, and family disintegration in refugee communities.

Without landed status, the children of Convention refugees find it extremely difficult to enter any university or college, as they are unable to pay the exorbitant non-resident fees. Employment opportunities are limited without having landed status. Most Federal and Provincial jobs as well as access to professional training programs are limited to those having Permanent Resident status.

In early 1994, the Somali Working Group stopped meeting regularly as Midayna was incorporated to advocate for the community. In August 1994, we discussed possible ways to apply section 46.04(8) without unfairly discriminating against Somalis and others in a similar situation. We also discussed how to maintain the Department humanitarian tradition towards refugees and their dependents. In acknowledging the Minister's concern that a Somali war criminal was given landed status, Midayna was willing to cooperate with the Department to help ensure that war criminals are not given landed status. Indeed, the community might be in a better position than any government agency to identify these people. We made it clear that Convention refugees do not want their persecutors to follow them to Canada. Very often it is the war criminals who are able to get valid documents through their connections in the government or by purchasing them.

We believe that the use of documentation in the above context is an inappropriate way to deal with security concerns. Therefore, on October 26, 1994, the Somali Working Group presented alternate ways of determining identity - that are more reliable and less discriminatory. One such way is to allow the use of affidavits as evidence of identity. At that meeting, the Department, represented by a policy advisor, proposed that the use of affidavits of identity would be enough for the "satisfactory identity document" requirement. We discussed and agreed

Life is the most precious element for the individual. For many, the first thing thought of is personal safety; anything else is secondary. For the last three years, thousands of Convention refugees have been grappling with the identification requirement of section 46.04(8) of the Immigration Act. It states that an Immigration Officer shall not grant Permanent Resident status to a Convention refugee, until the applicant secures a valid passport or travel document or a "satisfactory identity document." Officers at processing centres have interpreted this in a very restrictive way, requiring only official identity documents without using their discretion in favour of undocumented refugees.

In fact, there is nothing in the history of the Immigration Department's practice which would define "identity document" as a government-issued document. The main objective of this document requirement is to ensure that Permanent Residence is not granted to people with a criminal background.

Unfortunately, there are over 14,000 Convention refugees in Toronto who are unable to obtain official documents from their countries of origin. In countries where government institutions have collapsed, it is impossible to obtain official documents. The Somali, Iranian, Afghani, and Sri Lankan communities are among those affected. Women and children are disproportionately affected.

In 1992, the Somali Working Group (SWG) was established to help the Immigration Department understand the needs of the newcomers. We addressed administrative delays which existed in processing Somalis for landing and sponsorship. We provided the department with feedback on how to improve the quality of processing and explained the need for a Somali agency capable of addressing the concerns of the community.

Following the implementation of S.46.04(8), Convention refugees were faced with a new crisis: the requirement for identity documents made landing of our community members more difficult. There is a huge backlog of landing applications which poses a serious concern for Somalis as well as immigration management. The Inland Operations Director of the Ontario Region has noted in an internal Memo that "the ID requirement for landing has impacted on our ability to meet the targets set by the landing levels and will probably continue to do so".

Statistics show that since the implementation of section 46.04(8), the number of landing documents issued has been reduced dramatically. This has caused tremendous hardship for genuine refugees and their families. Canada's strict identity rule is not comparable with that of other countries. In the United



on details and information needed for such an affidavit. We also discussed the logistics of implementing the proposal, time frame to clear the backlog, etc. It seemed at that point that the crisis would be resolved within months.

Since then, the Immigration Department has failed to honour its promises to the community. In November 1995, the Federal Court ordered that the issue of a "satisfactory identity document" be put in the hands of an Immigration Officer, who would exercise his or her discretion and "consider all the circumstances of the case". It was significant that, in this case, the Court did not object to the use of an affidavit as a satisfactory identity document. Subsequent to the order in this particular case, Midaynta was told that a meeting would be held with senior Immigration officials to develop a procedure to deal with all outstanding cases in a uniform manner. Despite repeated requests, by February 1996 such a meeting had still not taken place.

To break the deadlock, the Somali community in Ottawa and Toronto intend to challenge the constitutionality of Immigration Act with the cases of several Somalis who have

not been able to obtain landed status. We received core funding from the Court Challenges program and on February 14, 1996 an application was filed in Federal Court, which we hope will resolve the legal limbo of 14,000 refugees. We are hoping to clearly establish that the Immigration Act is discriminating against certain refugee communities by making it almost impossible for them to obtain landed status in Canada. In specific terms, we are arguing that the interpretation of s.46.04(8) of the Act has the effect of discriminating against Somalis on the basis of their national origin, contrary to section 15 of the Charter of Rights and Freedoms.

