

**REFUGEE POLICY OF CANADA: AIMS,
GOALS AND MECHANISM**

*Dissertation submitted to the Jawaharlal Nehru University
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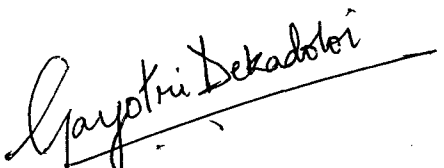


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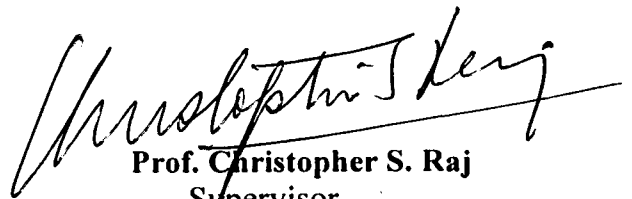
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Signature of the Student

We recommend that this dissertation may be placed before the examiners for evaluation.



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Chairperson


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Dedicated to my parents

Mr. Mileswar Dekadoloi
and
Mrs. Ulupi Dekadoloi

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GAYOTRI DEKADLOI

PREFACE

Migration is as old as human history. People have been moving over the ages for economic concern as for fear of persecution because of race, religion, nationality etc. The 20th century marked a change in the Refugee problem, as there was universalization and institutionalization of the Refugee issue, the International Community took responsibility to rid and protect refugees. The two World Wars have greatly devastated the world and the refugee phenomenon reached a great height. By the end of the Second World War there were millions of people homeless and the international community took responsibility for these people by providing aid, assistance and resettling them in Western democratic countries. This international refugee crisis was however thought to be a European phenomenon but very soon they realized that the refugee problem was there to be. By the 1960's and 1970s the refugee crisis reached a new height, as a result of decolonization wars and ethnic conflict and economic crisis people continued to flee their homeland. It was also a period of rivalry between two great powers, the Soviet Union and the United States and in this ideological war refugees were continuously assisted by Western states to show the brutality and despotic nature of the communist regime and even though there was internal conflict it was shown as an international phenomenon. However, by the 1980s countries throughout the world were facing increasing refugee flows and unable to control them they started to impose restrictions. Countries by now were facing economic recession, unemployment and the problem of illegal migrants. It was very difficult to distinguish who is a refugee and who

is a illegal migrant, therefore greater barriers were imposed to control the flow of refugee. By the end of 1980s Cold War had ended and the bipolarity of the world war was no more, this led to a New World Order; however, the New World Order brought new conflicts and disintegration of several former states and formation of new states brought new pattern of conflicts there was religious, ethnic identity, terrorism reach to new prominence.

The International community was no more interested to provide assistance and resettlement of refugees, even though the work of UNHCR was far more greater by now. Industrialized countries were not responding to the plight of these people, they instituted new mechanism of aiding and providing humanitarian assistance in zone of conflict rather then resettling them in their own country. Internalization of refugee issue was the agenda of the First world governments. In the new millennium, terrorism has become a global menace and countries are imposing new restriction and barrier to people coming into their country. In this global era of terrorism refugee plight is worsening as they subject to detention and human rights violation. This is creating human miseries and insecurity among refugees. Until the global community respond to such refugee plight, refugees will continue to exist.

The research is undertaken to study the International refugee crisis and in particular Canadian government policy response to the International refugee crisis. The policies and objective of the Canadian government to the refugee problem and how government respond to each new refugee situation. Chapter one of this research will look into the refugee problem from a global

perspective, how refugee issue evolved and how the nature of crisis changed over the years, the various laws and provisions that give refugee protection. Chapter two will look into the refugee issue from the Canadian perspective. Canada has been a nation of immigrants, how Canada have assisted refugees over the centuries and in the early half of the twentieth century. It then looks into the Post war refugee programme when Canada assisted refugee in an ad hoc manner and finally how refugee policy evolved in Canada. Chapter three will look into refugee policy of Canada from the formal adoption of a refugee policy in 1976, why Canada followed a liberal refugee policy. What were the factors that resulted in the liberal refugee policy and how policy change took place in the 1980s when there was abuse of its liberal policy. How world politics had a role in Canada following a liberal policy. Chapter Four will look into refugee policy from 1989 to the present day. How with the end of bipolarity Canada changed its policy. What were the issues for which Canada kept the refugee issue in the back burner? We will also look into the refugee policy in the aftermath of September 11, how government cope with refugee issue in the new situation of global terrorism. This research will be descriptive and critically analysed with whatever resources available.

CHAPTER – I

THE INTERNATIONAL REFUGEE CRISIS

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THE INTERNATIONAL REFUGEE CRISIS

Introduction

“The migration of people from valley to valley or from region to region, and since the emergence of the nation state, from country to country, is an acknowledged characteristic of human.”¹ Throughout history humanity has demonstrated nomadic, restless characteristics, and a single factor cannot explain their migratory tendency. Rather a complex assortment of circumstances and motives contribute to this persistent characteristic of human beings. In general, people have migrated over the ages because of dissatisfaction with prevailing circumstances combined with or somewhat in explicable sense of optimism that suggests more favourable conditions can be found elsewhere.

The motives behind population movements fall into two broad categories: a desire for a an improved lifestyle based upon economic betterment and a need to escape from persecution and oppression stemming from intolerance and discrimination whether practiced or merely condoned by those in authority. Frequently, these fundamental motivations explaining population movements may be interrelated and therefore difficult to separate. Economically motivated migrants have comprised the majority of

¹ Gerald E. Dirks, “A Policy within a policy: The Identification, and Admission of Refugees to Canada”, *Canadian Journal of Political Science* XVII: 2 June 1984, p. 279.

persons throughout the ages who have pulled up roots to relocate. Nevertheless, that portion of mankind which has felt compelled to flee to avoid physical danger resulting from officials or societal attitudes and policies has constituted a significant portion of the migratory population. The objective of this research is to focus on the latter category of persons.

Who is Refugee?

The accepted international definition of a refugee is spelled out in the 1951 United Nations convention Relating to the status of Refugees. It defines, as “a refugee is a person who owing to well founded fear of being prosecuted from reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country.”²

The refugee question is by no means a new one, for human history is full of episodes of people forced to leave their homes. But it was not considered a specific social phenomenon until the end of the 16th century. The word ‘refugee’ was in fact coined in 1573 in regard to the Dutch Calvinists who fled persecution in their Spanish dominated homeland and were taken in by their French brethren. Despite the fact that they were protestant they were protected by the king of France, then hostile to the king of Spain.

² 1951 Convention Relating to the Status of Refugees (Article 1).

The etymological history of the term reveals that, from the start, the refugee was identified not only by the persecution he or she suffered, but also by the sense of responsibility he or she evoked in others. Refugees have always existed, but their protection has always depended upon questions of specific solidarity and political interests.

According to Jaime Liambias-Wolff, “A refugee is not like other aliens, He nurtures the hope of returning to his homeland, uprooted by fate, he is forced to leave country, friends, relatives and familiar surroundings. He arrives in a new land with bleak prospects, branded with the Stigma of the exile. And even while his wound is still open, he must clear a way for himself in an unknown land, thereby jeopardizing his identity”.³ Unlike an immigrant, the exile is disoriented both physically and, even more, psychologically he despairs at the indifference of those who, unlike him, need not suffer the tribulation of being uprooted.

According to Guy S. Goodwin Gill “Refugees are a class known to and enjoying the protection of general international law and status are bound by the principle of non refoulement which requires that they not return a refugee to a country in which he or she may face persecution.”⁴

³ Jaime Liambias Wolff, “Reflection on the Condition of the Exile”, in Howard Adelman and C. Michael Lanphier., ed., *Refugee or Asylum? A Choice for Canada*. York Lanes Press Ltd., Toronto, 1990, p. viii.

⁴ Guy S. Goodwin Gill, “International Law and Human Rights: Trends Concerning International Migrants and Refugees”, *International Migration Review*, vol. XXIII, no. 3, Fall 1989, pp.526-546.

Not all displaced people can be called refugee, the refugee claimant must be outside his country of nationality; persecuted individuals still inside their country cannot be considered refugees. Moreover, the refugee must have a well-founded fear of persecution, not simply a fear of unequal treatment or discrimination.

The Refugee Problem: Causes and Consequences

The refugee problem is by no means a new phenomenon; throughout human history people have been forced to leave their homeland. But it was not considered a specific social phenomenon. Governments gave protection depending upon questions of specific solidarity and political interests.

The 20th century marked a change from ad hoc response and selective solidarity to a universalization and institutionalization of the refugee problem. With the creation of the League of Nations at the close of First World War came the notion of the international community's global responsibility to rid and protect refugees.

During the first half of the 20th century, the world witnessed two Great World Wars, which erupted as a result of power struggle between the European countries. The race for armament and militarization and racial discrimination resulted in mass exodus of Jews from Germany and persecution based on race led to million of people leaving their homes and becoming refugees. After the end of Second World War an estimate of 30 million people were homeless. This led the international community to solve

refugee problem in post 1945 Europe. In 1946, the International Refugee Organization (IRO) was established to set up refugee camps and provide for refugees legal protection, transportation and resettlement. In 1950, the IRO was succeeded by the United Nations High Commission for Refugees, holding what was thought at the time to be the limited mandate of resettling all the World War II refugees.

However, this assumption soon proved erroneous, and the major task of the United Nations High Commission for refugees in the 1960s and 70s has been to assist refugees from the Third World.

From the beginning of 1950s, Europe was locked into two opposing blocs and in this cold war context, refugee became synonymous with dissident, most refugee were fleeing totalitarian regimes to seek asylum, in democratic countries. The solution then was to relocate them definitely in Europe or in the North America and to confer upon them legal status and rights closely of the citizens of their host country. Asylum policy was liberal since, in the prevailing climate of ideological confrontation Eastern European refugees were greeted with sympathy and were apt to blend easily into the host population. In fact, until the end of the 1950's the refugee problem was essentially an Intra-European movement although it pretended universality, 1951 convention actually applied to Europe and it was not until the New York protocol of 1967 that the UNHCR mandate was extended to the rest of the world.

According to Francois Jean “In the early 1960s, wars of National Liberation and first conflicts in the newly independent states of Asia and Africa began to provoke important movement of refugees. After decolonisation, the UNHCR, as well as the World Bank and other UN organization, turned its attention to the Third World and had to adopt to a new situation of South-South movements of population and large scale exodus caused by war and insecurity”.⁵ Unlike dissidents from behind Iron curtain who arrived individually at the portals of the west, refugees from the South are collectively fleeing situations of conflict and usually seeking temporary haven in a neighbouring country. The decade culminated in an even larger exodus, estimated to be 5 to 9 million-occasioned by short but violent Bengali war of secession in the Indian sub continent.

Astri Suhrke is of the opinion that, “Although the people uprooted by wars of decolonization and secession had a homeland to which they eventually could and mostly return, the interim demand for asylum and relief was very considerable and created a sense of crisis in international community concerned with refugees.”⁶ UNHCR formally undertook to aid them by expanding its mandate to care for population displaced by war under a ‘good offices’ doctrine.

⁵ Francois Jean, “The Plight of the World’s Refugees: At the Crossroads of Protection in World in Crisis”, *The Politics of Survival at the end of the Twentieth Century*, Routledge; London, 1997, p.43.

⁶ Astri Suhrke, “A Crisis Diminished: Refugees in the Developing World,” *International Journal* vol. XLVIII, no. 2, Spring 1993, Canadian Institute of International Affairs, Toronto, p. 217.

