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The challenge of refugee determination in a self-interested world

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THE CHALLENGE OF REFUGEE DETERMINATION IN A SELF-INTERESTED WORLD

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ABSTRACT

Canada's refugee determination system is in crisis. Over the closing decades of the 20th Century, the number of individuals seeking refuge grew dramatically and this placed a strain on the international community to adapt. The increased ease of transportation made many more countries accessible to the refugee movement. As a result, various deflection strategies were implemented by the industrialized states to curtail this flow. This time period is truly unique in that it tests a Nation's tolerance and questions the capacity of existing decision-making processes to effectively balance international obligations with a sovereign interest in migration control. This major research paper analyzes three key challenges –backlog, abuse and security issues and compares how the Canadian, Australian and the United States refugee determination systems seek to address them. Finally, necessary improvements and developments are proposed.

Key words: Refugees; asylum; determination; systems; improvements.

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Disclaimer: The views and opinions expressed in this paper are those of the author or the works cited and do not necessarily reflect those of Canada Border Services Agency, Immigration and Refugee Board and Citizenship and Immigration Canada.

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"How countries treat those who have been forced to flee persecution and human rights abuse elsewhere is a litmus test of their commitment to defending human rights and upholding humanitarian values. Yet, fifty years after its inception, the states that first established a formal refugee protection system are abandoning this principle, and the future of the international refugee regime is under serious threat." – Human Rights Watch

1. INTRODUCTION

The refugee determination systems in the wealthy industrialized states are in crisis. This is reflected in the constantly changing national refugee laws and the adoption of a series of restrictive administrative and legal measures to stop refugees from reaching the wealthy industrialized countries. First, over the closing decades of the 20th Century, the number of individuals seeking refuge grew dramatically and this placed a strain on the international community to adapt. As a result, various deflection strategies were implemented by the industrialized states to curtail this flow. Refugee determination systems around the world continue to face backlogs and delays in processing of refugee claims. In an ever-changing global environment where economic, environmental and social policies are now intrinsically linked to those of non-neighbouring countries, there is no continent, and barely any country in the world that is untouched by the global refugee movement. Policies overseas directly or indirectly impact Canadian national policy in dealing with the migration of refugees. A majority of refugees continue to seek refuge in the world's poorer nations, however, the wealthy industrialized states such as Canada, United States and Australia are the ones that have adopted the harshest and most restrictive refugee policies. Canada, U.S. and Australia only protect about 5% of the world's refugee population, however, its governments have adopted sophisticated policies of non-entrée, designed to keep refugees from reaching their territories (UNHCR, 2006). Second, the increased ease of transportation has brought the world

closer than ever before and made many more countries accessible to migrants looking for a better economic life. Some economic migrants seek to circumvent lengthy queues and criteria used to select immigrants best suited to adapt to a country's economic needs. This constitutes an abuse of the refugee determination system as it is not being used for the purpose that it was intended. The refugee process should not be viewed as an alternative to regular immigration. Furthermore, many governments believe that the restrictive practices of recent years are justified. Only by preventing a large number of economic migrants from entering through the asylum door can public support be preserved for the admission of refugees and the institution of asylum. Third, there is an increase in vigilance surrounding national security and public safety. Recent events in the early 21st Century have thrust national security and public safety concerns to the forefront of political agendas of various nations. Tightening borders further and restricting access to the refugee determination system by excluding individuals suspected of or known to pose a security threat, individuals involved in war crimes or crimes against humanity and organized crime. This time period is truly unique in that it tests a Nation's tolerance and questions the capacity of existing decision-making processes to effectively balance international obligations with a sovereign interest in migration control. The imposition of such restrictions may also be the price that has to be paid to safeguard the welfare of established immigrant communities and to promote harmonious ethnic relations (UNHCR, 2006). This major research paper analyzes three key challenges –backlog, abuse and security issues and compares how the Canadian, Australian and the United States refugee determination systems seek to address them. Finally, necessary improvements and developments are proposed.

The early 21st Century is a unique time period in that there are new challenges to refugee determination. For instance, the global fight against terrorism and security concerns has had an impact on how the world views individuals seeking refuge. The heightened sense of alertness and vigilance has made a significant impact on the ability of individuals fleeing persecution to reach foreign lands in order to make a refugee claim using fraudulent documents. The lack of identification documents in the possession of other refugee claimants adds further fuel to this fire.

Furthermore, there has been a marked increase in tensions concerning social cohesion. There is inadequate protection for the most vulnerable groups of society including refugees; a lack of employment, vocational training and workers' rights; a lack of equal opportunities; and an increase in exclusion and discrimination. This has resulted in increased tension that often leads to violence. This violence may then lead to a further fear or hatred of individuals seeking refugee status. This illustrates the vicious cycle perpetuated by intolerance and hate.

With the large success of policies and programs that deter refugee movements to the developed countries, focus of studies have once again shifted to refugee determination systems and their efficiency (Gallagher, 2003; Hardy, 2003). There are emerging trends in policies and studies in a period when governments have sought to limit the level of primary immigration and to give priority to certain clearly defined groups, the spontaneous arrival of so many refugee claimants in the past had signified a loss of autonomy. It would be wrong to suggest that the wealthier states are uniformly opposed to refugee migrants. Indeed, countries such as Australia, Canada and the USA, nations of immigrants themselves, continue to see a virtue in the arrival and absorption of

foreign nationals whether they be economic migrants or refugees (Gallagher, 2001). These states continue to send personnel overseas to select refugees in need of protection. However, industrialized states and their citizens wish to regulate the process and to feel that they retain some control over the number and nature of the people admitted to their territory (Hathaway, 1995).

2. LITERATURE REVIEW

Currently, literature on refugee determination systems have primarily focused on Canada's refugee determination system and its shortcomings (Castles and Loughna, 2002; Gallagher, 2003, 2001; Hathaway, 1995; Rousseau, Crépeau, Foxen, and Houle, 2002). Only a few studies have compared Canada's refugee determination system to that of Australia (Adelman, 1994; Mares, 2002) and the United States (Adelman, 1991; Richmond, 2001). Although, many applaud Canada's refugee determination system - the Immigration and Refugee Board, as one of the best in the world, the reality is that no country emulates the Canadian system (Gallagher, 2003). A plausible explanation for this is that, while striving to protect those who are fleeing persecution, other countries also strongly emphasize deterring abuse and the control of illegal immigration. The Canadian system, as currently structured, does not accomplish these objectives. David Matas traces the bureaucratic path of Canadian refugee determination-a system notable for both "complexity and unfairness". He offers an in-depth analysis of this dysfunctional combination, and assigns responsibility to Canada's overriding immigration objective of controlling borders (Matas, 2001). Francois Crépeau, Patricia Foxen, France Houle and Cecile Rousseau turn their eye onto the actual process of

refugee determination, and expose serious concerns about the competence and ability of some decision makers on Canada's Immigration and Refugee Board (Rousseau, Crépeau, Foxen, and Houle, 2002). Anthony Richmond asks the question "Has anything changed since the early 1990's?" After comparing select elements of the Canadian refugee system with that of the United States and Europe, his response is a discouraging "yes and no." Western industrial states are willing in principle to accept small numbers of demonstratably desperate refugees from the African and Asian continent, but the countervailing fear of opened floodgates has led to increasingly stringent measures of exclusion (Richmond, 2001).

In the past, studies have looked at the constant flurry of efforts by industrialized states to prevent or deter refugees from arriving on their territory and to accelerate the procedures employed to examine their claims for refugee status (Matas, 1989; Castles and Loughna, 2002; Adelman, 1991). These measures have included:

- imposing visa requirements on citizens of countries which are producing (or have the potential to produce) significant numbers of refugee claimants, as well as levying hefty fines on transport companies who carry undocumented passengers or those arriving with fraudulent documents;
- interdiction of refugee claimants in international waters, followed by the repatriation of their transfer to a location other than a country where they hope to claim refugee status;
- summary rejection of refugee claimants at border posts and ports of entry, and the introduction of 'fast-track' asylum procedures to enable the speedy deportation of people with fraudulent or frivolous claims;

- safe third-country provisions - the return of refugee claimants through countries which they have transited and where their claim for refugee status might have been submitted, facilitated in many instances by the establishment of readmission or deportation agreements between the countries concerned; (Although new to USA-Canada as of December 2004, agreements have existed in the past between other countries ex. Dublin Convention)
- restrictive use and interpretation of the refugee definition contained in the 1951 UN Refugee Convention, thereby requiring higher standards of proof from people who claim to have a well-founded fear of persecution in their homeland;
- detention of refugee claimants in prison-like conditions, as well as the withdrawal or reduction of the right to work and their social welfare entitlements (surprisingly Canada, USA and Australia are notorious for this, with the only difference being that the U.S.A. and Australia have a mandatory detention policy for individuals arriving without valid travel documents whereas Canada has left discretionary authority to detain in the hands of CBSA officers)

Focus of international attention has shifted from the provision of asylum to refugees towards the eradication of the "root causes" of refugee migrations. As the distribution of state responsibility towards refugees is primarily based on geography and the relative ability of states to control borders, states have no reliable means of looking to their neighbours or the international community for assistance and solidarity. There is a perverse logic to the option of simply closing borders and pre-emptively avoiding any responsibility for providing protection (Matas, 1989; Hathaway, 1995). Robert Barsky (Barsky, 2001) challenges the statist conception underlying borders, arguing that "people

have the inalienable right to move around as they wish, for whatever reason they think appropriate. Period."