We will have to wait for the outcome of the court process. We have yet to determine whether newly appointed Immigration Minister Lucienne Robillard will take any steps to resolve the mess her predecessor left behind. In the meantime, we need the continuing support of refugee advocates as well as refugee and immigrant communities.

Dr. Mohamed Tabit is the Program Coordinator of Midaynta and President of the Somali Immigrant Aid Organization.

FREEDOM OF MOVEMENT

BY DAVID MATAS



essentially the same.

The international community has come to accept that where there is a conflict between the sovereign right of states to control their internal affairs and the rights of individuals to have their human rights respected, human rights must prevail. Respect for human rights is an accepted limitation on state sovereignty. That does not mean that the princ-

nize freedom of movement, because they would be reluctant to give up control over who enters their territories. For human rights advocates, there is nothing new in seeing conflicts between assertions of state sovereignty and protection of human rights. Usually, the claim of sovereignty is different - that states have a sovereign right to control their internal affairs - but the conflict is

Why do states recognize freedom of movement within their boundaries for their citizens? The reason, I suggest, is that states realize that freedom of movement within the boundaries of the state is an element of what it means to be part of the community of that state. If we accept that reasoning domestically, we must also accept it internationally. The fundamental basis of human rights is that there is one humanity in which we all share. Freedom of movement internationally is an element of what it means to be part of all humanity.

The right to freedom of movement cannot be found in the international human rights instruments. Yet we must remember that the starting point for human rights is the individual, not governments. The international instruments are only what governments are prepared to accept as legal and political obligations.

There are obvious limitations to the right to go where you want, just as there are obvious limitations to the right to say what you want. However, the limitations are, in themselves, not proof that the freedom does not exist, any more than one can say that the limitations to freedom of speech prove that there is no such fundamental freedom as freedom of speech.

International freedom of movement is a fundamental human right. Conceptually, freedom of movement is as much a part of what is essential to being human as any of the other fundamental freedoms. Being free means as much being free to go where you want as to say what you want or to associate with whom you want.

ple of state sovereignty over internal affairs has ceased to exist. What it does mean is that the principle is subject to an important countervailing principle that, in case of conflict, the right to respect of human rights prevails.

The same can be said of state control over borders. Here too is a principle of state sovereignty. This principle is also subject to a countervailing principle, the principle of respect for human rights. Freedom of movement, as one aspect of human rights, is one aspect of the rights that trump state sovereignty over borders.

What is the practical consequence of accepting international freedom of movement as a principle? It has been argued that freedom of movement means freedom of movement for economic migrants. If it does, then freedom of movement has enormous consequences, and it is unrealistic to believe that it will ever be accepted.

My answer is that the notion that there are large number of economic migrants is a consequence of the present standards regime. According to present international standards, those fleeing serious human rights violations are entitled to protection. Economic migrants are not entitled to resettlement. States wish to limit the number of those who enter and stay. To do this, they label many, if not most, of those fleeing human rights violations as economic migrants. The purpose is to prevent their theoretical commitment to protecting persons fleeing human rights violations from translating into large numbers of real people arriving in their countries.

The number of economic migrants is nowhere near as large as those who fear mass movement of economic migration seem to think. The bulk of those believed to be economic migrants are in reality people fleeing human rights violations, whether the violations be political, civil, economic, social or cultural rights. One advantage of a commitment to a general international right to freedom of movement is that it would get us away from this sham labelling of persons fleeing human rights

violations as economic migrants. An assertion and acceptance of a general right of international freedom of movement would be an effective way of confronting and combatting the violations of the specific movement rights that come from an overly narrow application of these rights.

There remains, nonetheless, economic migration, no matter what the international legal regime. Would a generalized right to international freedom of movement mean unrestricted economic migration? The answer is, not necessarily. There are valid exceptions to the principle of freedom of movement that come into play, such as prevention of environmental degradation or preservation of cultural identity. A balancing would have to be made between competing rights. The question would become whether the restrictions on freedom of movement are reasonable or necessary. Where the reason for movement is economic, the argument that the restriction is reasonable is more easily made than when the reason for movement is escape from human rights violations. Economic motivation for migration would not, in this context, be a reason in itself to bar the migration. It would be rather a factor to be taken into account, when deciding whether other circumstances justify restrictions on freedom of movement.

In practical terms, the fear of freedom of movement is that large numbers of people permitted entry would then have the right to use the social services of the country of destination, at great expense to the taxpayers of that country. Polling statistics show that this fear is widespread. Economic statistics, however, show that this fear is a myth. Immigrants are producers as well as consumers, sellers as well as buyers, taxpayers as well as users of government services. There is nothing to show that immigrants are a disproportionate drain on the economy of any country.

The fear that mass migration is somehow bad for the economy of the receiving state, while widespread, is irrational. Unreasoned fear of the uninformed is hardly justification for denial of a right.