Then, in the mid-to late 1970s, a new crisis erupted arising from huge and nearly coincidental refugee flows that appeared as some of the liberation struggles in the developing world became internationalized. Complex class and ethnic struggles unfolded in Southern Africa and the Horn of Africa, producing refugee population in millions. In Ethiopia alone, an estimated 2.5 million people were eventually uprooted and one million cross international borders. In Indo-China, a revolutionary struggle for independence became enmeshed in the global conflict between the United States and its communist adversaries, resulting in a protracted and devastating war and an exodus from the region that started in 1975 and soon reached one million. Renewed conflict in Cambodia added another half a million refugee by the end of the decade.

Also, for the first time large flow of refugees appeared in central and South America. Revolutionary struggles engulfed Central America's oligarchies agrarian societies, displacing an estimated 2 to 3 million people either internally or internationally. In addition there was refugees from Cuba about 125,000 in 1980. Despite strenuous containment efforts, enough people also managed to leave Haiti to suggest that intense outmigration pressures were building up in that land. The refugee crisis of the 1970's peaked with Soviet invasion of Afghanistan, which precipitated the beginning of outflow of people estimated to be about 5 million.

The refugee movements of the last 1970's posed new and distinctive problem for the international community. It appeared that a growing number of these refugees were destined to remain indefinitely in camps or legal limbo. Conditions in their homeland rarely permitted repatriation, either because the regime or social order from which they had fled became entrenched or because war continued. The affluent industrialized countries, however, were experiencing economic recession and faced increasing anti-foreign sentiments among their electorates. Therefore, only select refugee groups with special political ties to rich patron state, notably the Indo-Chinese, benefitted from major resettlement programme. Controversy mounted over costs and the inequity involved in giving preferential treatment to the Indo-Chinese to exclusion of other needy refugees.

In the 1980s, there was a change in policy of the first world governments, faced with immense refugee flow and growing discontentment of citizens, and the growing expenditure of government to provide aid to refugees. Government began to discuss the possibility of joint action and cooperative policies to cope with actual or threatened massive population upheavals originated in Third World.

Governments established regulatory procedures operating in defense of what they perceive to be the public interest, to be selective welcoming those who are useful for them and preventing those whom they consider to be burden.

In the 1990s, refugee problem took a major turn as a new area of conflict emerged. With the end of Cold War, Soviet Union collapsed, and new states emerged, however, new conflict develop in the regions, which is ethnically divided, therefore, leading to great concentrations of refugees in and around countries in conflict (e.g. Myanmar, Afghanistan, Tajikistan, Azerbaijan, Georgia, ex-Yugoslavia, Chechnya, Liberia, Somalia, Sudan, Burundi, Rwanda etc.). These refugees are usually placed in camps organized in the host countries with the assistance of international community. Post cold war era witnessed crisis in the Middle East, a new inter-state war unleashed. Intra state conflicts like armed rebellion, ethnic cleansing and environmental degradation in the third world produced millions of refugees.

However, the last decade, perceptions have changed immeasurably in the Western countries: refugees who had a political significance during the Cold War and positive image are now considered undesirable by increasing isolation.

Cold war certainties have given way to a profound disquiet in the face of upheavals all over the globe and the fear of mass immigration. This reticence has increased as South-North movement of refugees towards Western Countries have been added to South-South flows which still continues to drain off the bulk of refugees.

The refugee question, once considered in the light of human rights, is now seen as a threat of immigration. The magnitude of refugee movements and the growing numbers of asylum seekers in the Western Countries has catalyzed a profound change in refugee policy in the north as well as the south. The chronic state of camps reveals the inadequacy of aid policy in the South, and the reticence of host countries marks the limits of a policy of reinstatement in the north. The tandem of aid and resettlement, which has been the cornerstone of refugee policy for three decades, has now been replaced by the key words of repatriation and prevention.

The collapse of the cold war, which is marked by an astounding rise in refugee figures, albeit yet to rival the World War II scale. "In 1992, there were 16.4 million refugees and 237 million internally displaced people. As against this, there were 9.7 million refugees and 5 million internally displaced in 1969 and 7.7 million refugees in 1982".⁷ Concern over an increasing flow of refugees was initially voiced after the Berlin wall came down in 1989. Europe's gates, its richer western parts feared, would be flooded by economic and political migrants from East as East rapidly reconstellated. "In 1991, the pentagon issued a paper arguing that the threat of a new conflicts in the East and South required new forms of intervention. The new conflicts, it said, would appear as protracted low intensity war, which would not confine themselves with state borders; on the contrary, they

⁷ Mynon Weiner, "Bad Neighbours, Bad Neighbourhoods", *International Security*, vol. 21, no.1, Summer 1996, pp. 12-17.

were wars which targeted civilians and created massive refugee movements which destabilize a widening circle of countries and regions”.⁸

Ethnic Nationalism asserted the primacy of ethnic identities in creating nation states or governing them. Ethnic nationalism tended to eclipse the others and that was religious identity, or as in South Asian term “Communalism”. In this context, Yugoslav wars, based as they were not only on dissolving the federation but on redrawing its borders communally between Slav Muslims, Orthodox and Catholics. Europe and US began to re-examine images of a refugee: no longer a poor victim of tyrannical a Third World state, but white and a member of East Europe’s most developed and liberal state. Refugees are no longer a victim of large-scale Inter-state wars, but of protracted low intensity communal conflicts, which could amount to genocide.

According to Sadako Ogata, “In the past half a century a seemingly unending string of conflicts and crisis that have resulted in the displacement of tens of millions of people. As we enter, the new millennium, the fact that the world still finds a need for United Nations High Commission for Refugees should serve a sobering reminder of international community’s continuing failure to prevent prejudice, persecution, poverty and other root causes of conflict and displacement”.⁹

⁸ Radha Kumar, “who is a refugee?” *Seminar 463*, March 1998, p. 15.

⁹ Sadako Ogata, “The State of the World’s Refugees 2000: Fifty Years of Humanitarian Actions, UNHCR, Oxford University Press Inc., New York, 2000.

The Refugee in International Law

“The international legal regime for the protection of refugees is constituted by a complex network of National and International Laws which operate in conjunction”.¹⁰ The protection of refugees is often identified. Sometimes exclusively, with application of the convention (1951) and Protocol (1967) Relating to Status of Refugees. Particularly with Article 1 and Article 33, which define refugees and the principles of non-refoulement.

“A Strength and a weakness of the Convention and Protocol lie in their individualized approaches to the criteria of status and protection. In so far as they encapsulate the notion of individual human rights they are strong, but they are weak in so far as they require other less well-defined situation of need. No analysis of the refugee in international law is complete without regard to the attainment of a permanent or durable solution.”¹¹

The end of the Second World War saw millions of people displaced and the led to the adoption of the 1951, United Nations Convention Relating to Status of Refugees; 130 countries have ratified it.

A key feature of the definition is that refugees are people who have crossed an international borders and therefore, are to be distinguished from internally displaced person who vide the international law principle of sovereignty and non-intervention are concern of the state which they are

¹⁰ B.S. Chimni, “In International Law Refugees”, *Seminar 463*, March 1998, p. 18.

¹¹ Guy S. Goodwin, Gill, “Refuge or Asylum: International Law and the Search for Solutions to the Refugee Problem” in Howard Adelman and C. Michael Lanphier, ed., *Refuge or Asylum? A Choice for Canada*, York Lanes Press Ltd., Toronto, 1990, p.28.

National. Secondly, it incorporates the principles of non-refoulement, the cardinal principle of International Refugees Law Article 33(1) of the convention: No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion nationality, membership of particular social group or political Opinion. Thirdly, the convention outlines the minimum standard of treatment of refugees, including the basic rights to which they are entitled. It also notes the duties which refugee owe to the country of refuge. Fourthly, it contains provisions concerning their juridical status, gainful employment and welfare. The convention also embodies provisions regarding the issue of identity and travel documents, naturalization and other administrative matters. Fifthly, the convention vide Article 35 requires contracting states to cooperate with the office of UNHCR in the exercise of its function in particular to facilitate its duty of supervising the application of its provision.

However, the 1951 convention possessed some disturbing features, Firstly, despite objection by Third World Countries, the scope of convention were limited to events occurring before 1951 and further states given the option to limit the geographical scope of those events to Europe, thus confining their obligation under convention to European refugee alone. Second, the definition of refugees confined alone. Second, the definition of

refugee confined protection of those who feared persecution because of civil or political as opposed to their socio-economic status.

Nearly 95 per cent of refugees admitted to the US over the years have come from the former Socialist states revealing how the 1957 convention became an instrument of Cold War politics.

The 1967 Protocol on Status of Refugees: In 1967, a protocol on status of refugees was adopted. Its key feature was that it prospectively removed the temporal and geographical limitations contained in the 1951 convention. However, there was no attempt to reconsider the definition of the term refugee. This meant that most Third World refugees continued to remain de facto excluded as their flight is frequently prompted by natural disaster, war, or political and economic turmoil, rather than by persecution, at least as that term is understood in the western context.

The 1969 Organization of African Unity Convention on Refugees: In 1969, the OAU adopted a convention governing the specific aspects of refugee problems in Africa, which came into force in 1974. It had several firsts to its credit. Firstly, it expanded the definition of refugees, over and above the 1951 Convention. It states that: the term refugee shall also apply to every person, who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his

country of origin or nationality. It also stresses that refugees include persons fleeing civil disturbances, violence of war, irrespective of whether or not they have a well-founded fear of persecution

Secondly, the principle of non-refoulement received a broader international interpretation in OAU Convention. Thirdly, in contrast to the 1951 Convention, the OAU Convention emphasizes the actual grant of asylum. Article II entitled Asylum calls upon states to use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees. Fourthly, it is the only international instrument to contain a provision on voluntary repatriation. Obligations placed on the country of origin to facilitate the resettlement of refugees who return. Fifthly, it contains an explicit provision articulating the principle of burden sharing, when Western States are practicing burden shifting by closing their doors to refugees and being unwilling to share the financial burden of the poor countries hosting refugees. Sixthly, the OAU, places a duty on every refugee to abstain from subversive activities against other member states.

The Cartagena Declaration (1984). The UNHCR convened a colloquium composed of government representatives and distinguished Latin American jurists, which met in Cartagena, and adopted Cartagena Declaration for Refugees. It definition to OAU. This Declaration was non

binding but it was approved by the General Assembly of the Organization of American states in 1985.

The three traditional solutions to the refugee problem are resettlement in third country, local integration and voluntary repatriation with the last being described as the most preferred solution. Local integration, on the other hand is rare event. The International legal framework of voluntary repatriation is not single universally binding legal instrument, which lays down the principle of voluntary repatriation. The OAU convention remains the only International legal instrument, which establishes norms concerning voluntary repatriation. A whole host of restrictive practices have been institutionalized in the western world to prevent refugees fleeing under developed countries from arriving at its doorsteps.

Firstly, there are the restrictive visa policies and carrier sanctions. Secondly, international zones have been demarcated in airports where physical presence does not amount to legal presence. Thirdly, safety zones have been created inside countries as in Northern Iraq and former Yugoslavia to stop asylum seekers moving out and seeking refuge. Fourthly, no refoulement principle has been given narrow interpretation. Also most European countries have been implementing safe third country concept, where by asylum seekers are denied access to a comprehensive asylum determination procedure because they could apparently have sought protection in countries they passed through to reach their ultimate

destination. Sixthly, there is an attempt to harmonise internal procedures in Europe. Seventhly, asylum seekers have been held in offshore camps, which have been effectively declared rights free zones. Eighthly, even if asylum seekers manages to cross hurdles a very restrictive interpretation is given to the definition of refugee contained in the 1951 convention.