The world's wealthiest nations on the other hand, attempt to prevent refugees from crossing into their borders uninvited, irrespective of their country of origin, reasons for fleeing, or even whether the demographic self-interest of the country of asylum could actually benefit from the absorption of more people. Although Canada appears less draconian than some nations in dealing with claimants who actually arrive within its borders, it has also pioneered many deflection strategies. The embargo on refugees is accomplished in several ways. Refugees are excluded physically through interdiction and non-entrée policies, and discursively through their demonization as criminals and illegals. Restrictive eligibility requirements and narrow interpretations of the convention further limit access to refugee protection. Detention and limited assistance (or no assistance at all) while refugee determination is ongoing operates to socially marginalize refugee claimants within host countries.

Janet Dench (Dench, 2001) has addressed the evolution of Canadian interdiction policies focusing on the detrimental impact of these practices on refugee's ability to reach a safe-haven. Dench places an emphasis on her analysis of the impact of these policies on refugees in the context of a broader critique of the international regime's failure to approach the issues of trafficking and smuggling from a human rights perspective, preferring instead to frame them as criminal matters. This leads to an erasure of refugees, as well as the collective demonization of those who resort to irregular migration as illegals and criminals.

Stephen Knight (Knight, 2001) offers a comparative perspective on border controls through his analysis of the U.S. "expedited removal" law. Knight describes how the increased powers of immigration officers to detain and deport those found to be undocumented arrivals or having unsuitable travel documents, combined with the virtual elimination of judicial review, have led to grave concerns about abuse of due process and profoundly unjust outcomes. Knight also illustrates that the U.S. "expedited removal" process also prevents Canadian-bound refugee claimants from transiting through the United States, effectively forcing them to seek asylum in the U.S. (Knight, 2001). Knight's analysis reminds us that nation-states do not operate in a vacuum, and that the impact of national migration policies inevitably traverses borders, even as refugee claimants themselves cannot.

Joseph Rikhof's (Rikhof, 2001) contribution to Canadian immigration policy on war crimes, crimes against humanity, terrorism, and organized crime expands upon the complex development of jurisprudence and legal arguments that regulate the substance and process of exclusionary provisions. He elaborates on the measures taken by the government of Canada to address the problem posed by the presence of persons in Canada who have been involved in genocide, war crimes or crimes against humanity. His analysis provides the groundwork for considering how international law, politics, and human rights norms have shaped and developed existing domestic law.

3. COMPARISON OF CURRENT REFUGEE DETERMINATION SYSTEMS

Refugees flee their own country of nationality or place of habitual residence with few political or economic resources thus are almost entirely dependent on host country

governments, organizations, agencies and other interest groups to provide them with the basic necessities for survival. Resettlement services provide invaluable assistance, but refugees are frequently excluded from important decisions regarding their resettlement. They are expected to be cooperative and grateful for the services that are provided. The structure and organization of resettlement programs yield conflict between refugees and the host countries over issues such as location, levels and stability of funding, job placement and future position in the host society.

Under the Refugee Convention, the responsibility to provide international protection—a surrogate to the ruptured, national protection—is placed on states that are parties to the Convention. Thus, refugee law is implemented by states and, to the extent possible, through domestic legal systems. There is no regulated monitoring of states' compliance with their obligation to provide surrogate protection, although the United Nations High Commissioner for Refugees (UNHCR) serves an important supervisory function. No refugee-specific, international institutions hear inter-state complaints or individual communications. There is no right to freedom of movement between states. General principles of international law recognize the right to leave one's country, and to return to it but impose no duty on other states to permit entry. The international bill of rights recognises only the right of individuals to seek asylum, with no duty on states to in fact accede to such requests (Hathaway, 1995).

Canada, USA, and Australia all have legislation, policies, and procedures that specify the process whereby an individual is determined to be a refugee. The exact procedures that are in place vary with some similarities according to the country as described below. The current Canadian and U.S. refugee determination systems share a

number of similarities in that there is a preliminary determination of eligibility conducted by front-line officers, and then if eligible, the claims are referred to a refugee determination tribunal or judge. The essential elements are the same, except that the US has a mandatory detention policy and expedited removal process for undocumented arrivals and distinguishes between those that present themselves when seeking asylum as opposed to individuals seeking asylum when facing removal. Canada makes no such distinction, has no such expedited removal process and has no mandatory detention policy. Australia also has a mandatory detention policy which is even stricter than the U.S. concerning individuals who are unauthorized or undocumented. These individuals are detained until their claim is determined. Furthermore, Australia grants temporary protection and permanent protection based on the method employed to enter its boundaries. Canada and the U.S make no distinction in its granting of status.

3a) Canada

The Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) determines claims for refugee protection made within Canada. The Immigration and Refugee Board is an independent quasi-judicial tribunal. A Canada Border Services Agency immigration officer, at a port of entry (border, airport, and port) or at a Citizenship and Immigration Canada (CIC) center receives a claim for refugee protection made within Canada. All claims deemed eligible by an officer are referred to the IRB for a hearing. Canada is a signatory to several international agreements, including the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under these three agreements, Canada must

process all claims for protection made within Canada. Under the same agreements, the RPD must provide protection for "Convention refugees" and "persons in need of protection". The RPD's role is to determine which claimants are Convention refugees or persons in need of protection.

If the RPD grants "Convention Refugee" status or "protected person" status, the claimant receives the status of "protected person" and can apply for permanent residence in Canada, and eventually for citizenship. If the RPD does not grant "Convention Refugee" status or "protected person" status, the claimant can be removed from Canada. The claimant can ask the Federal Court for permission to apply for judicial review, ask for a pre-removal risk assessment by the department of Citizenship and Immigration Canada (CIC), or ask for a humanitarian and compassionate review by CIC prior to removal.

In accordance with its humanitarian tradition and international obligations, Canada protects many thousands of people each year, nearly half of whom are refugees selected abroad to resettle in Canada. The other half are persons who have been granted permanent resident status after claiming refugee protection once in Canada (Annual Report to Parliament on Immigration, 2005).

Certain rights are granted to refugee claimants. For example, they may apply for work permits if they cannot survive without public assistance. Claimants may also apply for study permits while waiting for a decision on their claims. Minor children, however, may attend primary and secondary school without a study permit. In addition, CIC's Interim Federal Health Program covers emergency and essential health services for

refugee claimants and refugees in Canada not yet covered by the provincial health care program (Annual Report to Parliament on Immigration, 2005).

The Immigration and Refugee Protection Act (IRPA) also makes some important changes to refugee protection. It was designed to speed up the processing of refugee claims. Section 100 states that an officer has three working days to decide on the eligibility of a refugee claim. Under the Act, claims are automatically referred to the Immigration and Refugee Board, if Citizenship and Immigration Canada or Canada Border Services Agency has not made a decision on eligibility after three days (s. 100(3)). IRPA establishes a new system within the IRB for grouping decisions concerning risks. All grounds relating to protection are examined at a single hearing before the Board's Refugee Protection Division instead of being reviewed at various stages by various authorities. IRPA expands the grounds for which refugee claims are ineligible. Applicants who have received removal orders for reasons of security, human or international rights violations, serious criminality or organized criminality are ineligible for an IRB hearing(s. 101(1)f). The Refugee Protection Division suspends consideration of a claim at any stage on these same grounds (s. 103). In addition, security screening of refugee applicants is initiated by the Canadian Security Intelligence Service (CSIS) as soon as they make their claim (IRB, 2006).

For multiple claims, IRPA extends the waiting period before a new claim can be submitted from 90 days to six months to discourage what the government calls the "revolving door" (IRB, 2006). IRPA also introduced the Pre-Removal Risk Assessment (PRRA). In cases where there is new evidence, PRRA helps repeat claimants and persons whose claims have been rejected, or who have been declared inadmissible on the

grounds of serious criminality, security, human rights violations or organized criminality, to be assessed based on the 1951 Geneva Convention on Refugees and the 1984 UN Convention Against Torture. However, persons who cannot be referred to the IRB on security grounds will not have access to the refugee determination process, and PRRA will concern only those risks under the Convention against Torture. Consequently, these people will not face removal, but they will not be able to obtain refugee protection.