For those concerned with promoting freedom of movement as a right, it may be argued, energy is better spent in expanding the list of specific movement rights, rather than attempting to assert the rights of freedom of movement as such. My answer is that the reason we state human rights as broad rights with exceptions, rather than as a long list of specific rights, is to emphasize and reinforce their human rights character. A generalized right to freedom of movement has an educational value that the specific listed rights do not have. Asserting the right means informing people that such a right exists.

One advantage of asserting the right to international freedom of movement is that it would eliminate an illogicality in the current international movement standards. For instance, right now the instruments recognize the right to leave any country, but no rights to enter at least one country, except your own. Yet, without a right to enter at least one country besides your own, the right to leave is meaningless. Historically, Western countries protested long and loud about exit controls in what were then communist countries. Yet, once the exit controls were lifted, the West imposed entry controls to prevent the very same people from entering who were prevented earlier from leaving. By refusing to accept that the right to leave includes a right to enter, states have made the right to leave meaningless. Protest against violations of the right to leave is seen as an exercise in hypocrisy.

The same can be said of all the various components of the present piecemeal international regime of standards for movements. Because there is no overarching principle, because it is accepted that states can prevent entry, the working of specific movement rights is continually frustrated. Respecting the general principle of the right to international freedom of movement would mean that the specific rights that are already there would be respected in a meaningful way.

David Matas is a lawyer in private practice in Winnipeg, Manitoba, Canada.

THE UNFINISHED WORK OF THE COMPREHENSIVE PLAN OF ACTION

B Y N A N C Y S A L A M E T

of deprivation measures and violent means to "encourage" and carry out repatriation. Since the inception of the CPA, there have been mass protests in the form of hunger strikes, rioting and self-immolation. At present, Vietnamese asylum seekers are protesting and resisting forced repatriation because they believe that they have been unjustly screened out. CPA-participating states such as Canada assert that forced repatriation is the most appropriate course of action, and assure that the "UNHCR [will] monitor

Philippines that recently decided to normalize the stay of those who refused to return to Vietnam. Many Vietnamese Canadians fear for the safety of family members they wish to sponsor, because of a highly discriminatory regulation under the Canadian Immigration Act which was introduced in 1994. Unlike all other asylum-seekers, Vietnamese must first be repatriated in order to apply for family reunification according to this discriminatory regulation. By repealing this discriminatory regulation that prohibits the family reunification of Vietnamese asylum-seekers directly from countries of first asylum, and by calling for the re-screening of the remaining camp populations, Canada can help bring the Vietnamese refugee situation in South East Asia and Hong Kong to a just and a peaceful end.

Nancy Salamei is a Project Coordinator of the Vietnamese Refugee Sponsorship Committee, Ottawa.



On December 31, 1995, the Comprehensive Plan of Action (CPA) for Indochinese refugees came to an official end. However, approximately 38,000 Vietnamese asylum seekers are still languishing in refugee camps and detention centres. There, they live under conditions of escalating violence, as a result of the forced repatriation procedures now underway. This problem was not foreseen in 1989 when the CPA was devised and agreed upon by 77 nations and heralded as a humane and just solution to the Indochinese refugee crisis. The CPA's primary objectives were: 1) to establish region-wide refugee determination procedures, and 2) to repatriate asylum-seekers who were deemed "non-refugees." Underlying the CPA was complete reversal of the presumption that boat people were *prima facie* refugees; thereafter, they were considered asylum-seekers who had to prove their refugee status as defined by the 1951 UN Convention and the 1967 Protocol.

Six years after this shift in policy and practice towards the boat people, it can be argued that the CPA did more harm than good. The first and foremost problem of the CPA was its flawed and corrupt refugee determination process. There are many well-documented cases of refugees wrongly screened-out. On 21 January 1996, the U.S. State Department publicly criticized screening-decision under the CPA. More recently, the CPA was marred by the use

reparations to ensure that they are safe, fair and humane." (January 17, 1996 letter from Sergio Marchi). However, evidence to the contrary exists. For example, on January 18 of this year, a police raid

BOOK REVIEW



FRANÇOIS CREPEAU,

"DROIT D'ASILE - DE L'HOSPITALITE AUX CONTROLES MIGRATOIRES"
(THE RIGHT TO ASYLUM - FROM HOSPITALITY TO MIGRATORY CONTROL),

BRUXELLES, BRUYLANT, 1995, 424 PP.

This book explains how public opinion is ill-informed as to the reality of exile and how it assimilates the refugee question into a simplistic rhetoric of "illegal" immigration. Pressured by public opinion, Western governments implement a range of unilateral as well as multilateral mechanisms to fight undesirable immigration. These mechanisms do not effectively distinguish between refugees and other categories of migratory people and produce the intended result of reducing the number of asylum claims.