A positive development in the realm of definition is that a number of countries including Canada (1993) and the US (1995) have issued guidelines on women refugees fearing gender-relating persecution. These guidelines recognize that women may experience discrimination unique to their gender and that in some cases they can meet the standards for refugee status.

According to Guy S. Goodwin Gin, “International Laws impact on the search for solutions to the problems of refugees is at times imprecise and many will agree inadequate. There remains an inescapable tension which roles and standards are only non-beginning to circumscribe, between the sovereignty of states and the claims and needs of individuals. While solution can rarely be imposed on refugees, standards with legal content are emerging which should at least steer international action in appropriate directions.”¹²

The Nature of the International Refugee Crisis

“The nature of the world refugee crisis has changed significantly over the period since the Second World War. The number of people labelled

¹² Ibid., p. 37.

as refugees has grown hugely, their spatial distribution has been metamorphosed and the potential causes of forced migration have had to be expanded to environmental change occasioned by man's direct and indirect interference with eco system."¹³

The UN, in framing its convention definition of refugee in 1951, was clearly thinking of refugees as a European phenomenon. However, in 1960's, with decolonization struggles there was outflow of population, although people were uprooted they eventually could return to their homes.

The refugee movements of the 1970s posed new and distinctive problems for the international community. Western states generally claimed that the mass outflows were caused by totalitarian regimes in the countries of origin, which violated human right. Socialist and many developing countries responded by citing colonialism, global economic inequality and apartheid as the underlying causes of social conflicts and related migrant outflows. The Cold War made the situation worse because it tended to internalize and exacerbate internal struggles, which were often carried on with high technology weapons provided by opposing great power alliances. The result war frequent and intense conflict, and it was no coincidence that massive refugee flows peaked in the early 1980s. "The refugees from those struggles became an important element in the conflict themselves. When fleeing from the territory of adversary, the refugees represented at the very

¹³ Vaughan Robinson, "The Nature of the Crisis and the Academic Response" in Vaughan Robinson, ed., *The International Refugee Crisis. British and Canadian Responses*, Refugee Studies Programme, University of Oxford, 1993, p.3.

least or propaganda victory for the other side, which could claim, in the spirit of the Cold War, that these people were voting with their feet.”¹⁴

The collapse of Soviet Socialism and subsequently Soviet Union itself undermined the revolutionary left everywhere. This created incentives for compromise at the local level and simultaneously offered the US an opportunity to a abandoned foreign commitments that were inconclusive, controversial, or declining strategic value. When global de-escalation harmonized with local conditions, regional conflicts, moved rapidly towards conclusion, repatriation of refugees also took place.

Declining international interest in yesterday’s strategic conflicts also meant that assistance for reconstruction and the reintegration of refugees was not readily forthcoming. Because of the inherent problem of repatriation, the return of an estimated 15 million person displaced in regional manifestation of cold war was a daunting task.

Another common refugee producing violence in new era was a reversal of the state formation process, which had earlier been a source of conflict. In the early 1990s conflict based on religious divide seems imminent in many states of Middle East and North Africa. From a geographical perspective, the Post Cold War pattern of refugee producing conflicts in the developing world is reasonably clear state disintegration and implosions were mainly an African problem. Unlike Asia and Latin

¹⁴ Astri Suhrke, “A Crisis Diminished: Refugees in the Developing World”, *International Journal*, vol. XLVIII no. 2, Spring 1993, Canadian Institute of International Affairs, Toronto, p. 223.

America. The Crisis demonstrates the weakness of the nation state as a framework for African development. In the Post Cold War Era, collective action through regional or international organization came to force. The concept of humanitarian intervention has attracted renewed interest as a means of dealing with refugee producing situation in the developing world. UN has expanded its mandate and institutional capacity to address humanitarian emergencies, including involving large-scale population movement.

Internationalization of refugee movement through humanitarian aid to refugees in the country of conflict seemed to be preferred solution. Internalization was part of a broader international reassessment, which sought to create a comprehensive refugee policy, to modify the causes of outflow through conflict resolution. The principle of National Sovereignty was affirmed at the UN, a formal erosion process was actually under way. A resolution passed in December 1991 on humanitarian assistance reaffirmed respect for National Sovereignty and territorial integrity but spoke of assistance being provided with the consent of the affected country.

The growing internalization of refugee assistance was a characteristic sign of the new Post Cold War era, just as the emphasis on receiving and resettling refugees had been typical of the earlier period.

In conclusion, the International Refugee Crisis is not a new phenomenon people have been throughout the ages leaving their homeland

for fear of being persecuted. However, the establishment of an international refugee regime is a notable feature of the 20th century. In the last half a century the refugee situation has undergone various changes from European phenomenon to a world wide circumstances, the governments of the world also implementing policies which are refugee friendly as in the case of Canada in 1970s, to selective and restrictive policy in 1980s and 1990s in the Europe and North America. It is also noted that governments during the Cold War period was ideologically divided between East West blocs. Therefore, Government's in Western Europe, in order show tyranny of the totalitarian regime often would take in people fleeing these regimes and would resettle or integrate the people into their country. However, the end of ideological war and the economic recession in the first World Countries and the growing population movements from the Third World made countries of industrialized states to be selective and restrictive and instead of encouraging people into their country. They now began to provide humanitarian aid in zone of conflict itself. Earlier the regional conflict was exacerbated to be international conflict but now internalization of refugee crisis international organization providing aid in the crisis zone able to prevent refugee from flowing into their country. It can be noted that while the global population of refugees was going up the governments of the day are following a parochial policy to prevent the refugee from coming to the country and thereby often denying the basic human rights. States have often

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demonstrated a lack of political commitment to solving refugee problems.

As long as there will be lack of political commitment and parochial policy

refugees will be a problem and continue to exist.

CHAPTER – II

EVOLUTION OF REFUGEE POLICY IN CANADA

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EVOLUTION OF REFUGEE POLICY IN CANADA

Introduction

“Since the end of the Second World War human rights advocates and media have continually reminded the global community of international displacement of people as a result of war, political oppression or natural disasters. Therefore, it is understandable that Canada, an immigrant receiving nation, whose citizens have roots in almost every country in the world would continually respond to such human interest stories”.¹

Canada participated in the drafting of the 1951, Geneva Convention relating to the Status of Refugees and its 1967 Protocol. However, Canada acceded to these in 1969, and became one of hundred states that accepted the United Nation’s definition of refugee and the principles of non-refoulement. It was with the proclamation of the Immigration Act in 1976 that a formal procedure for distinguishing the difference between immigrant and refugee came into effect.

Canada has a long history of people coming into the country, when pre historic ancestors of Canada’s present day Indian and Inuit became the country’s first immigrants they journeyed to America by the way of the Bering Strait. But the first large influx of refugees took place when

¹ Stanley B. Knight, “The International Refugee Crisis: The Canadian Response” in Vaughan Robinson ed., The International Refugee Crisis. British and Canadian Responses, Refugee Studies Programme; University of Oxford. 1993,p.17.

thousands of English speaking, largely Protestant settlers were uprooted by American Revolution known as the United Empire Loyalist. Among these loyalist attracted to Canada were some 30,000 free blacks who left America to become part of the first large influx of freed and fugitive slaves.

There has been immigration from Europe ever since Canada came into being. British and French immigrants came to Canada in search of better life. There was Mennonites, Hutterites and Doukhobors who were refugees and Canada resettled them in different part of Canada. Chinese and Japanese also came to Canada but they were taken in mostly for construction purposes like the construction of continental railways and worked in dangerous jobs like mines and lumber mills, agricultural land were not given to them. In 1880s, Jews began fleeing Russia in hordes after the assassination of Czar Alexander II unleashed pogroms. Canada was slow at first to acknowledge the plight of these unfortunates, but finally responded in frenzy. During the 19th century and early part of 20th century Canada followed a racist and restrictive Immigration policy. Canada's anti refugee stance found expression not only in the stringent enforcement of certain immigration regulations but also in its refusal to let the SS St. Louis dock at a Canadian port when it sought asylum in 1939. This ship had Jewish refugees fleeing Hitler's regime. "Canada of the 1930s and 40s was a

country permeated with racism, xenophobia and anti-Semitism. For Canadian Jews in these years, quotas and restrictions were a way of life".²

Even after the war, Canada's door remained closed to Jewish refugees. By 1948, however, Canada now seemed prepared to do her duty. Canada was coming under irresistible pressure from her United Nations allies as well as from domestic ethnic communities to accept large numbers of displaced persons. By 1960s Canada finally abandoned her racial discrimination policy and began moving in the direction of universality as well as admission based on, among other things, an applicants skill. For the first time Canadian immigration policy had a firm employment and manpower orientation.

Between 1945 and 1978 more than 250,000 refugees were admitted into Canada. Aside from groups like Hungarians, Czechs, Ugandan Asians and Chilean refugees. By the 1970s there was worldwide glut of refugees and therefore, Canadian government was forced to nationalize its policy. New domestic pressure groups had been created in Canada around the refugee problem. Churches, civil rights committees and various ethnic organization joined together to lobby for a more liberal policy. After a decade of hearings, reports, white papers, green papers and mass meetings, a new Immigration Act appeared in 1976.

² Irving Abella, "Canadian Refugee Policy to 1980", in Vaughan Robinson ed., *The International Refugee Crisis, British and Canadian Responses*, Refugee Studies Programme; University of Oxford 1993.p.86.

The Immigration Act of 1976 stipulated, Canada could make its most helpful contribution by providing assistance abroad rather than settling massive numbers of refugees in Canada, it also gave refugees rights they had never had before and mandated that the intake of refugees would be one of the components in establishing annual immigration levels.

Earlier, no distinction was drawn between economic migrants and refugees but Canada's Immigration Act of 1976 adopted the convention definition of a refugee and established a formal procedure for determining refugee claims. In other words, the full force of Canadian law required the necessity for recognizing and sheltering people who were refugees under the conventions definition.

The objective of this chapter is to examine the Canadian refugee policy since the beginning of confederation to 1976. Therefore, we shall look into the following points

1. History of Refugee flow to Canada until 1945
2. Post-war Refugee movements in Canada
3. Immigration Act of 1976
4. Evolution of Refugee policy
5. Conclusion

History of Refugee flow to Canada until 1945

Canada has a long history of people coming into the country, when prehistoric ancestors of Canada's present day Indians and Inuit became the

country's first immigrants they journeyed to America by way of the Bering Strait. Throughout human history people have been forced to leave their homeland for fear of persecution based on race, religion nationality etc, and countries have given refuge to these people. Canada too has a history of giving asylum to these people.

The first large influx of refugees to Canada were United Empire loyalist, when thousands of English speaking, largely protestant settlers were uprooted by American Revolution. However, according to Irving Abella, "The majority of the loyalists were not refugees but rather British settlers who preferred to live under their old flag rather than the new American one".³

But there were of course some who would qualify as refugees under today's commonly accepted definition most however, were economic migrants.

According to Valerie Knowles, "There were large political refugees who headed North to British North America either because they did not wish to become citizens of the New United States of America or because they feared further beatings, imprisonment, or other forms of harassment for their support of the British during the War of Independence".⁴ There were about 40,000 to 50,000 loyalist who come to Canada between 1775 and about 35,000 in 1784.