Canada's Immigration and Refugee Protection Act (IRPA) includes a safe third country provision: "A claim is ineligible to be referred to the Refugee Protection Division if . . .101(1)e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence." Signed by officials of Canada and the United States on December 5, 2002 and implemented on December 29, 2004. The agreement is part of the Smart Border Action Plan and is designed to ensure that the United States and Canada share the responsibility of providing protection to genuine refugees. The agreement, it is suggested enhances the ability of both governments to manage, in an orderly fashion, refugee claims made by people crossing the shared border. According to the agreement, refugee claimants are required to request asylum in the first safe country they arrive in. Refugee claimants accessing Canada from a Canada-United States land border are not eligible for a refugee determination hearing with the Immigration and Refugee Board unless they qualify for an exception as outlined in the regulations of the Immigration and Refugee Protection Act. The exceptions are consistent with the principles of the Act: family reunification, the best interests of the child, and no returning to a country where a person may face the death penalty. The exceptions include situations where the refugee has

family in Canada or where the claimant is an unaccompanied minor. The agreement applies only to Canada-United States land border crossings. It does not apply to refugee protection claims made at airports or inland offices, but for one exception - the agreement includes a provision that makes a person being removed from the United States and transiting through a Canadian airport ineligible to make a refugee claim in Canada.

The new Act was passed in the tense atmosphere following September 11 and under pressure from the United States to harmonize immigration standards. Canada's immigration policy was modified by the new Anti-Terrorism Plan that includes the Anti-terrorism Act, Public Safety Act and the two joint Canada-U.S. declarations - Joint Statement on Cooperation on Border Security and Regional Migration Issues and the Canada-U.S. Smart Border Declaration (I.R.B, 2006). In this way, the new anti-terrorism plan supports measures to control illegal immigration. In the end, the association between migrants, refugees and terrorists — already heavily covered by the media — is reinforced.

Canada leaves discretionary authority in the hands of Immigration officers to detain individuals who they believe will not appear for further examination, pose a threat to themselves or are a danger to the public, against whom there is an ongoing investigation, or who's identity is unknown and cannot be established.

3b) U.S.A

Since March 2003, the United States Citizenship and Immigration Services (USCIS) Asylum Division has been responsible for implementing the U.S. asylum program. In addition, the Division maintains liaison with non-governmental

organizations, other federal agencies, and foreign governments and organizations concerning asylum and related issues (USCIS, 2006).

In the affirmative asylum process, individuals present in the United States, regardless of how they got there and regardless of their immediate immigration status, may apply for asylum. They do this "affirmatively" by submitting an application to USCIS. This is in line with the idea that a genuine asylum-seeker should present himself/herself to immigration authorities "without delay." Asylum-seekers must apply for asylum within one year from the date of last arrival in the United States, unless they can show changed circumstances that materially affect their eligibility or extraordinary circumstances relating to the delay in filing, and that they filed within a reasonable amount of time given those circumstances. Asylum seekers file an application form (I-589) by sending it to a USCIS service center and are then interviewed by Asylum Officers in a non-adversarial setting (USCIS, 2006).

Similar to Canada, affirmative asylum applicants are almost never detained. They are free to live in the U.S. pending the completion of their asylum processing with USCIS and, if found ineligible by USCIS, then with an Immigration judge. The interview time for an affirmative asylum applicant by USCIS is normally within 43 days of application and, if not approved, is referred by USCIS to an Immigration Judge at the Executive Office for Immigration Review (EOIR) for further and de novo consideration (USCIS, 2006).

The asylum reforms of 1995 were somewhat successful for affirmative asylum applicants in that processing times were decreased to about 6 months of the initial application, unless USCIS did not approve the application and referred it to an

Immigration judge then it would take much longer. If USCIS does approve the application, the decision can be issued within as little as 60 days from the initial application. During this period, most asylum applicants are not authorized to work (USCIS, 2006).

Asylum seekers are placed into defensive asylum processing in one of three ways: they are referred to an IJ by Asylum Officers who did not grant asylum to them, or they are placed in removal proceedings because they are undocumented or in violation of their status when apprehended in the U.S. or were caught trying to enter the U.S. without proper documentation and were found to have a credible fear of persecution or torture (USCIS, 2006).

Immigration Judges with the Executive Office for Immigration Review (EOIR) hear asylum applications in the context of "defensive" asylum proceedings. That is, applicants request asylum as a defense against removal from the United States. Immigration Judges (IJs) hear such cases in adversarial (court-room-like) proceedings: the IJ is a judge that hears the applicant's claim and also hears any concerns about the validity of the claim raised by the government, which is represented by an attorney. The IJ then makes a determination of eligibility. If the applicant is found not to be eligible for asylum, the IJ determines whether the applicant is eligible for any form of relief from removal and, if not, will order the individual removed from the United States.

Most undocumented immigrants stopped by immigration officers at a U.S. port-of-entry (POE) may be subject to an expedited removal. This means that for individuals who are determined not to be genuine asylum seekers, refusal of admission and/or removal from the United States can be effected quickly. Any person subject to expedited

removal who raises a claim for asylum - or expresses fear of removal - will be given the opportunity to explain his or her fears to an Asylum Officer prior to removal.

If the individual claims a fear of return, the individual is detained and given an initial interview with an Asylum Officer. The role of the Asylum Officer is as an Asylum Pre-Screening Officer (APSO) who interviews the person to determine if he or she has a credible fear of persecution or torture. This is a standard of proof that is broader and the burden of proof easier to meet than the well-founded fear of persecution standard needed to obtain asylum. Those found to have a "credible fear" are referred to an Immigration Judge to hear their asylum claims. Most individuals who are found to have a credible fear are released. However, some are not released, and instead are detained while their asylum claims are pending with an Immigration Judge.

The United States has a mandatory detention policy for asylum seekers who come to the U.S. without valid travel documents and are therefore subject to an "expedited removal" process. Asylum seekers are taken, often in handcuffs and shackles, to detention centers, jails and prisons.

3c) Australia

Australia's Humanitarian and Refugee Program provides protection to asylum seekers who have entered Australia, either without a visa or as temporary entrants, and who are determined to be owed Australia's protection under the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees (the Refugees Convention) and relevant Australian laws.

In Australia, an officer of the Department of Immigration and Multicultural Affairs (DIMA) makes the initial asylum determination. Applications for Protection

visas are assessed by departmental case managers trained in law, policy and procedures concerning the Refugees Convention and Protection visas. The case manager assesses the applicant's claim to Australia's protection against the Refugees Convention definition of a refugee, Australia's domestic laws, and objective evidence including country condition documents about the conditions in the asylum seeker's country of citizenship or usual residence. Applicants are expected to put their claims in writing. An interview is not essential, but a case manager may ask an applicant to attend an interview if further information is required. Where needed, the department arranges interpreters for any interviews. Decisions are made on the individual circumstances of each applicant's claims. There is no blanket approval or refusal of applications based on broad assumptions, for example about the safety of particular countries. Applicants who are refused a Protection visa will receive a written decision setting out the reasons for that decision. Applicants may, within 28 days of notification of the decision, apply to the appropriate tribunal for a full merits review of their case.

Asylum seekers who are found to be convention refugees, and who satisfy health, character and security requirements, are granted a Protection visa. Applicants may be granted either a permanent Protection visa, for those who have entered Australia lawfully, or an initial three-year Temporary Protection visa, for those who entered Australia in an unauthorised way. Applicants granted a Temporary Protection visa may re-apply for protection, and if found to still require Australia's protection after 30 months on a Temporary Protection visa, may be granted a further Protection visa. Whether an applicant is granted a temporary or permanent Protection visa depends on a number of factors, including the person's actions as they travelled to Australia.

If the claimant is declined, he or she has a right of appeal, *de novo*, to an independent tribunal. In Australia, this is the Refugee Review Tribunal (RRT). The RRT has the option of referring an RRT-reviewable decision to the Administrative Appeals Tribunal when the decision involves an important principal or issue of general application.

The Australian Migration Act contains a section, specifically section 474, a privative clause of an extraordinary breadth. Section 474 applies to all decisions of the Refugee Review Tribunal made after October 2001. The effect of s 474 is that decisions may only be reviewed on the grounds of "mala fides" (bad faith), narrow jurisdictional error, or exceeding constitutional limits.