From the Geneva Convention of 1951, to the aftermath of Schengen and Dublin Conventions, François Crepeau presents a detailed analysis of this process which threatens the very existence of the right to asylum. Succinctly, he argues that the objective of this process is to ensure that the majority of asylum claims will not be processed by national authorities, either because the asylum seekers may be returned to another state or because they are unable to penetrate the "Western Fortress!"

François Crepeau demonstrates how the age-old institutions of asylum and protection are now used *a contrario* (in a reversed fashion): industrialized states, in the name of their sovereignty, refuse access to their territories in order to avoid the obligations they have accepted under international refugee law.

François Crepeau is a Doctor of Law of the University of Quebec in Montreal where he chairs the activities of the Centre for the Study of International Law and Globalization.

The book could be ordered in Canada from :
Editions Arts, Lettres et Techniques Inc.
901 boul Ste-Croix
Ville St-Laurent QC H4L 3Y5
tel 747-4784/4785 fax 747-5366.

Refugee Update will publish a comprehensive article by Prof. Crepeau on "International Cooperation on Interdiction of Asylum Seekers" in its next issue.

THE HEAD TAX KIT:

A TOOL FOR EDUCATION AND ACTION

The Toronto-based Ad Hoc Coalition Against the Head tax is pleased to announce the release of *The Head Tax Kit: A Tool for Education and Action*.

The educational kit addresses broader issues of refugee rights and social justice by focusing on the \$975 Right of Landing Fee, or Head Tax, imposed on refugees and immigrants by the federal government in 1995. The kit looks at the history of Canada's treatment of immigrants and refugees, corrects some of the popular myths about newcomers, explores the impact of the Head Tax (and other immigration policies) on women and people of colour, and examines Canada's international and constitutional obligations to refugees. The kit brings the reality of these issues into sharp focus through a selection of personal stories and meditations. As well, the kit provides practical suggestions for action by individuals and groups interested in advocating for a fair immigration and refugee policy.

The Head Tax Kit is a project of the Ad Hoc Coalition Against the Head Tax, an informal partnership of some 50 national, regional and local groups. The kit has gone through an extensive peer review process involving the Jesuit Refugee Service-Canada, The Inter-Church Committee for Refugees, The Canadian Council for Refugees, the Centre for Refugee Studies at York University, and others.

For a copy of *The Head Tax Kit*, contact Andrew Brouwer at Citizens for Public Justice in Toronto (phone: 416-979-2443, e-mail: cpj@web.apc.org). Single copies of the kit are available for \$5 each.

CANADIAN MORATORIUM ON LANDMINES

On January 17 the Ministers of Foreign Affairs and Defence of Canada jointly announced indefinite suspensions on the production, export and operational use of anti-personnel mines. These weapons, however, remain an integral part of Canadian military doctrine and training.

It should be borne in mind that the moratorium does not prohibit or outlaw this inhumane weapon of warfare but rather suspends its use in war.

Despite this limitation, Canada is moving in the right direction, and Canadian agencies working in concert with Mines Action Canada (MAC) can take credit for this. Let us not forget that, one year ago an announced position of this kind was simply not in the cards.

While the moratorium is good, it is not enough. This is not a ban, even though an estimated 26,000 civilians are killed and injured by these weapons every single year. This announcement may encourage other countries to make similar announcements. However, to be truly effective, Canada must specify the terms and conditions of its moratorium.

Organizations making up the MAC coalition have made clear their feelings - the human suffering and the long-term effects of anti-personnel mines are unacceptable. Why is our government reserving the right to use this weapon? MAC rejects the Canadian



government's position that some types of mines are more acceptable to use than others. No mine can tell the difference between a soldier and a civilian. Nothing justifies the physical, social and economic devastation caused by these weapons.

MAC is working to clarify some of the ambiguities of the Canadian moratorium. It will be an important step if other countries are to adopt clear positions restricting the use, production and export of anti-personnel landmines. The Canadian Ministers and government representatives should make public the comprehensive Policy Review Report which they felt weighed military utility against humanitarian consequence.

Canadian soldiers and peacekeepers have brought peace and hope to troubled areas of the world. Our military leaders and government, however, must be convinced that anti-personnel mines are indiscriminate weapons with such devastating consequences that their use is totally unacceptable.

Canadian NGOs are asked to contribute \$100.00 for 1996 Coalition activities. For more information on the Coalition contact Celina Tutle at MAC c/o PGS 170A Booth St., Ottawa ON K1R 7W1, tel: 613-233-1982, fax: 613-233-9028, e-mail: cppceli@web.apc.org

REFUGEE UPDATE

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