³ Ibid,p.80.

⁴ Valerie Knowles, "Strangers at our gates: Canadian Immigration and Immigration policy 1540-1990", Dundurn Press Ltd, Toronto, Canada.1992.p.19.

The second waves of refugees to arrive in Canada were upto 30,000 fugitive slaves who made their way up the underground railway to their final destination in Nova Scotia or South Western Ontario. The free blacks expected that they would be dealt with on the same terms as white loyalist. However, besides the scourge of racism, the blacks also faced a host of other obstacles. After the Emancipation Proclamation and end of the civil war the vast majority of these ex slaves close the vagaries of a post war America over life in their new home. Very few of these refugees close to settle in Canada.

Over the next generation, two groups of refugees arrived from Russia-Several thousand Mennonites and Doukhobors. Both found life under the Czars repressive and were anxious to leave. And anxious to have them was Canada, whose government was desperately searching for European immigrants especially agriculturalists to settle the vast, empty plains of the west.

In 1880s, Jews began fleeing Russia in hordes after the assassination of Czar Alexander II unleashed programs in Kiev, Odessa and other towns and villages. Homeless, hungry and penniless, they poured into Austria not knowing where they would end up. Slow at first to acknowledge the plight of these unfortunates, the west finally responded in frenzy. Canada's empty prairie lands would make a good home for the refugees.

From 1896 on, Canadian policy makers were committed to the principle that the country would be peopled by homesteaders and farmers. With the appointment of Clifford Sifton as minister of interior there was a revamp the immigration service. He firmly convinced that massive agricultural immigration was the key to general Canadian prosperity. In return these immigrants not only cleared and cultivated huge areas of the Canadian west, but they also built the railways, constructed the roads, cut the lumber and mined the coal which allowed the great western boom to continue, though most of them more likely to take up picks and shovels. Despite Sifton's emphasis on agricultural immigrants many who arrived were neither able nor willing to settle on the land.

Tanya Basok and Alan Simmons is of the view that "For much of Canada's history prior to Second World War, immigration was entirely an inward directed policy: that is it was only concerned with the contribution of immigrants to national economic and social development without consideration of Canada's political role on international stage".⁵ The most important determinant of immigration policy in these years was the business community. They lobbied incessantly and successfully for an open door policy. Anyone who wanted, so long as he was healthy, unskilled and preferably illiterate, should be allowed to come to Canada. In the minds of most Canadians these immigrants were both unassimiable and

⁵ Tanya Basok and Alan Simmons; "A Review of the politics of Canadian Refugee Selection" in Vaughan Robinson, the International Refugee Crisis: British and Canadian Responses, University of Oxford. 1993, p.134.

unorganisable. They would remain in Canada as long as their work was needed; when it no longer was, they could return home and indeed, many immigrants shared this belief. They saw themselves as temporary sojourners coming to Canada to earn enough money to return home.

Frank Oliver succeeded Sifton in 1905 and made significant changes in Canadian immigration policy. For Oliver the ethnic and cultural origin of prospective immigrants took precedence over occupation. Between 1900 and 1914, immigration to Canada was shut off because of the war but more than 10,00,000 Britons arrived. In addition, 110,000 Italians, 65,000 Jews, 95,000 poles, 85,000 Russians and 50,000 Ukrainians as well as ten of thousands of Germans, Finns, Hungarians, Swedes, Slavs and others settled in various parts of the country. Clearly some of these were refugees fleeing religious or political persecution, but no special arrangements were made or needed for them. All were treated like ordinary immigrants. Except of course for the Asians. For years the government has attempted to restrict the flow of Chinese immigrants to Canada. Since no one worked harder and for less pay than the Chinese they were in great demand by the railway, mining and lumber interests in the country, especially in British Columbia. By the end of the 19th century there was a ferocious anti oriental sentiment throughout the province, fuelled by those who feared that British Columbia would be taken over by the Chinese.

From the onset of the war in 1914 to the end of the post war depression in 1925, only small numbers of immigrants arrived in Canada. Among these were tens of thousands of Hutterites and Mennonites, refugees from Soviet Union, who being white European and Christian, were allowed to take up lands in Ontario and western Canada. But the increasing nativism in the country in this period severely limited the numbers who arrived. In a confidential memorandum in 1928 the Dominions office warned the British Prime Minister that Canada was fast losing its Anglo-Saxon character, that it was allowing in too many foreigners and was therefore no longer an appealing home for British immigrants (Public Records Office).

As Lorne Foster points out, “For many in Canadian society at that time, immigration raised questions about genetics and the dilution of superior bloodiness by inferior ones and at the societal level, about heredity, breeding, racial qualities, tribal instincts and their effect on the Canadian social order”.⁶

Canada during this period closed its doors and followed restrictive and racial discrimination policy towards refugees. Although they could bring badly needed skills and talents to the Canadian community, refugees were certainly not welcomed by the federal government, and by large number of Canadians. “When Canada was most required to show compassion Canada shut herself off from the world and strenuously fought any attempt by

⁶ Lorne Foster, “Tunstile, Immigration, Multiculturalism and Social Order and Social Justice in Canada”. Thompson Educational Publishing Inc. Toronto 1998, pp. 83-84.

desperate refugees, under no circumstances was this country prepared to create a special humanitarian classification for entry of refugees and to make a distinction between them and ordinary immigrants".⁷

It was precisely this attitude which explains Canada's response to the great refugee movements of the inter war period, the Armenians in the 1920s and the Jews in the 1930s government created a whole series of obstacles to ensure that no Armenian refugees arrived, if rehased to accept the Nansen Pass an identity certificate given by the League of Nations High Commission for Refugees to stateless refugees. In the end, by 1930 only 1200 Armenians were permitted into Canada 4000 Jews found entry into Canada during 1933 to 1939.

Canada's anti refugee stance found expression not only in the stringent enforcement of certain immigration regulations but also is its refusal to let the SS St Louis dock at a Canadian port when some 900 Jewish refugees seek refuge fleeing from Third Reich of Hitler in 1939, the ship was forced to return to Europe where many died in concentration camps.

Anti Semitism was rife throughout Canada, the Canada of the 1930 and 40s was a country permeated with racism, Xenophobia and anti Semitism. The government, whether liberal or conservative, influential civil servants and a large part of Canadian population wanted to deny entry to refugees in the 1930s, however, there was a select groups of Canadians who

⁷ Valerie Knowles, "Strangers at our gates: Canadian Immigration and Immigration Policy 1540-1990", Dundurn Press Ltd., Toronto, Canada, 1992,p.110.

wanted to see immigration barrier lowered. They included leading spokesman for the Jewish community prominent members of the protestant churches, newspaper editors and commentators in English speaking Canada, the cooperative commonwealth federation and various pro refugee organization.

Foremost among the leading non-sectarian refugee lobbies was the Canadian National committed on refugees and victims of political persecution, later shortened to the Canadian National Committee on Refugees (CNCR). It was founded by the League of Nations Society in Canada, which was spurred to organize for a new struggle by the pogroms of Europe in 1938 and after the Munich settlement, which saw a large chunk of Czechoslovakia surrender to Hitler and some 80,000 anti nazi resident fleeing for this lives.

Under the chairmanship of Cailine Wilson, the CNCR mobilized to lobby for amore liberal immigration policy and to champion the refugee cause. But the organization faced opposition from government and public indifference or hostility to refugees ultimately it did not succeed in bringing about dramatic change in government immigration policy in the pre war and Second World War years, but it did succeed in helping settle individuals and families in Canada and raising public awareness of the refugee question.

Even though there was a strict immigration policy refugees did succeed in breaching it, during the 1930s Czech refugees were admitted to

Canada and another sizeable groups of refugees who made up were the poles. When second world war broke out there were mass exodus of people from Europe but this made little impact on Canadian sensibilities. Canada allowed only 500 refugees between 1939 and 1945.

Even after the war, Canadian door remained closed to Jewish refugees. Nevertheless, despite its attitude towards Jews, in terms of a refugee policy in general, for Canada the Second World War was a watershed. It was clear that millions of European would never return to their homes. It was also clear that the world would expect Canada to become part of the solution of this Post war refugee crisis willingly Canada joined the International Refugee Organization, less willingly however, did she open her doors to refugees.

Post War Refugee Movements in Canada

After the end of the Second World War Canada's immigration policy changed in response to the gradual addition of outwardly directed concerns. By 1948, Canada seemed prepared to do her duty; Canada was coming under irresistible pressure from her United Nations allies as well as from domestic ethnic communities to accept large number of displaced persons. Thus by the end of the decade boatloads of Balt, German, Eastern European and even Jewish refugees were arriving in Canada. More than 250,000 immigrants entered the country of whom more than 100,000 were displaced persons, but discriminatory aspect of Canadian policy did not change. In

1947, Mackenzie King reassured his citizens that only those people considered desirable and adaptable would be acceptable. He added this did not mean oriental and others (Canada, House of Common Debates, 1947 pp.2644-6.)

Canada participated in the drafting of the 1951, Geneva Convention Relating to the Status of Refugees and its Protocol of 1967. However it accepted the United Nations definition of refugee and principle of non-refoulement in 1969. It was not until the proclamation of the Immigration Act in 1976 that a formal procedure for distinguishing the difference between immigrant and refugee came into effect. "Canada reflecting a profound lack of interest and concern on the part of both liberal and conservative politicians of that day was to wait for nearly 18 years before putting her signature to this document, despite continuing involvement in refugee matters and the admission of a considerable number of refugees".⁸

As the post war period began, new ideological conflict between United States of America and Soviet Union came to the forefront. The Cold War had begun. The United States intervened against the communist partisans in the Greek Civil War in 1947 in Czechoslovakia communist coup ended democracy in 1948, and the US led Marshall plan began in that same year to promote an economic solution to the threat of a communist take over

⁸ Freda Hawkins, "Critical years in Immigration: Canada and Australia Compared", McGill Queen's University Press Montreal, 1991. pg.157.

throughout Europe. The Berlin crisis of 1949 consolidated the division of Germany.

Canada's response was directed towards refugees in Western Europe against the backdrop of the cold war. Refugees during this period, was considered a European phenomenon, therefore, governments in west directed their attention towards European refugees. When, in 1949, 18 Arab families uprooted from Palestine as a result of the Arab Jewish war sought resettlement in the west, Canada like all other western countries, refused to consider them. Canada was unwilling to take them for the very reason it had earlier been unwilling to take the Jews, they were seen to be alien and unacceptable for adaptation to Canada.

“Refugees, during this period had no rights in Canada. The UN passed the Geneva Convention in 1951, but Canada was unwilling to sign at the time because refugees were viewed as individuals fleeing persecution to whom a country gave temporary asylum. Canada saw itself as a country of permanent resettlement for immigrants”.⁹

Further, Canada wanted to control who came into the country. Though clearly humanitarianism and some sense of obligation to clear out the camps of Europe were factors in Canadian policy, the key that unlocked the door to Canada was self interest for labour was needed to feed a rapidly expanding and industrializing economy. Racism, too was a factor. Michael

⁹ Howard Adelman, “Canadian Refugee policy in the post war period: An analysis” in Howard Adelman, ed., *Refugee policy: Canada and the United States*, York Lanes Press Ltd. Toronto, 1991,p.190.

Lanphier describes the Canadian response to the refugees produced by the Soviet repression of the Hungarian uprising as “the first ever crisis to demand Canada’s participation in the international resettlement effort”.¹⁰ Canada had participated in emptying the refugee camps of Europe between 1947 and 1952, but that was hardly a response to a crisis.