If the Refugee Review Tribunal affirms a decision to refuse a Protection visa, the Minister has a personal non-compellable power to substitute a more favourable decision (example: grant a visa) if the Minister considers that it is in the public interest to do so. This enables the Minister to grant a visa to a person who has been found not to be owed Australia's protection obligations but where other compelling circumstances exists. The Minister has issued guidelines on the type of unique or exceptional circumstances where the Minister may wish to consider exercising the public interest powers.

Australia operates a system of mandatory detention of unauthorized and undocumented arrivals. It assigns temporary or permanent status depending on the method employed to gain entry into Australia. This detention policy has been a topic of hot debate in recent years because of the location and conditions of detention facilities, the length of detention and the fact that children are detained. Public outcry forced the Australian government to rethink its detention policies. Recent statistics as of January

2007 from the Department of Immigration and Multicultural Affairs (DIMA, 2007) show that out of 577 people in immigration detention, approximately half were detained for less than three months. There were no children in immigration detention centres. In fact, currently children are detained only as a last resort. Where detention was necessary, residence determination arrangements were put in place with non-government organizations to place families with children in the community and assist them with housing and living expenses while their immigration status was resolved.

4. Weaknesses in Current Refugee Determination Systems

4a) Canada

Canada's Immigration and Refugee Board has come under severe criticism and scrutiny in recent years because of the ease with which claimants enter the system, the generous treatment they receive once in it, the high rate of acceptance of claims and the considerable likelihood that they will never be forced to leave the country if their claim is rejected (Matas, 2001). This has made Canada a choice country not only for bogus refugee claimants seeking better economic opportunities but also for war criminals and terrorists. According to Canada's Program on Crimes against Humanity and War Crimes Eighth Annual report for 2004-2005, there were 663 refugee cases under investigation in Canada for war crimes, crimes against humanity and security in 2004-2005 as opposed to 65 non-refugee cases under investigation in Canada in 2004-2005 (CBSA, 2005).

Decision-making at the Immigration and Refugee Board – Refugee Protection Division is inherently difficult. Refugee determination is extremely difficult because it involves deciding what may happen in the future in another country, about which the

decision maker may have limited knowledge, based often on testimony that must pass through an interpreter and that may be confusing because of the traumatic experiences that the claimant has lived through. Often, decision-makers have little documentary evidence that can help decide the case one way or the other, and the credibility of the claimant is a decisive factor. However, credibility assessments can easily be wrong.

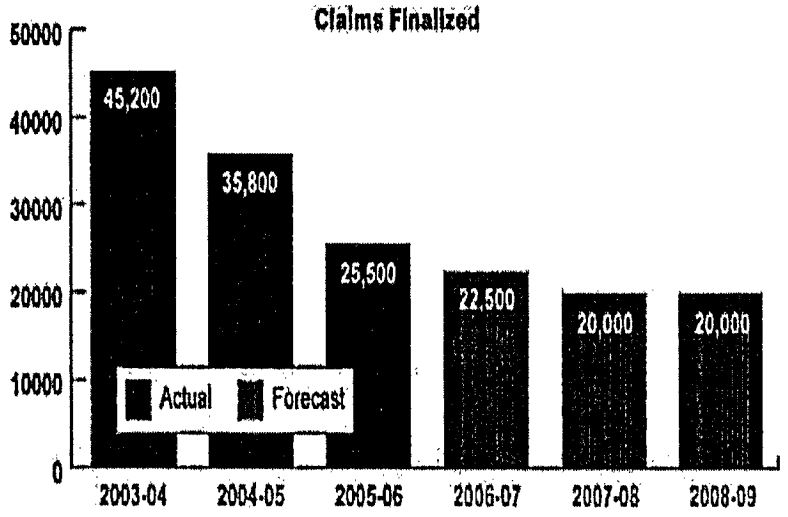
Not all decision-makers are equally competent at the Immigration and Refugee Board. For many years, appointments to the Immigration and Refugee Board have been made in part on the basis of political connections, rather than purely on the basis of competence. As a result, while many board members are highly qualified and capable, some are not. The Progressive Conservative party who announced a reform to the appointment process in spring of 2005 recognized this problem. While this is a positive development and may mean future improvements, board members appointed under the old political patronage system continue to decide on the fate of refugee claimants.

Decision-making is inconsistent at the Immigration and Refugee Board. Refugee determination involves a complex process of applying a legal definition to facts about country situations that can be interpreted in different ways. Different decision-makers do not necessarily come up with the same answer, leading to serious inconsistencies. Two claimants fleeing the same situation may not get the same determination; depending on which board member they appear before.

In 2006-2007, the Refugee Protection Division expects to finalize 22,500 cases, 12 percent less than in fiscal year 2005-2006. A continued downward trend in finalizations is anticipated, attributed to a reduced flexibility to schedule hearings and a continued focus on addressing a higher proportion of older, complex and time-consuming

cases due to success in finalizing relatively simple, straightforward cases from the inventory. In 2004-2005, there were 35,800 claims finalized.

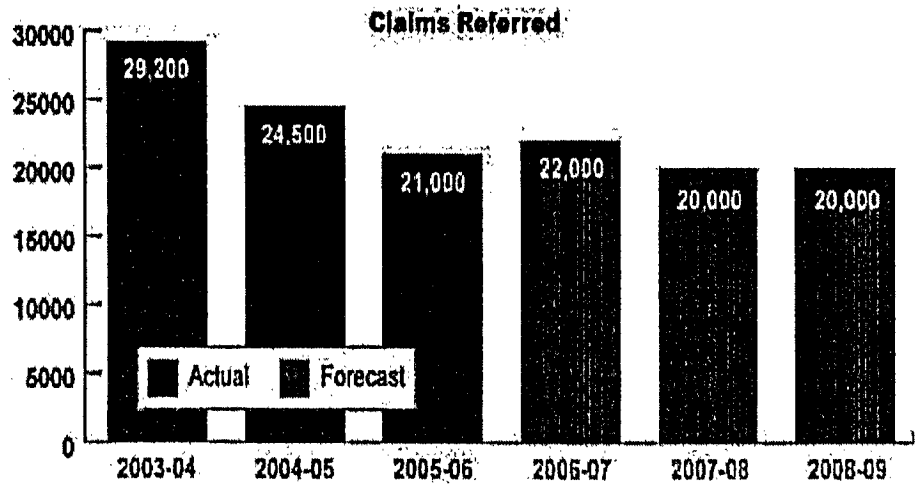
Fig.1



Source: Immigration and Refugee Board of Canada – Report on Plans and Priorities 2006-2007

As Figure 2 below indicates, for fiscal year 2006-2007, the Refugee Protection Division expects that it will receive approximately 22,000 new claims, 5 percent more than in fiscal year 2005-2006.

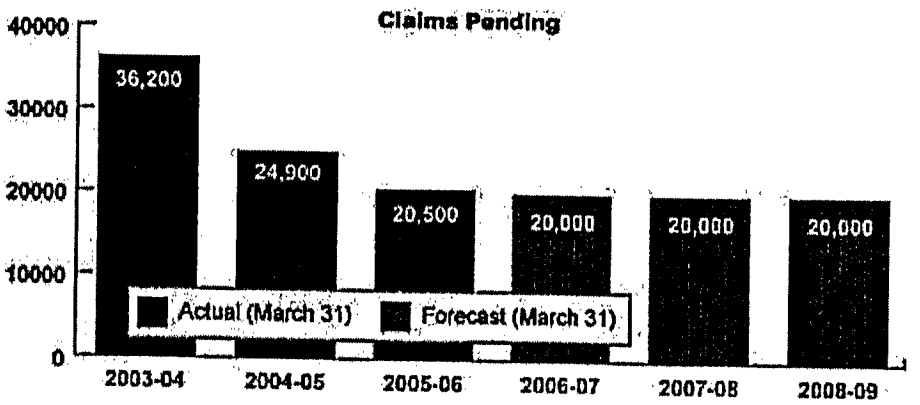
Fig.2



Source: Immigration and Refugee Board of Canada – Report on Plans and Priorities 2006-2007

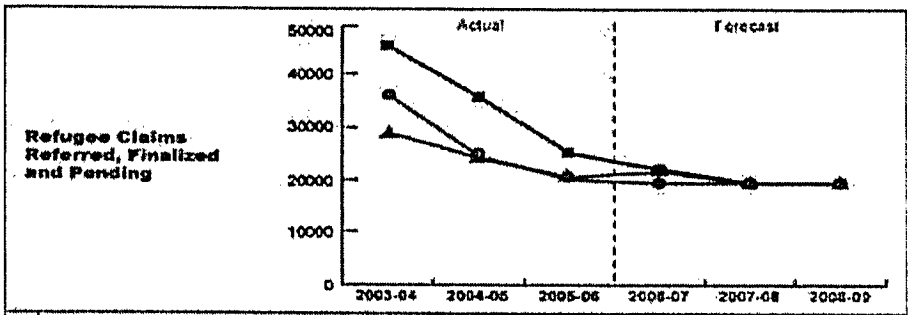
In the past, the reduction of the inventory of claims pending (waiting for a decision) from 36,200 in 2003 to 20,500 in 2005-2006 (Figure 3) was attributed to increased resources and improvements in case management processes by the Immigration and Refugee Board (IRB, 2006). However, other factors have also contributed to this reduction – the relative success of the safe-third country agreement, increased global focus on border protection and security and increased vigilance at the hands of Migration Integrity Officers overseas. The Division is positioned to reduce its inventory to approximately 20,000 claims pending by the end of the 2006-2007 fiscal year, if appointments and re-appointments of decision-makers are made in a timely way.