The Canadian government responded whole heartedly and with dispatch to the Hungarian crisis, the leading factor was humanitarian concern for the refugees on the part of sectors throughout Canada, including the public, members of cabinet, and the media. “It was a perfect liberal cause and the government responded to it quickly”.¹¹

The Cold War ideological undertones of this initiative cannot be ignored, since many scholars have pointed out that refugees escaping communism even some notably right wing individuals have generally been more welcome in Canada than left wing dissidents fleeing rightist regimes. Prior to the 1957 there was a fear of taking in refugees from soviet dominated regimes lest the Soviets seed the refugees with spies, to those fleeing the suppression of the workers revolt in East Berlin in 1953. Reg Whitaker calls this a watershed in the security establishment fear of those fleeing Soviet communism”.¹² Thus began the movement of refugees from

¹⁰ Michael Lanphier, “Canada’s Response to Refugees”, *International Migration Review* vol.15, no.1, Spring Centre for Migration Studies 1981,p.114.

¹¹ Freda Hawkins, “Canada and Immigration: Public Policy and Public Concern”. 2nd Edition Toronto: University of Toronto Press, 1988.

¹² Reg Whitaker, “Double standard. The Secret History of Canadian Immigration”. Toronto: Lester and Orpen Dennys.1987.p.85.

East Europe as the successor to the movement from West Europe. Canada took in more than 37,000 Hungarian refugees. The movement of 1956 resulted in an ad hoc initiative by the Canadian government, which was not based on any formal policy toward refugees.

By the 1960s Canada finally abandoned her racial discriminatory policy and began moving in the direction of universality as well as admission based on, among other things, an applicants skill for the first time Canadian immigration policy had a firm employment and Orientation. Significant untakings of refugee resettlement occurred immediately after the Czech upheaval of 1968. Some 12,000 Czech refugees represented a large enough number to indicate an affirmative response of Canada to an unambiguous political crisis.

The first test of Canada's new colour-blind refugee policy was provided by Idi Amin, the brutal dictator of Uganda. Although Canada had allowed in a handful of Tibetan refugees approximately 200 in the late 1960s, no large movement of non white refugees had ever before broken through the restrictive barrier until 6,000 Ugandan Asians were admitted in 1972.

Some refugees fared less well, when the right wing forces overturned the Marxist government of Salvador Allende in Chile. Canada was exceedingly reluctant to accept any of the thousands of refugees fleeing the

murderous new regime . In 1973, however Canada accepted more than 7,000 Chilean refugees.

This phase of the development of Canadian refugee policy ended with the intake of more than 9,000 Vietnamese refugees into Canada following the US defeat in and retreat from Vietnam in 1975. The policy for receiving Vietnamese refugees from 1975 to 1976 was distinctly different from the policy involving the movement of Indo-Chinese refugees from 1978 onward. Canada's acceptance to 5,000 Vietnamese was motivated mostly by an obligation to demonstrate token solidarity with United States.

Between 1945 and 1978 more than 250,000 refugees were admitted into Canada. Aside from Hungarian, Czech, Ugandan Asian, Chilean, Vietnamese, small members of Cypriots, Lebanese, Indo-Chinese, Kurds and Haitians were also allowed into Canada. Yet despite the fact that world was awash with refugees, Canada had no formulated policy the government either responded in an ad hoc manner to each new wave of refugees or it accepted them as immigrants some argued that no policy was necessary; after all, in the 1970s Canada had accommodated more refugees per capita than any other country in the world.

In 1969, Canada signed the Geneva Convention on Refugees and its Protocol, thereby ensuring that Canada had an obligation to refugees in accordance with international law, but that obligation had not yet been incorporated into domestic law. In 1967, Canada had passed the first

Immigration Act with an overt intention not to discriminate among immigrant on the basis of race, religion, or national origin. The Act established universal criteria for admission based on a point system.

Further, in 1970, new guidelines for the admission of refugees into Canada were published by the department based on both refugee convention and relaxed immigration criteria. These guidelines specified that adequate assistance would have to be available from the public sector, the private sector, or both. The guidelines further provided that the refugees would not have to be outside their country of origin, a very important criterion when applied to the Chilean prisoner program.

New domestic pressure groups had been created in Canada around the refugee problem, churches, civil rights committees and various ethnic organizations joined together to lobby for a more liberal policy. After a decade of hearings, reports, white papers, green papers and mass meetings, a new Immigration Act appeared in 1976.

Immigration Act appeared in 1976

Canada's international legal obligation with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted was fulfilled with Canada's Immigration Act of 1976. It adopted the convention definition of a refugee and established a formal procedure for determining refugee claims. With the passing of the Act elements of the Geneva Convention were incorporated into Canadian domestic law. In other

words, the necessity for recognizing and sheltering people who were refugees under the conventions definition became required by the full force of Canadian law.

Gerald E. Dirks of Brock University is of the view that “The formulation of the act, especially those sections relating to the process of refugee status determination and admission to Canada, provides a useful illustration of the policy making process in an emotionally sensitive area because of conflicting and competing governmental and non governmental forces interested in shaping refugee provisions, their implementation and administration”.¹³

The Green paper of 1974 had recommended that Canada’s obligations under the Geneva Convention be incorporated into domestic law, but the procedures governing determination under the law were to be a matter of regulation. The policy group in the Immigration Department charged with developing these regulations did not want to develop detailed provisions. As it would invite too many claims, abuse of the system and develop backlog. They also did not want a refugee claim to be matter of right; they wanted to keep it a matter of discretion for immigration officers. They were afraid that liberal refugee policy would create a pull factor so that Canada would become a dumping ground for refugees.

¹³ Gerald E Dirks, “A Policy within a policy: The identification and Admission of Refugees to Canada”, *Canadian Journal of Political Science* XVII: 2 June 1984.p.279.

As a result, Canada backed into the development of a set of convention refugee determination procedures, bit by bit and very reluctantly. After the introduction of the 1976 Immigration Act, the Interdepartmental committee on Refugee status became Refugee Status Advisory Committee (RSAC) with a representative of UNHCR as a member. It was not empowered to make a decision on a refugee claim but was mandated to advise the Minister whether a refugee claim is valid.

Since the adoption of this Act it has frequently been intimated that the plight of refugees around the world would improve significantly if more nations would, like Canada, move from an abstract endorsement of the good intentions of the convention to concrete embodiment of its provision in their domestic legislation and practice.

With the passing of the Act a number of new initiatives were developed which demonstrated a willingness to participate in world politics and share the burden of support for international protection of refugees. All of these programmes were consistent with the UNHCR goals of durable solution to refugee problem.

According to Valerie Knowles, "Immigration Act of 1976 broke new ground by spelling out the fundamental principles and objectives of Canadian immigration policy. The inclusion of an identifiable class for

refugees, selected and admitted separately from immigrant is an important innovation in the new Act".¹⁴

The Refugee Status Advisory Committee addresses the question of individual already in Canada who claim to be refugees to determine the validity of refugee claims and to prevent the arbitrary deportation of individuals to countries where their lives and freedom would be threatened. There were other features like the strengthening of various procedural protections for individuals subject to inquiries and the tempering of administrative discretion. On the other hand, the Act provides the cabinet with sweeping authority to exercise administrative discretion in national security questions.

"The Immigration Act of 1976 was a progressive statute that generally regarded at the time of its baptism as the best legislation of its kind in the world. And initially it did work well. Before long, however, this statute would be sorely tested by new developments in the fast evolving immigration field, those surrounding the refugee phenomenon of the 1980s".¹⁵

¹⁴ Valerie Knowles, "Strangers at one Gates: Canadian Immigration and Immigration Policy 1540-1990", Dundurn Press Ltd., Toronto Canada 1992. pg. 159-60.

¹⁵ Ibid.p.161.

Evolution of Refugee Policy

The evolution of refugee policy in Canada has developed in increasingly broad and detailed ways. This evolution may be highlighted by the following four points:

1. Adoption of the UN definition of convention refugee;
2. Differentiation in legislation of refugees into convention and other designated class;
3. Development of methods of sponsorship for refugees in both convention and designated classes; and
4. Formulation of annual refugee plans.

Adoption of the Convention Refugee Status

Canada did not sign the UN Refugee Convention upon its formulation in 1951; rather it opted to use the definition as operating guidelines for identifying refugees. Decisions regarding the admission of refugees fall squarely, according to the government of the day, within the terms of national sovereignty. "After years of implicit adherence, Canada has explicitly accepted the definition of refugee as appears in the UN Convention and has incorporated it into the Immigration Act of 1976".¹⁶ The formal adoption of the convention refugee definition in 1969 implicated Canada in an international commitment, however tenuous, to assist such

¹⁶ C. Michael Lanphier, "Asylum Policy in Canada: A Brief Overview" in Howard Adelman and C Michael Lanphier, ed., *Refuge or Asylum? A Choice for Canada*. Toronto York Lanes Press Ltd. 1990,p.81.

refugees as a continuing rather than ad hoc undertaking since, 1969 the government has responded to ten refugee movement of differing sizes. Earlier, three very large movements were undertaken, however the responses stand largely outside the legal frame of the UNHCR Convention, as they relate to activities undertaken abroad, whereas the convention specification relate to right and privileges of refugees within the bounds of the country.

Differentiation of Designated Class from Conventions Refugees

The specific requirements which conform to the convention refugee status cannot be met in every situation in which large numbers of persons experience or perceive political retribution in their home country. As a result the Immigration Act of 1976 enabled the government to establish designated classes for persons whose collective situation placed them in a defacto refugee situation even if the convention criteria might not all be met. The use of designated classes over comes the brittleness of a single definition, so that definition used by Canadian visa officers can more closely fit the characteristics of the particular group of displaced or persecuted persons.

Refugees under designated class specification are examined individually as to whether they meet the specifications for eligibility and admissibility. If both are affirmative they can be issued a visa as landed immigrants. The same status as other immigrants to Canada.

There are three different designated classes, in vigor for a two year period.

1. Indo Chinese 2) Latin American 3) self exiled.

The categories differ among themselves in specification persons from Indochina and East Europe need not demonstrate fear of political reprisal but must be residing outside their home country. Latin American designated class on the other hand citizens must be residing within their home country and demonstrate fear of some reprisal if they remained. The specifications are adapted to the particular political exigencies, which in turn, depart from strict convention refugee terms. A second stream of refugees can be defined at the pleasure of the government so that total number of refugees is augmented while the condition for eligibility vary from time to time.

The number of eligible persons of designated class would exceed the disposition of Canada to accept of them all. In selection of refugees, for admissibility the government officers use a criterion of likely adaptability to Canadian life measured in a far less precise or exacting way than when applied to ordinary immigrants to Canada. The latter are selected under a system which tests ability to establish successfully in relation to labour market condition with points awarded on a series of social and economic indicators. In the case of refugees, the immigration officer must take them into account yet, the additional assistance available to refugees by government, sponsor and voluntary agencies mitigate adoption difficulties. Admissibility, therefore, involves a certain amount of discretion even though

the ultimate criterion remains the potential success of establishment in Canada.

Development of Sponsorship Arrangements

The intake of convention and designated class refugees planned by the federal government, the legislation has included provisions enabling groups of individual and organization to sponsor refugee individual or families. Groups of five or more persons or a corporation may undertake support of the refugee and dependents for a period of one year. In addition national organisations may sign master agreements with the federal government enabling the constituent groups to sign sponsorship undertakings with minimal formalities policy development has therefore encouraged participation of the private and organizational sectors in sponsorship while maintaining the centralized procedure of admission. Number of refugees admitted to Canada may thereby vary not only with political conditions but also the level of participation of the private sector within Canada, as private sponsorship are supplementary.