Fig.3



Source: Immigration and Refugee Board of Canada – Report on Plans and Priorities 2006-2007

Fig.4



	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Claims Referred	29,200	24,500	21,000	22,000	20,000	20,000
Claims Finalized	45,200	35,800	25,500	22,500	20,000	20,000
Pending (March 31)	38,200	24,900	20,500	20,000	20,000	20,000
Variance: Rounded - Inventory	22	-19	0	0	0	0
% variance relative to actual	0.1%	-0.1%	0.0%	0.0%	0.0%	0.0%

Source: Immigration and Refugee Board of Canada – Report on Plans and Priorities 2006-2007

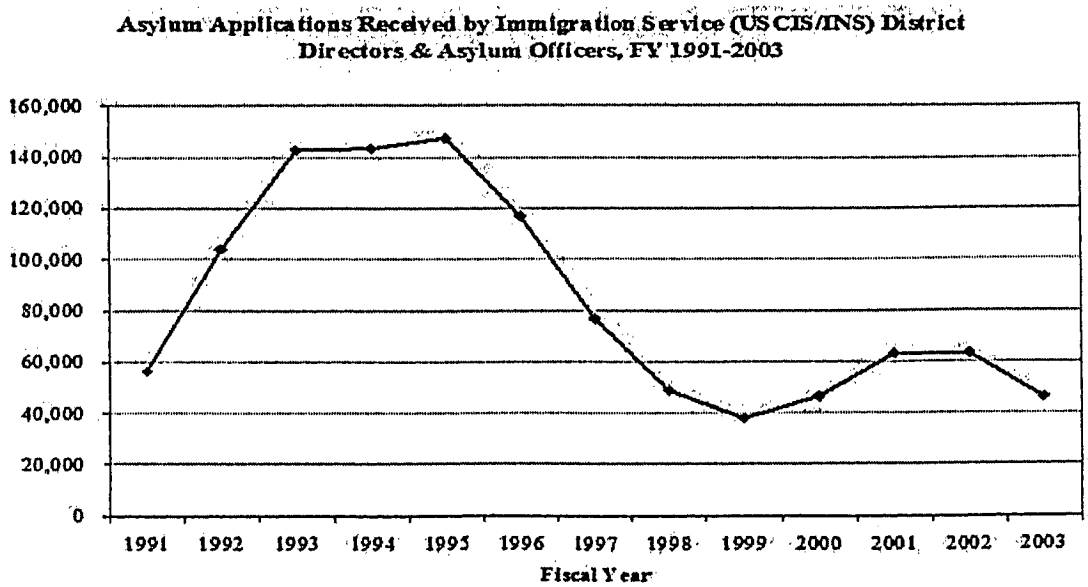
The most recent UNHCR figures available (January to March 2005) suggest that the downward trend observed in 2004 – when the global number of refugees reached an estimated 9.2 million, a 4 percent decrease from 2003 - continued in 2005 (UNHCR, 2006). This sustained global decline is due to many factors, including voluntary repatriation, a reduction in interstate conflicts, increasing stability in some fragile states, and improved human rights conditions in some states. Notwithstanding a general increase of at-risk refugee claims in recent decades, recent statistics show a slight decrease. The above statistics at face value appear to portray a positive outlook with respect to the state of affairs of refugees. However, one must exercise caution when interpreting these statistics as a general decrease. This does not mean that there is a decrease in the World's refugee populations. The reality is that in addition to the above factors, specific factors contributed to this decline in Canada. Imposition of visas, carrier sanctions, interdiction and interception mechanisms already discussed in this paper prevent undocumented migrants from arriving on our shores. Deterrent measures — for example, the elimination of refugee appeals, reduced legal aid, increased detention and

penalties for migrant smuggling — have also been used to send a message abroad to discourage irregular migrants from crossing borders. Moreover, regional initiatives, such as the Canada-US Safe Third Country Agreement, and an increased global focus on border protection and security have been established to serve as preventive and deterrent mechanisms. A reality contrary to what these statistics at face value show. People are still moving around in the world, the number of refugee claimants crossing borders overall may have declined but the numbers of internally displaced have not.

4b) U.S.A.

The most serious flaws and shortcomings of the US asylum system includes misuse and abuse and have resulted primarily from applicants getting lost in bureaucratic backlogs or from over-worked Asylum Officers not having sufficient time to closely scrutinize the stories and evidence presented by asylum seekers (Ewing, 2005). It is estimated (Figure 5) that there were approximately 46,000 asylum applications received by USCIS/INS in 2003.

Fig.5



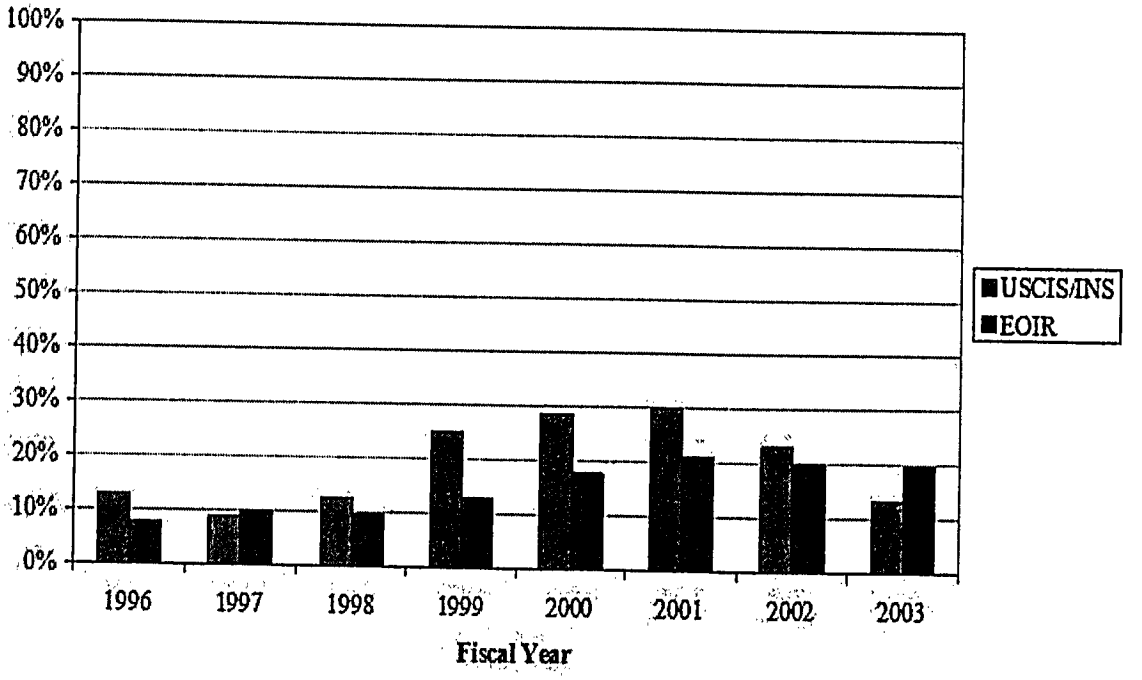
Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004.

Simply filing an application for asylum no longer guarantees permission to remain or work in the United States for any significant length of time. Most importantly from a national security standpoint, the identities of asylum applicants are checked against the databases of the Department of Homeland Security, Department of State, FBI, and CIA. Proposals such as the REAL ID Act, which place more bureaucratic hurdles in the path of asylum seekers and unnecessarily add to the workload of already over-worked Asylum Officers, represent a pointless diversion from those measures that actually would improve the security of the asylum system. To the extent that vulnerabilities still exist in the system, they lay with inadequate staffing and funding of the Asylum Corps and inadequate training of immigration inspectors (Ewing, 2005). Raising the standards of evidence demanded of asylum applicants, or insisting that they tell their stories in a certain way, does nothing to address these underlying problems, while needlessly placing victims of persecution in harm's way and adding to the bureaucratic backlog. As Fig. 6 shows, there were a very low percentage of claims that were accepted in the U.S.A. between 15-20% in 2003. However in Canada, the success rate of refugee claimants has hovered between 40-50% of claims (I.R.B., 2006). Several factors may explain this difference between Canada and the USA. First, USA has a much more restrictive use and interpretation of the refugee definition contained in the 1951 UN Refugee Convention, thereby requiring higher standards of proof from people who claim to have a well-founded fear of persecution in their homeland. Second, Canada is much more lenient when it decides on refugee claims based on gender related persecution and sexuality claims. This is because Canada's case law incorporates a much wider interpretation of

'membership in a particular social group' in the Convention refugee definition (Gallagher, 2002).

Fig.6

Percent of Asylum Applications Filed with the Immigration Service (USCIS/INS) & Executive Office for Immigration Review (EOIR) that Were Successful, FY 1996-2003



Source: Office of Immigration Statistics, Department of Homeland Security, *2003 Yearbook of Immigration Statistics*, September 2004 & Executive Office for Immigration Review, Department of Justice, *FY 2003 Statistical Year Book*, April 2004.

Note: Success rate equals cases approved as a percentage of cases completed. Unsuccessful cases include those that were denied, withdrawn, abandoned, otherwise closed, or – in the case of applications filed with USCIS/INS – referred to an Immigration Judge.

There is a broad recognition that "asylum adjudication may be the most difficult adjudication known to administrative law, owing both to the high stakes involved and the unique elusiveness of the facts." Nevertheless, prior to the creation of the Asylum Corps, asylum applications were simply one of the many applications that INS examiners decided. The examiners were provided no special training in interviewing refugees and

had little access to asylum-related legal or other information. After years of debate, the decision was made to create a specialized group of adjudicators, backed by a resource center that could collect detailed human rights information on the countries from which asylum applicants come. The goal was to create a stable of experts who would be able to gather the relevant facts and conduct in-depth interviews necessary to make informed decisions in these unique cases.

Despite the enormous benefits in terms of security and efficiency that came with investing in the Asylum Corps, at present the Corps is neither staffed nor funded at the levels needed to perform its job most effectively (Ewing, 2005). Asylum Officers are required to conduct 18 asylum interviews each two-week pay period. Taking into account the officers' other job responsibilities, this means that each asylum case must be completely adjudicated in about 3.5 hours, including review of the application, researching country conditions, interviewing the applicant, evaluating the applicant's credibility, performing the necessary security checks, and writing a final decision. Complicating this situation even further, translation services are inadequate to meet the needs of asylum seekers from dozens of different countries. These strenuous working conditions have contributed to a high turnover rate in the Asylum Corps (Ewing, 2005).

The inadequate training of immigration inspectors outside of the Asylum Corps who first have contact with asylum seekers also undermines the efficiency of the asylum program. According to the UNHCR (UNHCR, 2006), the records kept by immigration inspectors of their initial interviews with asylum applicants are often incomplete, inaccurate, and not read back to and verified by the applicant, as is required. Moreover, the Inspector Field Manual instructs inspectors to not ask about the details of an

applicant's claim for asylum, yet Immigration Judges sometimes deny a claim because the applicant has "added detail" not included in the initial interview.

4c) Australia

The biggest criticism of Australia's refugee determination system is its mandatory detention of asylum seekers including men, women and children in barb-wired prisons (Mares, 2002; Amnesty International, 2005). A great deal of literature, debate and controversy surrounds this very contentious issue. Decisions by the High Court of Australia have confirmed that under Australia's Migration Act, failed asylum-seekers who cannot be returned to their countries of origin can be held in immigration detention for the rest of their lives (Amnesty International, 2005). Furthermore, undocumented asylum seekers that arrive in Australia are detained until their application has been dealt with (Mares, 2002). As of May 2005, Amnesty International (Amnesty International, 2005) estimated that the Australian Government had detained at least 150 people for more than three years in immigration detention. This figure included those detained in Australia's immigration facilities on Nauru, of which there were 54 including 48 adults and six children. The total number of persons detained by Australia rose to at least 200 when those detained for more than 18 months but less than three years were included. As of May 2005, Australia's longest serving immigration detainee, a rejected Kashmiri asylum-seeker, Peter Qasim, had been in detention since September 1998. In the case of children, Australia's Human Rights and Equal Opportunity Commission reported that the average detention period for a child in immigration detention was one year, eight months and 11 days (Amnesty, 2005). Recent statistics as of January 2007 from the Department of Immigration and Multicultural Affairs (DIMA, 2007) showed that there were 577

people in immigration detention. 14 were unauthorised boat arrivals and 41 were unauthorised air arrivals. About 15 per cent of people in immigration detention were seeking asylum or a merits or judicial review of a decision in relation to their application for a protection visa. There were 27 people waiting for DIMA to decide on their Protection Visa application.

The refugee status determination (RSD) process in Australia has also been the subject of severe criticism. A primary decision is made by an immigration officer, usually without interview, based on papers submitted, and also usually without an opportunity given to applicants to obtain supporting evidence. Special so-called "natural justice" rules apply which oust and severely limit the usual administrative law principles. Needless to say, most applicants are declined at first stage (Donald, 2002). Applicants then have the opportunity to appeal to an inquisitorial and supposedly independent Tribunal, consisting of single member panels that conduct closed door hearings.

The structure of the Refugee Review Tribunal and its relationship to the government is problematic. Tribunal members are appointed to 1 year renewable terms of office (Donald, 2002). The resulting insecurity of tenure likely leads tribunal members to make decisions they believe will be viewed with favour by the government. Moreover, one author alleges that board members are actually issued quotas of refusal (Mares, 2002). Peter Mares (Mares, 2002) believes that there is actually direct interference on the decision making of the RRT. Accountability, transparency and independence are concerns at the RRT.

Decision-making is also inherently difficult at the Department of Immigration and Multicultural Affairs and the Refugee Review Tribunal for other reasons. Refugee

determination is extremely difficult because it involves deciding what may happen in the future in another country, about which the decision maker may have limited knowledge, based often on testimony that must pass through an interpreter and that may be confusing because of the traumatic experiences that the claimant has lived through. Often decision-makers have little documentary evidence that can help decide the case one way or the other, and the credibility of the claimant is a decisive factor. However, credibility assessments can easily be wrong.

Decision-making is inconsistent by Officers. Refugee determination involves a complex process of applying a legal definition to facts about country situations that can be interpreted in different ways. Different decision-makers do not necessarily come up with the same answer, leading to serious inconsistencies. Two claimants fleeing the same situation may not get the same determination; depending on which decision maker they appear before.

The quantity and quality of Federal Court litigation of refugee status matters in Australia has been an ongoing problem (Donald, 2002). Two factors that affect access to legal representation are the availability of legal aid and the detention of refugee claimants. Australia's practice of detaining asylum seekers at geographically remote locations impacts on who, if anyone, represents them. Also, legal aid is not available for judicial review of RRT decisions.

5. CONCLUSION

This research paper has examined refugee determination systems in Canada, USA, and Australia. Most of the attention has been on Canada with a comparative

reference to United States and Australia. I have reviewed the literature, institutional arrangements and identified weaknesses in the various institutions. In this conclusion, I pick up on themes from each of the earlier sections.

5a) Gaps in Research

Currently, there exist gaps in research. Empirical and field studies need to be conducted to explain the discrepancy discussed earlier in my paper concerning the overall refugee movements including those internally displaced versus the downward trend in cross border movements. I have attempted to explain this trend by discussing deflection strategies that wealthy industrialized states use whenever there is a rise in the number of refugee claimants. Field research needs to be conducted to obtain the necessary statistics that would take into account the reality of high refugee generating areas forcing people to be internally displaced and restrictions imposed by the West that prevent persons from crossing borders. Present studies see refugee problems as transnational problems, which cannot be resolved by means of uncoordinated activities in separate countries. International studies need to be coordinated and one of the most viable options proposed is a system to share in the burden and responsibility of refugee protection by non-receiving and receiving countries (Gallagher, 2001; Mares, 2002). A globalized system could spread the costs of providing refugee status among the largest number of states thus minimizing the risk of an unacceptable high cost being imposed on any single government.

The Canada-U.S. Safe Third Country Agreement aims to set an important precedent that would defend the integrity of the refugee determination system, improve the country's ability to control immigration, and enhance national security. Studies need

to be conducted to test the impact of the safe third country agreement. In the short run, it was argued that the United States would face a somewhat larger number of refugee claimants as a result of this agreement. This is because the United States is more accessible (more international flights arrive in the U.S.A. than in Canada and they have a long land border with Mexico). The result is that more people pass through the U.S.A. on their way to apply for refugee protection in Canada than vice versa. However, the magnitude of such an increase was open to debate. As the option of transiting the United States in order to apply for refugee status in Canada has been eliminated, some significant number of those whose objective was Canada chooses not to come to the U.S. in the first place, opting instead to apply for refugee status in an EU country. Currently, we do not know how many additional asylum claims have been generated by this agreement for the U.S. or the decrease in number of claims for Canada. What we do know is that there has been a general decline in the number of claims received by Canada but we don't know how much of the decrease can be attributed to the Canada-U.S. Safe Third Country Agreement.