Formulation of Annual Refugee Flow

With the development of attention to refugees as a separate category of immigrants, has come the annual planning exercise specifically addressed to the Canadian commitment to refugee intake in the following year. In the first instance the planning endeavour is conducted independently of other

immigration concerns. Assessments are made of prior commitments, their possible extension, and new source of refugees given the world situation. Quotas for anticipated refugees are attached to each category the planning exercise is complicated administratively as it must be related to overall immigration policy government fiscal year planning and international development. The levels of overall immigration result from a negotiated plan involving provincial economic and social concerns as well as from forecasts of natural replacement and net immigration.

A number of demands, sometimes conflicting bear upon the determination of the annual refugee plan. The planned intake represents a commitment both internally to Canadian provincial governments and voluntary sector and externally to the UNHCR. Its budgetary implications have to be secured. Finally infrastructure has to be arranged both abroad and for resettlement in Canada.

Conclusion

It can be stated that Canada has a long history of receiving people into the country. Canada has followed a policy of restriction and racial discrimination in 19th century and early part of the 20th century. However, Canada has come a long way in her refugee and immigration. She has lurched indecisively between an open door and a closed door, between open mindedness and narrow mindedness, between generously and selfishness. A whole range of factors economic, social, political and demographic have

over the years determined Canadian policy. Adelman divides "Canada's refugee policy into two periods the first, when the Canadian policy was Euro-centered, the second when it began to be world centered".¹⁷ Before 1948, "The important question was that of the Jews who had been the target of persecution and murder by the Nazi regime, upto 1948, the record of the Allied powers including Canada in accepting the persecuted Jews was poor. This was largely because of self interest".¹⁸

Canada's response to refugee problems had oscillated both in level of intake and in degree of organization of activity since World War II. Positive responses to refugee movements from central and Eastern Europe following the cessation of hostilities and subsequent political upheavals represented a series of ad hoc responses yet with substantial numbers reserved.

Canada adopted the UNHCR convention definition of refugee in 1969, although it had been used implicitly since 1951. "Two implications followed from this ambivalence first, Canada as a government appeared reticent to assume responsibility for refugees as an international commitment, above and beyond national goals, until late in the sixties. Secondly, and more important, the definition was somewhat maladaptive if used exclusively".¹⁹

¹⁷ Howard Adelman, "Canadian Refugee Policy in the Post-war Period: An Analysis", in Howard Adelman, ed., *Refugee Policy: Canada and the United States*; Howard Adelman ed., (Centre for Refugee Studies, York Lanes Press Ltd. 1990.p.186.

¹⁸ Ibid,pp.186-187.

¹⁹ C. Michael Lanphier, Canada's Response to Refugees. *International Migration Review* vol.15, no.1, 1981. p.129.

It is understandable that within this evolving multicultural nation the response would range from general acceptance of refugee policies and newcomers to partisan position of support or rejection by different expatriate nationalists. Consequently, “Canadian immigration and refugee policy has been and will continue to be a reflection of the government of the days convictions and the politicians interpretation of the electorate’s cultural and economic insecurity”.²⁰

²⁰ Stanley, B. Knight, “The International Refugee Crisis. The Canadian Response”, in Vaughan Robinson, ed., *The International Refugee Crisis: British and Canadian Responses*, Refugee Studies Programme, University of Oxford, 1993, p.17.

CHAPTER – III

CANADA'S REFUGEE POLICY FROM 1976 TO 1989

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Introduction

Canadian refugee policy was liberalized by the new immigration legislation of 1976. With the passing of the Act, elements of the Geneva Convention were incorporated into Canadian domestic law. It therefore, established a formal procedure for determining refugee claims. For the first time an ongoing refugee programme was instituted that included procedures to screen refugees from abroad before acceptance into Canada and procedures within Canada for those who arrive and claim to be refugees under the definition of United Nations Convention on Refugees.

Canada throughout history had followed restrictive and racist refugee policy. It was not until the 1960s that racial policy was abolished. In 1976, it not only liberalized its policy but also brought humanitarianism as the thrust of its refugees policy. The 1976 Act introduced designated refugees provision who took asylum on humanitarian grounds. Under the designated provision Canada accepted 77,000 Indo Chinese refugees between 1975 to 1981.

During the 1970s to 1980s Canadian Government accepted refugees in high number and also followed most liberal refugee policy. The source countries of refugees was not confined to Europe alone, Vietnam, South

Asia, Africa and other regions of Indo-China became major source countries. There was mounting international pressure for countries in the west to admit refugees for resettlement or dramatic upsurge in Canadian media coverage of refugee question, and increase in public interest in the issues, and a demand by Canadian churches and voluntary agencies that the government pursue a more aggressive refugee policy.

However, it is believed that ideology played a very important role during the cold war period as Canada gave refugee status to people fleeing Communist regime to embarrass Soviet Union, Canada also took refugees from rightist military regimes so it can be stated that humanitarianism was not the only ground to taking in refugees there were political consideration too.

Canada's liberal refugee policy soon faced challenges in the 1980s. Canada's economic growth fell sharply, inflation and unemployment rose, and government deficit soared. In 1981 and 1982 Canada was facing severe recession. However, by 1983, the recession began to moderate. There was an ever-increasing refugee flow to the country and with it growing illegal migrants claiming refugee status. There was constant abuse to the prevailing refugee determination system. The government was alarmed by growing unemployment and growing illegal migrants and therefore, introduced Bill C-84 to amend the Immigration Act of 1976. It was Refugee Deterrence and Detention Bill, which contained numerous draconian provisions.

Government also introduced Refugee Reform Bill C-55 designed to produce a refugee determination system.

The fall of the Berlin wall in 1989 and the end of the Cold war and disintegration of Soviet Union brought new challenges to Canada's refugee policy. The New World Order brought about new areas of conflict. There was ethnic conflict and political upheavals in many parts of the world and refugee population was ever increasing. Canada was faced with new realities in the late 1980s.

The focus of this chapter will be on Canadian Refugees policy from 1976 to 1989. We shall look at various factors of Canadian Refugee policy. Is humanitarianism in true sense Canada's refugee policy objective? Whether Ideology plays a role in refugee policy. Whether refugee policy is connected with Canada's foreign policy. We shall also look at the societal context of the Canadian refugee policy, whether race still plays a role in Canada's refugee policy, and also economic motive of refugee policy.

Refugee Policy of Canada until 1989

Canada liberalized its refugee policy by the new immigration legislation of 1976. Canada earlier had been accepting refugees in an ad hoc fashion to each wave of refugees. It was not until 1969 that Canada accepted the United Nations definition of refugee and 1967 protocol. However, "1976 Act brought into effect in 1978, incorporated into Canadian domestic law Canada's obligation to the Geneva Convention. It also allowed Canada the

discretion to select refugees on humanitarian grounds for entry into Canada”.¹

For the first time an ongoing refugees programme was instituted that included procedures to screen refugees from abroad before acceptance into Canada and procedures within Canada for those who arrive and claim to be refugees. These are two parts into which Canada’s refugee admission policy can be divided.

“Canada is geographically remote from the major refugee producing regions of the world. With the passing of the 1976 Act a number of new initiatives were developed which demonstrated a willingness to participate in world politics and share in the burden of support for the international protection of refugees.”² As the world community became increasingly aware of the fact that temporary refugee concerns were becoming permanent refugee problems, Canadian immigration policies focused on three major programmes:

- 1) Social and family reunification.
- 2) Independent and economic
- 3) Humanitarian.

The thrust of the Humanitarian programme is its concern for refugees. It has been developed to support the UNHCR resettlement initiatives.

¹ Howard Adelman, “Canadian Refugee Policy in Post War Period” In Howard Adelman, ed., *Refugee Policy: Canada and the United States*; *Centre for Refugee Studies*, York University, York Lanes Press Ltd., Toronto, 1991, p.200.

² Stanley, B. Knight, *The International Refugee Crisis: The Canadian Response*, Refugees Studies Programmes, University of Oxford 1993, p.18

Canada is the only country in the world, which lands refugees on five major programmes that can lead to citizenship.

The five means by which a refugee may enter Canada include:

1) Government sponsored refugees 2) Privately sponsored refugees 3) Designated class refugees 4) Family reunification 5) Convention refugees.

According to R.A. Girard, "Canadian Refugees policy has evolved as a humanitarian policy in its own right, with diminishing reference to Canada's specific needs and interests".³ The focus on resettlement of European refugees, which dominated programming until the late 1960s, has been replaced by annually planned intakes of refugees from all major world regions.

"Canada was far more humanitarian in her response to the plight of the boat people. Vietnamese, Laotians and Kampuchians, who fled Indo-China from the communist regimes established in the wake of Saigon's fall in 1975."⁴

In 1979-80, Canada admitted some 60,000 of these refugees, most of whom had endured several days in small, leaky boats. Although this was not the largest single refugee group to enter Canada since the Second World War it represented the highest number of boat people.

³ R.A. Girard, "Canadian Refugee Policy: Government Perspective" in Howard Adelman and C. Michael Lanphier, ed., *Refuge or Asylum? A Choice for Canada*, York Lanes Press Ltd., Toronto 1990, p.113.

⁴ Valerie Knowles, "Strangers at our Gates: Canadian Immigration and Immigration Policy 1540-1990, Durdurn Press Ltd., Toronto, 1992, p. 165.

Canada's initial response to the case of Vietnamese refugees was largely because of its perceived obligations to USA. However, Canada's decision to admit Indo-Chinese by 1978 was because Canada began to view refugee flow as a product of the policies of North Vietnamese government following its take over of the South, rather than simply as individuals fleeing because of their involvement with the previous regime. There was intense media Coverage of the plight of these people, and Canadian people, responded to this crisis with unprecedented compassion. "Humanitarianism- not anti communism or Tory ideology, not self interest or public pressure was the key factor present in the government and in virtually all leading sectors of society and which motivated the drive for Canada to take in the single largest refugee movement in its history."⁵

Reg Whitaker is of the view that, "The sheer humanitarian appeal of people adrift at sea at the mercy of fate was no doubt at the heart of the public response in Canada".⁶

The Stirring plight of the boat people and the lobbying mounted by Church congregation and other organizations in the voluntary sector succeeded in wringing generous commitment of help from the Clark administration. Flora MacDonald, minister of external affairs, and Ron Atkey, Minister of Employment and immigration, obtained approval for

⁵ Howard Adelman, ed., "Refugee Policy: Canada the United States Centre for Refugee Studies, York University, York Lanes Press Ltd., Toronto, 1991, p. 213.

⁶ Reg Whitaker, "Double Standard: The Secret History of Canadian Immigration", Lester and Orpen Dennys Ltd. Toronto, 1987, p. 262.

50,000 refugees to be admitted to Canada by the end of 1980. Announced in July 1979, the decision provided for both privately sponsored and government sponsored refugees, the government initially agreeing to match each refugee that individuals and church and other voluntary groups supported.

Canada's humanitarian policy was not confined to Indo-Chinese alone. Canada has accepted refugees from Latin America as well. The largest waves from Chile in the 1970s and from El Salvador in the 1980s were initiated and sustained largely by flight from dictatorship, state terror civil war and violence. Other smaller, flow such as those from Argentina, Guatemala and Peru also arose in periods of internal strife approaching civil war.