Finally, the effect of Canada's failure to implement the Refugee Appeal Division (RAD) is another significant area needing further examination. The failure to implement the RAD, limits the claimant's right of appeal to the Federal Court with leave and provides no in-house remedy. Refugee determination is one of the few decision-making processes in Canada where a wrong decision can mean death, imprisonment or even torture for the applicant. Even though the stakes are so high, there are fewer safeguards in this system compared to other decision-making processes where the stakes are much lower (for example, a minor criminal offence). As a result, wrong decisions can go

uncorrected. Non-implementation of the Refugee Appeal Division shows disrespect for the rule of law. Parliament approved a law that included a right to an appeal on the merits for refugee claimants. This right was balanced by a reduction in the number of board members hearing a case from two to one. There was never any suggestion that the implementation of the appeal would be indefinitely delayed and there is no indication that Parliament would have passed the law if the government had proposed it as it is now being implemented.

5b) Recommendations for Change

Canada's humanitarian tradition, adds a moral responsibility to the legal requirement. For most of Canada's immigration history, neither politicians nor officials made any distinction between immigrants and refugees. The reasons for an individual's departure from their country of origin seldom interested officials responsible for processing those who wanted to settle in Canada. Instead, migrants from abroad were looked at for what they had to offer in terms of satisfying labour market needs, supplying capital, skilled trade or just settling the land. Public servants are no different from other Canadians when it comes to acquiring values and philosophical attitudes. The normal socialization process, including formal and informal education, peer groups, and the media, continue to shape their beliefs. Officials responsible for meeting and dealing with refugee claimants must be humane, free from political influence and sensitive to their plight and should recognize how they differ from routine immigrants. Therefore, a model could be proposed where Immigration officers become front-line decision makers. If the refugee claimant receives a positive determination, then the refugee enjoys humanitarian protection right away. If the refugee claimant receives a negative determination then

he/she is entitled to a full hearing before the tribunal. Thus meeting requirements of the "Singh" decision and curtailing abuse and expediting claims. Immigration officers are in a better position to determine who is and isn't a refugee not political appointees who at times lack training and have a political agenda to please the general population. The experience in Australia showed that this was not such a good idea, however, this would work if the Immigration Officers were to be given adequate training, staffing and resource support.

The integrity of the asylum system is enhanced by sufficient staffing and funding to allow the thorough and timely adjudication of refugee cases, and adequate training of the immigration inspectors who first come into contact with asylum seekers. Current law already denies refugee status to individuals who have engaged in terrorist activity, committed serious crimes, or who may pose a danger to national security (CBSA, 2005). Refugee applicants already undergo extensive security checks. The critical issue is whether or not the Refugee Protection Officers and Asylum officers who are assigned to review asylum claims have the time and resources they need to efficiently and effectively determine who is a legitimate refugee.

Canada, U.S. and Australia have made a humanitarian commitment to grant asylum or refugee status to those that deserve by signing various international instruments, however, they should also maintain the integrity of the system if current and future models are to be successful. Given the numbers of persons arriving in Canada, the United States, and Australia without valid travel documents, much wider use should be made of detention until the identity of the individual is determined. Migration Integrity Officers (formerly referred to as Immigration Control Officers) posted abroad were

effective in stopping people with improper documents from traveling to Canada. Officers intercepted 6,271 such individuals in 2000, 7,880 in 2001, and 5,601 in 2002 (Standing Committee on Public Accounts, 2003)

Claimants entering the Canadian refugee determination system can at present be assured of staying in the country for a considerable period of time, at least 12-18 months currently, as well as receiving free legal counsel, welfare payments and full access to the health care system (I.R.B., 2006). This extended stay has been made possible in large measure by a decision of the Supreme Court of Canada which conclude that Section 7 of the Canadian Charter of Rights and Freedoms (namely, that everyone is entitled to life, liberty and security) applies to everyone who has managed to set foot on our soil, and not just Canadian citizens. While there is also considerable scope for improving various aspects of the refugee determination system in the United States, Canada could benefit from the introduction of something similar to the U.S. Expedited Removal System, which allows for the quick deportation of those with manifestly unfounded claims. This determination could be made by CBSA officers. The average processing time for a claimant in Canada is now just under one year. The government's objective is to reduce it to six months by the end of 2007.

Canada needs to review its application of the standards outlined in the U.N. Convention on Refugees. At present Canada accepts claims from many persons who are not fleeing persecution as defined by the UN Convention. Many have left their homeland because of civil wars or other conflicts and by UN standards require only temporary protection until they can return home. Still others have been granted refugee status for more personal reasons, such as having an abusive spouse. Canada, in fact, warned the

UNHCR back in 1991 that stretching the definition of refugee would make so many people around the world eligible to claim status that the system would become unmanageable - to the particular disadvantage of those requiring protection from persecution. The United States has also stretched the definition well beyond the original intent of the UN Convention in some areas - although not to the same extent as Canada. Prior to the implementation of the Canada-U.S. Safe Third Country Agreement, individuals who visited the United States with the hope of staying permanently, but who did not meet U.S. refugee standards, simply travelled to the Canadian border where they were almost automatically accepted into the Canadian determination system. The implementation of the "safe third country" agreement has curtailed this flow to a near trickle.

Substantial additional funding is required to make the Canadian system function more efficiently. As well as the resources required for increased detention need to be applied to the interception of persons with questionable documents at airports abroad before they board for Canada. More resources should be used to track rejected claimants and have them removed as quickly as possible. The fact that Canada has one of poorest records for those who fail to get status is a major inducement for bogus claimants. Much if not all of the required funding can be realized from savings resulting from the speeding up of the refugee determination process.

Foreign-based terrorist organizations have been attracted to establishing themselves in Canada for a number of reasons. One of these is the fact that it is not only very easy to get into the refugee determination system in the first place but, unless there is very obvious adverse information available on an individual, little security background

checks are usually made until a claim is accepted and an application is made for landed immigrant status. A more stringent detention system combined with at least preliminary security checks could improve this situation. A much more effective and expeditious deportation regime, as recommended in the previous paragraph, - particularly in the case of those with connections to terrorist organizations - is needed.

Given that a number of relevant organizations and entities both internal and external to the United Nations are involved in the prevention and combat of terrorism, an integrated and coordinated response to terrorism will serve to increase effectiveness, avoid duplication of efforts and resources, increase cost efficiency, and broaden the audience that each entity can reach individually.

5c) Challenges

Refugee systems in Canada, USA and Australia face a number of challenges. There is an unprecedented movement of illegal migrants organized by international criminal organizations. It is estimated by the UN that four million people are smuggled across international borders each year (UNHCR, 2006). Criminals are now believed to make more money from people smuggling than from the smuggling of narcotics.

The requirement that Convention refugees produce "satisfactory" identity documents in order to be granted permanent residence. This requirement negatively affects certain groups of refugees: Refugees who come from countries where identity is not traditionally established through official documents (notably African countries) are disadvantaged along with citizens of countries where there is no legitimate government authority that can issue documents. Individuals who are less likely to possess such documents include the youth, women or people from rural areas. Thousands of refugees

from Somalia and hundreds of refugees from Afghanistan have been forced to wait years for permanent residence because there is no functioning government in their countries and documents that the refugees do have are frequently discounted.

The imposition of visa requirements on nationals of traditional non-white countries. Some nationals (generally from southern countries) need visas and others (generally from "white countries") don't. Southern countries account for 81% of countries whose citizens require visas in order to enter Canada, USA and Australia while predominantly "white" countries represent only 19% of countries requiring visas. By contrast, predominantly "white countries" make up nearly 50% of countries that do not require a visa.

Visa requirements are imposed on nationals of refugee-producing countries. The visas are backed by carrier sanctions, which make it difficult for most refugees to even contemplate traveling to the north. Refugees who circumvent the visa barrier are increasingly deflected back to the countries transited during their escapes, even when these intermediate states are unable to offer them meaningful protection. Others face interdiction on the high seas or in artificially designated "international zones".

There is a disproportionate representation of visible minorities within Immigration Department staff. Visible minorities are disproportionately clustered at lower levels of officer groups. Measures need to be implemented which ensure equitable representation of visible minorities at all levels of the Department. Also, measures need to be implemented to ensure equitable representation of visible minorities at all levels of tribunals and the appeals process where they deal with refugees. Grace-Edward Galabuzi (Galabuzi, 2001) discusses the issue of unequal access to the workplace for racialized

groups. An important finding that explains the reality of access and the disproportionate representation at lower level positions.