The Chile exodus in 1973, after Pinochet coup was composed primarily of migrants who were victims of the political change. Many self exiled and refugees went to United States but others who supported Marxist government could not go". It was at this point, in 1974-75 that humanitarian groups in Canada brought pressure to bear that induced shifts in Canadian policy which led many Chileans to migrate to Canada."⁷

A large flight of refugees from El Salvador arose immediately after a surge of repression, assassinations and out break of civil war in 1979; these refugees were however not considered bonafide refugees by United States.

⁷ Alan B. Simmons, "Latin American Migration to Canada: New Linkages in the hemisphere migration and refugee flow system", *International Journal*, vol. XLVIII, no. 2, Spring 1993, p. 294.

The implementation of Canadian refugee policy in 1978 opened the way for Salvadorians refugees into Canada. Canada accepted 108 individuals in 1979 but the number continued to rise annually through the 1980s to 4,290 migrants in 1990. In total, some 26,000 Salvadorians moved to Canada between 1973 and 1990.

Canada's response to the situation has also had to be cognizant of U.S. Policy towards this region; US Policy had greatly affected what Canada has been willing and able to do. There has also been considerable pressure on the Canadian government by the Churches to provide assistance to Salvadorians. "This combination of domestic pressure, sense of international obligation, and foreign policy considerations vis-à-vis both the United States and the governments of first asylum has meant a modest programmes. There is not a great deal of incentive for Canada on self interest grounds to welcome most Salvadorians".⁸ Canada accept them on Humanitarian grounds" Guatemala was under civil was for more than a decade. Guatemalans had therefore, moved to Canada, but numbers were relatively small compared to Chilean and El Salvadorians. Canada announced special measures for Guatemalan refugees. These measures provided relaxed criteria for the selection of immigrants living in Guatemala, opportunities for Guatemalan in Canada to apply for permanent residence without having to leave the country and a moratorium on deportation to Guatemala. This was

⁸ Howard Adelman, "Canadian Refugee Policy in the Post War Period: An Analysis" in Howard Adelman, (ed.), *Refugee Policy: Canada and the United States*, Centre for Refugee Studies, York University, York Lanes Press Ltd., Toronto, 1991, p. 217.

because of increase of Guatemalan convention refugee claimants between 1982-1983. Apart from Latin American refugees Canadian also has accepted refugees from Sri Lanka and Iran during this period as humanitarian refugees.

Even though Canada accepted refugees on humanitarian grounds ideological factor remains the thrust of its refugee policy. It was generally believed that Canada accepted Indo-Chinese refugees because they were fleeing the communist regime. Canada's policy is reflection of US policy during this period. In the United States, the government was clearly trying to justify the unsuccessful war and the fact that boat people showed the communist states to exactly the sort of brutal totalitarian regimes the Americans had claimed to be opposing. Canadian accepting Indo-Chinese therefore gave an indication of its opposing the communist blocs. Many believed that refugees from right wing regime were not considered refugees as they were mostly Marxist supporters.

Rhoda Howard is of the view that, "In none of the humanitarian refugee movement is there evidence of immediate response to the plight of left-wing refugees from right-wing or fascistic dictatorship. Nevertheless, in response to concerted public pressure, Canada has admitted in piecemeal fashion over 6,600 refugees from right-wing dictatorship in Latin America since 1973".⁹ As in the case of Chilean refugees Canada was reluctant to

⁹ Rhoda Howard, "Contemporary Canadian Refugee Policy: A Critical Assessment", *Canadian Public Policy*, vol. 2, Spring 1980, p. 365.

accept them. There was no arrangement, no welcoming committee, no large scale funding and worse no visas were made available to them. "It was their misfortune to have been the victims of a right wing rather than a left wing purge. Security officials in Canada were totally unsympathetic to their plight".¹⁰

Reg Whitaker is of the view that, "The refugee movements were not merely the result of the imposition of a particular ideological regime they were also the direct result of war".¹¹ The Vietnamese had been at war for four decade. Constant war had exacted a profound economic, social and human toll, and these had brought massive relocations of people.

In the earlier decades Canada had accepted refugees from Eastern Europe like the Hungarian and the Czechs these refugees were accepted by Canada because of the Cold War enmity between the two ideological blocs. It cannot be denied that Canada had accepted them because of ideological difference, and West wanted to embarrass Soviet Union in the international arena. However, the 1970s scenario is different then earlier phenomenon and to put ideology, as the sole factor of taking in refugees would be incorrect nonetheless, ideology did play a role during 1970s and 1980s.

The 1980s show the renewal of the Cold War, events in Poland, Afghanistan, Grenada Nicaragua and Libya, and various spy arrests and

¹⁰ Irving Abella, "Canadian Refugee policy to 1980: Historical Overview" in Vaughan Robinson, ed., *The International Refugee Crisis: British and Canadian Responses*, Refugee Studies Programme, University of Oxford, 1993, p. 92.

¹¹ Reg Whitaker, "Double Standard: The Second History of Canadian Immigration", Lester and Orpen Dennys Ltd. Toronto 1987, p. 262.

scandals on both sides have punctuated the troubled decades, the threatening spectre of nuclear war, made more pressing and alarming an arms race out of control and the thickets of missiles growing on both sides. Canada has been an ambivalent participant in these developments. But Canada like its western allies did not restrict the movement of people across borders and to step up controls over non-citizens within its borders Canada appeared to be pursuing its own unique course in its immigration and citizenship policy.

However, in the 1980s Canada was faced with some of the most of challenging immigration issues ever to confront policy makers and try the souls of policy enforcers chief among these was the fast-developing refugee phenomenon, which saw spiraling numbers of individuals claim refugees status within Canada. The refugee question in fact, dominated the immigration scene during this period, attracting widespread media coverage igniting public controversy and radically altering Canada's immigration policy options.

The refugee explosion was just one feature of international migration in these years; however, another major phenomenon was the escalating number of illegal or undocumented migrants. Improved communication, cheaper transportation and the growing gulf between rich and poor nations had led to soaring number of people seeking to escape overpopulation and lack of economic opportunities in their homeland for a better life in developed countries like the United States, Canada, Australia and Western

Europe. These migrants lack qualification or family connection to be admitted to receiving countries by conventional method; therefore, they sought refugee status as means to gain entry. In the mid eighties Canada received substantial number of asylum seekers, but did not qualify as refugees. In fact, commercial operations aid the journey of these migrants.

In 1968, 155 Tamil men, women and children were picked up off the southeast coast of New Found land. At first they claimed they had come directly from Sri Lanka, but later, after their pitiful saga unraveled, they confessed that they had traveled to Canadian waters from West Germany. However, Canadian government gave asylum to these people.

However, the arrival of groups of Sikhs less than a year later, Some 174 Sikhs, the government recalled parliament in emergency session to amend the Immigration Act of 1976. The Refugees Deterrent and Detention Bill C-84, was hasting drafted by government. This bill contained numerous draconian provisions. The bill created a storm of protest from humanitarian organization, immigration lawyers, Canadian churches and members of the general public. Refugee issues took all attention of media and it diverted attention from important long-standing immigration question.

In 1986, Canada was awarded the UN prestiges Nansen medal in recognition of their major and sustained contribution to cause of refugees. During the past decade Canada had granted safe haven to more than 150,000 individuals from refugee camps abroad. However by 1989, Canadian

refugee policy had been contently abused by illegal migrants and this resulted in government taking new measures to control its determination system and following a controlled and tightened policy. Even though Canada continued to follow liberal refugee policy, illegal migrants complicated its policy towards refugees.

Canada's Refugee Determination System

The 1976 act created new and complex procedures for inland refugees, these included the creation of the Refugees Status Advisory Committee, (RSAC), the role of which was to review cases and make recommendations to the minister as to the acceptability of a claim of refugee status under inland refugee determination procedure adopted in 1976. If an applicant was found inadmissible at a port of entry or overstayed the allowable time in Canada, an inquiry was scheduled to determine whether the person should be removed from Canada. At the inquiry, the applicant could claim refugee status, the refugees claimant would then be examined under oath by senior immigration officers and the transcript of the interview would be forwarded to the RSAC in Ottawa for a consideration of the claim of convention refugee status, the RSAC would then advise the minister. If the claimant did not qualify, his or her application was considered on humanitarian and compassionate ground by the special review committee, which acted in an advisory capacity to the minister. If the minister rejected the claim, the claimant could apply to the Immigration Appeal Board (IAB)

for re-determination of his or her refugee status on the basis of the documentary record. If, after a paper review, the IAB was of the opinion that there were reasonable grounds to believe that a claimant could succeed, the IAB would grant an oral hearing to the claimant. If the claim was approved by any of the above three bodies, the inquiry was resumed to determine whether the claimant was a medical, criminal, or security risk, and consequently inadmissible even as a refugee. If the refugee was rejected on these grounds, he or she could once again appeal the IAB. The IAB decisions were further appealable to the Federal Court on questions of law or jurisdiction. "The complexity of these procedures when confronted with the sharply increased numbers of inland refugee claims that occurred in the 1980s led to a crisis in the refugee determination process".¹² The admission of refugees in this manner posed problems, however, one of these was the threat to carefully thought out immigration programme. "The unpredictable arrival of such claimants and the complex process of such claimant and the complex process of determining the validity of their claims made it extremely difficult for Canadian authorities to implement a coherent immigration programme embracing pre determined numbers of people of the three classes of immigrants. Also, because it was patently obvious that many claimants were not genuine refugees but merely individual seeking to

¹² Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, University of Toronto, Toronto 1998, p. 412.

improve their economic prospects in Canada, this category of new comers began to excite a lot of controversy.”¹³

The Immigration Department’s inability to handle the inland refugee claim backlog is the dominant theme in Canada’s immigration history in the 1980s, when increasing numbers of migrants learned that claiming refugee status increased the chances of admission to a more affluent country. “It was a crisis that seemed largely unanticipated by immigration officials.”¹⁴

In 1981, Lloyd Axworthy, commissioned a task force to report on a variety of issues arising from inland refugee determination. In a review of the process of inland refugee determination, Robinson Report recommended an elaborate procedure, which would leave the burden of proof upon the claimant but would protect the claim. Among the safeguards would be elimination of the procedure of pre-screening and the provision of oral hearings to all claimants. Refugee Status Advisory Committee to review all cases and advise the minister accordingly would be expanded to include another oral hearing and counsel. All recommendations by RSAC and decisions of the immigration Appeal Board would have rationales supplied.

This refugee determination procedure proved to be exceedingly time-consuming and possibly counter-productive to fairness and expediency. In 1984, Rabbi Gunther Plaut was commissioned to conduct a thorough review

¹³ Valerie Knowles, *Strangers at our Gates: Canadian Immigration and Immigration Policy 1540-1990*, Dundurn Press Ltd., Toronto, 1992, p. 172.

¹⁴ Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, University of Toronto, Toronto, 1998, p. 412.

of the past legislation and practice resulting in the Plaut Report in 1986. “Based on lengthy hearings and consultation, the plant commission devised alternative models for a refugee determination process consisting of fewer steps of review while retaining maximum fairness to both claimant and Canada.”¹⁵

Near the end of the 1983 the backlog had grown to the extent that to clear it, using the status determination procedures and assuming no new claimant joining the queue, would have taken up three years.