Some refugee claimants are denied protection completely or face a delay in getting permanent resident status on the basis that they may pose a threat to a nation's security (CBSA, 2005). Certain ethnic or national groups are particularly apt to be targeted for extra security checks. Systematic criminality checks are conducted on some groups of refugee claimants based on profiling and stereotyping (CBSA, 2005).

My Research paper concludes that the Immigration and Refugee Board may be structurally ill-suited to handle the current backlog, abuse and issues relating to security and that patching holes in the current system cannot fully address problems such as the widespread abuse, cost, backlog, and security concerns (Rousseau, Crépeau, Foxen, and Houle, 2002). Furthermore, if the Canadian system were to be placed for example in Kenya next to a refugee producing country such as Somalia, this system would not work. The only reason that this system doesn't fall apart is that Canada has implemented a number of deflection strategies that minimize the flow of refugee claimants. Given an influx of claims, this system would collapse. While Canada has had a strong tradition of accepting refugees who are genuinely fleeing persecution as defined by the United Nations Convention on Refugees, there is growing concern on the part of the Canadian public over what is regarded as widespread abuse of the system. It is not only very costly but results in many people remaining in Canada who should not be here. This is seen as unfair to migrants who have come to Canada legally, usually after a lengthy processing period, who may also suffer from being confused by the public with large numbers of

illegal migrants coming from the same source countries. It is equally unfair to genuine refugees whose processing is delayed because the system is clogged with bogus claims.

Despite the impressive array of legal instruments and institutions directed to the protection and assistance of refugees and other forcibly displaced persons, increasing numbers of human rights and refugee advocates view the international instruments that protect refugees as inadequate to ensure respect for the basic human rights of those forced to migrate (Gallagher, 2003; Gallagher, 2001; Hardy 2003). The need to strengthen refugee protection at the international level is pressing, particularly to address issues such as guaranteeing initial asylum to those in flight from persecution and violence, respecting the human rights of asylum seekers, including the right to be free from arbitrary detention, and extending refugee rights to those displaced within countries as a result of persecution and violence. Governments, acting through the United Nations and regional intergovernmental organizations, must not only expand the coverage of international law but also improve its enforcement. Until governments collaborate to establish comprehensive international standards and meaningful mechanisms, many refugee claimants will simply remain vulnerable and subject to human rights violations.

This paper is important in that Canada is a world leader in the field of refugee determination however, there is room for improvement as the system is not one without flaws. One of the greatest challenges of the 21st century is to ensure that people in every part of the world enjoy security and freedom; security from armed conflict, violence, human rights abuses and poverty; and the freedom to realize their personal potential, to participate in the governance of their country, and to express their individual and collective identity. As recent refugee emergencies have demonstrated, people who do not

enjoy security and freedom may be left with no alternative but to flee from their homeland and seek refuge in another state. Such forced migrations may in turn generate new forms of tension and insecurity, particularly in countries that are unable to meet the needs of their own citizens, let alone thousands of displaced and distressed new arrivals. Refugees are increasingly confronted with rejection and exclusion. Too often, there is pressure to contain displaced populations within the borders of their own state or to send them back home, irrespective of the dangers confronting them there.

References

Adelman, Howard and David Cox (1994). "Overseas Refugee Policy," in *Immigration and Refugee Policy: Australia and Canada Compared* (2 volumes), eds. Howard Adelman, Lois Foster, Allan Borowski and Meyer Burstein, 255-282.

Adelman, Howard (1991). "Canadian Refugee Policy in the Postwar Period: An Analysis." *Refugee Policy, Canada and the United States Compared*, ed. Howard Adelman, pp. 172-223. Toronto and New York: York Lanes Press.

Australia, Department of Immigration and Multicultural and Indigenous Affairs (2001). "Part 11: Article 31—Refugees Unlawfully in the Country of Refuge: An Australian Perspective." Website accessed April 10, 2006 at <http://www.immi.gov.au/refugee/publications/convention2002/>.

Australia, Department of Immigration and Multicultural Affairs (2007). "Detention Statistics Summary – Detention and Offshore Services Division." Website accessed January 23, 2007 at <http://www.immi.gov.au/managing-australias-borders/detention/statistics/immigration-detention-statistics.pdf>

Barsky, Robert F. (2001). An Essay on the Free Movements of Peoples. *Refuge: Canada's Periodical on Refugees,* 19(4), 84-93.

Castles, Stephen, and Sean Loughna (2002). "Trends in Asylum Migration to Industrialised Countries: 1990–2001." Paper for United Nations University-World Institute for Development Economic Research Conference on Poverty, International Migration and Asylum, Helsinki (27–28 September).

Canada Border Services Agency [CBSA] 2005. Canada's Program on Crimes Against Humanity and War Crimes, 8th Annual Report 2004-2005. (March)

Canada, Standing Committee on Public Accounts (2003). "Twenty-Fifth Report." April 2003.

Citizenship and Immigration Canada (2005). "Annual Report to Parliament on Immigration, 2005."

Dench, Janet (2001). Controlling the Borders: C-31 and Interdiction. *Refuge: Canada's Periodical on Refugees,* 19(4): 34-40.

Donald, Jeanne (2002). Australian and New Zealand Refugee Law – A comparison. Ryken and Associates, Sydney, Australia.

Ewing, Walter A. (2005). "Asylum Essentials: The U.S. Asylum Program Needs More Resources, Not Restrictions." American Immigration Law Foundation. (February)

Galabuzi, Grace-Edward 2001. "Canada's Creeping Economic Apartheid- The economic segregation and social marginalisation of racialised groups." Toronto: The CSJ Foundation for Research and Education, May 2001.

Gallagher, Stephen (2003). "Canada's Dysfunctional Refugee Determination System- Canadian Asylum Policy from a Comparative Perspective." Fraser Institute, 78, December, 1-39.

Gallagher, Stephen (2001). "Canada's Dysfunctional Refugee Policy—The Case for Reform from a Realist Perspective." *Behind the Headlines* 58, 4 (Summer): 1–17.

Hardy, Cynthia (2003). Refugee determination. *Administration & Society, 35*(4), 462-488.

Hardy, C., & Phillips, N. (1999). No joking matter: Discursive struggle in the Canadian refugee system. *Organization Studies, 20*(1), 1-24.

Hathaway, James C. (1995). New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection, *Journal of Refugee Studies*,Vol.8, No.3.

Canada, Immigration and Refugee Board of Canada (2006). Part III- Report on Plans and Priorities 2006-2007. (September).

Knight, Stephen M. (2001). Defining Due Process Down: Expedited Removal in the United States. *Refuge: Canada's Periodical on Refugees*, 19(4), 41-47.

Mares, Peter (2002). Borderline: Australia's Treatment of Refugees and Asylum Seekers in the Wake of the Tampa. UNSW Press, 2nd ed.

Matas, David (2001). Refugee determination complexity. *Refuge: Canada's Periodical on Refugees, 19*(4), 48-54.

Matas, David and Illana Simon (1989). *Closing the Doors : The Failure of Refugee Protection.* Toronto : Summerhill Press, 1989.

Millbank, Adrienne (2000). "The Problem with the 1951 Refugee Convention." Social Policy Group, Parliament of Australia (September 5).

Penz, Peter (2000). Ethical Reflections on the Institution of Asylum. *Refuge: Canada's Periodical on Refugees,* 19(3): 44-53.

Richmond, Anthony H. (2001). Global Apartheid: A Postscript. *Refuge: Canada's Periodical on Refugees,* 19(4): 8-13.

Rikhof, Joseph (2001). Access, Asylum and Atrocities: An Unholy Alliance? *Refuge: Canada's Periodical on Refugees,* 19(4): 100-115.

Rousseau, C., F. Crépeau, P. Foxen, and F. Houle (2002). The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board. *Journal of Refugee Studies* 15, 1: 43–70.

United Nations High Commissioner for Refugees [UNHCR] 2006. Statistical Yearbook (2004).

United Nations High Commissioner for Refugees [UNHCR] 2006. 2005 Global Refugee Trends: Statistical overview of populations of refugees, asylum-seekers, internally displaced persons, stateless persons, and other persons of concern to UNHCR. Geneva (June).

United States, Citizenship and Immigration Services 2006. Obtaining Asylum in the United States- Two Paths to Asylum. Website accessed April 10th, 2006 at http://uscis.gov/graphics/services/asylum.

United States, Department of Homeland Security 2004. 2003 Yearbook of Immigration Statistics. (September).