A major deterrent to the smooth, efficient operation of Canada’s refugee determination system was the Singh decision. The Supreme Court of Canada handed it down in 1985, after it had deliberated the case of Harbhajan Singh and six other appellants. The Singh decisions had profound implications for the refugee determination system because it meant that refugee claimants in Canada must be guaranteed virtually the same social and legal protection accorded Canadian citizens under the charter of Rights and Freedom. Ideally of course, claimant should be provided with all these procedural guarantees. But administratively, the furnishings of such guarantees rules out expeditious hearings, add considerably to the costs of processing refugee claims, and promote delays. The end result is a clogged refugee determination system maintained at great expenses by the Canadian taxpayers. When many of these fears became harsh reality in the 1980s, in

¹⁵ C. Michael Lanphier, *Asylum Policy in Canada: A Brief Overview*, in Howard Adelman and C. Michael Lanphier, “Refuge or Asylum”? *A Choice of Canada*. York Lanes Press Ltd., Toronto, 1990, p. 84.

1987, after many delays, the government introduced the Controversial Refugee Reform, Bill C-55 designed produce a refugee determination system that reduced the time required to decide the outcome of an application for refugee status and that cleared up the backlog of claimant already living here and waiting for their claims to be processed. Although the bill recognized Canada's legal and moral obligation to genuine refugees and established a multi stage screening process, it nevertheless unleashed a torrent of controversy.

The chief source of uproar was the proposed safe third country provision, which allows the Canadian to refuse entry of a refugee if he had filed refugee claim in safe third country. Another was the long delay in implementing the new legislation. By the time the new legislation was proclaimed, some 125,000 people were in the refugee backlog.

As a result, the new system which provided for the establishment of an independent, quasi judicial body Immigration and Refugee Board and a two stage screening process, found itself confronted by staggering workload. It soon led to parallel backlog of claimants waiting to have their cases resolved.

The daunting task faced by the IRB would underscore the continuing need to find the right balance between control and fairness. Notwithstanding the criticism directed against the new system. "Canada has continued to

remain true to its tradition of admitting more refugees per capita than any other country in the world.”¹⁶

Connecting Refugee Policy and Foreign Policy

States refugee policy and its foreign policy can impact upon the other, the relationship is in fact reciprocal. There may be a causal relationship between immigration and refugee policy on the one hand and foreign policy on the other. “A State’s foreign policy can trigger refugee flows, as occurred with Soviet Union in Afghanistan and with United States. Similarly, unplanned or planned population movements across international frontiers have had an impact upon foreign policy”.¹⁷ The outflow of people from Indo-China in the late 1970s is an illustration of that phenomenon. The relationship between refugee and foreign policies may be more obvious when we observe the actions of the Great powers, but this inter connection can also be seen in the policy of Canada. In 1956, 1968 and again in 1981, the Canadian government took steps to significantly relax prevailing immigration and regulations so as to expedite and facilitate the movement to this country of thousands of refugees from Hungary, Czechoslovakia and Poland. In each instance, these Eastern Europeans were endeavoring to avoid the oppressive living conditions of their homelands.

¹⁶ Valerie Knowles, “Strangers at our Gates: Canadian Immigration and Immigration Policy 1540-1990”, Dundurn Press Ltd., Toronto 1992, p. 176.

¹⁷ Gerald E. Dirks, “*Regulating the Refugee Flow: Some Observations*” in Howard Adelman and C Michael Lanphier, ed., *Refugee or Asylum? A Choice for Canada*, York Lanes Press Ltd., Toronto 1990, pp. 93-94.

The relaxation of Canadian immigration regulation occurred in large part as a result of foreign policy motives. Specifically, Canada, as a member of the Western alliances and an ideologically foe of the Soviet union, wished to embarrass Moscow and its allies by welcoming their nationals who sought a more satisfying way of life under a different sort of political system. Certain domestic interest groups within Canada, such as ethnic association, did urge the government to liberalize immigration procedures on these occasions, but it can be argued that, at these particular times foreign policy considerations were uppermost in the minds of policy makers.

The relationship between refugee and foreign policy in Canada is of interest for other reasons too. Policy makers contemplating any programme to admit refugees through the relaxation of normal immigration criteria must weigh both foreign and domestic implications. When Canadian authorities in 1979 authorized the entry into the country of 50,00 displaced persons who had fled from Indo-China to other states in South East Asia, numerous factors influenced their decision. Externally, a programme to admit the Indo-Chinese would act to maintain as even strengthen Canada's global image as humanitarian, refugee receiving state. However, the government of Canada and several other likeminded states did not want their willingness to assist the hundreds of thousands of displaced persons to be viewed by Vietnamese authorities as a sign that the uncontrolled and unmanaged population exodus from Indo-China would be tolerated indefinitely. Accepting the South East

Asians for settlement elsewhere was not intended to be seen as tacit approval of Vietnam's policy of exporting its own nationals. The root causes behind the outflow of people had to be identified and resolved.

Domestically, the Canadian policy makers had to estimate the extent of public sympathy for the Indo-Chinese escapees and judge the extent to which the private sector would be prepared to assist in providing the needed resources to help these people integrate successfully.

In foreign policy terms, an important consideration is that a receiving states admission policy can act as a signal to the government of the state from which the persecuted person have fled as Canadian attempt to embarrass the Soviet Union over the East European refugees. However, accepting dissidents from an ally can prove much more awkward. During the height of the US involvement in South East Asian conflict in the late 1960s thousands of Young American men migrated to Canada to escape conscription and to demonstrate their rejection of their governments policies Canada did nothing to discourage there young Americans from resettling in this country. The Canadian government did not distinguish them from immigrants yet, American political leaders inside and outside congress criticized Canada regularly for its willingness to accept the conscription evaders and deserters. Her, too, Canadian policy sent a foreign policy signal. Thus, again, the stance a government takes towards involuntary population

movement is seen to be a tool or mean adopted to fulfill a foreign policy objective.

Canadian foreign policy during the past few decades has emphasized a multilateral approach to international issues, including the global refugee phenomenon. Canada has taken a keen interest in the administrative and financial aspects of this United Nations agency. Canada also provided funds for the operational activities of the UNHCR and has, continued to accept bonafide refugees for settlement when their relocation in a third state seems appropriate. Canadian foreign policy planner is of the view that the international community as a whole can best manage refugee issue.

Societal and Economic Context of Refugee Policy

During the 19th and earlier part of the 20th century Canada followed a racist immigration policy and therefore, restricted people from other parts of the world. But with the abolishing of its racist immigration Canada open its door to all. However, economic needs of Canada could not be ignored. Canadian industries needed people therefore, liberalized its policy. Society played an important role in liberalizing Canadian refugee policy.

Norman Buchigani is of the view that “the range between highest and lowest ethnic status much less than before, such that people in Canada now have fairly egalitarian ethnic attitudes compared with other Western

Countries.”¹⁸ Discrimination has been reduced similarly over the past few decades as a result of moderating attitudes, increasingly equal and multidimensional inter-ethnic personal relations, the establishment of federal and provincial human rights legislation making many kinds of discrimination illegal and an increased sense that discrimination is socially disapproved.

By the late 1970s, it was becoming evident that high levels of visible minority immigration per se would not cause a major deterioration of Canadian attitudinal and behavioural tolerance. “Advocates of South East Asian resettlement were deeply concerned about the possibility of an attitudinal backlash. And yet public opinion polling, academic research and anecdotal evidence suggest that South East Asian immigration had virtually no negative consequences for general ethnic relations.”¹⁹

The reasons are because it is generally believed by Canadian society that East Asian were hard working and industrious, self reliant, economic enterprises and well ordered family life and societal order. By 1980s Canadian borders were increasingly being challenged as external immigration pressures, the availability of international travel and information on immigration option increased. So many asylum-seekers came directly over its borders Canadian government barred them from the country

¹⁸ Normal Buchignani “Refugees and Ethnic Relations in Canada” in Vaughan Robinson, ed., *The International Refugee Crisis British and Canadian Responses*, Refugee Studies Programme, University of Oxford 1993.p.37.

¹⁹ Ibid., p. 45.

by Bill C-55. However, there was public outcry from media, church and non-governmental organizations to take in refugees who needed safe haven. As the case may be for Tamil refugees who were given asylum, even after they did not qualify as humanitarian refugee.

Canadian refugee selection may also be influenced by economic ideology, although the evidence for this is less certain. Refugees, admitted to Canada tend to include a high proportion of young adult males with relatively high levels of education and often judged a potential immigrants for long term Canadian needs e.g., Czechs, Rhoda Howard is of the view that, "Canadian policy is ambiguous, immigration officers are given authority to relax the normal immigration criteria for refugees, yet clearly their mandate is to regard refugees as potential immigrants and to judge this long term potential to become Canadian citizens. Economic criteria such as refugees potential employability or entrepreneurial skills override his need for political asylum."²⁰

It may be concluded that politics of refugee selection in Canada is part of a dynamic system in which economic self-interest is a powerful force.

Conclusion

The political and to a large extent, public consensus that seemed to emerge on most major issues of immigration policy in the previous period,

²⁰ Rhoda Howard, "Contemporary Canadian Refugee Policy: A Critical Assessment", *Canadian Public Policy*, vol. 2, Spring 1980, p. 369.

culminating in the near-unanimous passage of the 1976 Immigration Act was sharply fractured towards the end of 1980s. "While a more open democratic policy making process in the previous period had helped shaped a broad policy consensus, it led in the present period to political distrust and polarization of political and public position".²¹ The focus of much of the controversy revolved around appropriate responses to dramatic increases in refugee claims, reflected in total refugee admission numbers, and particularly in inland refugee claims, debates in Canada over this period were in many respects a microcosm of debates that occurred in many countries in the industrialized world about the form and extent of countries moral and legal responsibilities to victims of persecution, oppression and deprivation elsewhere in the world.

Bill C-55, C-84 indicates, the government's proposed responses to the perceived refugee crisis precipitated a furious onslaught both from opposition political parties and the non-governmental organization community. Refugee issues dominated Canadian Immigration policy and will continue to be the focal point of public debate and controversy with large and increasing numbers of refugees uprooted by civil war and ethnic or religious persecution, the substantial cost involved in processing refugee claims and resettling refugees, and magnitude of human tragedy entailed in the absence of effective responses by more developed countries, all suggest

²¹ Ninette Kelly and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*. University of Toronto Press, Toronto 1998, p. 435.

that this is not a transitory dilemma. In Canada, Refugee policy debates dominated the 1980s obscuring other important trends in immigration policy. However, Canada's contribution cannot be denied for which Canada received United Nations prestiges Nansen Medal in 1986. On no other occasion has an entire country received this honour.

CHAPTER – IV

CANADA'S REFUGEE POLICY IN THE CHANGING TIMES

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CANADA'S REFUGEE POLICY IN THE CHANGING TIMES

Introduction

During the Cold War period Refugee policy of Canada was based on ideological and humanitarian grounds, and following a liberal refugee policy Canadian government accepted refugees in high number and an open door policy. However, Canada's liberal refugee policy soon faced challenges in the 1980s, with even increasing refugee claims and unemployment and the growing illegal migrants claiming refugee status, therefore government was alarmed with the new realities, and the constant abuse of refugee determination system. Amidst much public outrage government introduced bill C-84, the refugee deterrence and detention bill in 1987, this bill contained numerous draconian provisions. In 1989, government also introduced Refugee Reform through Bill C-55 designed to produce a new refugee determination system.

The end of Cold War brought new areas of conflict and with it refugee problem became a global problem but governments across the world have parochial approach towards refugees. In 1992, Canadian government introduced bill C-86 which brought security measures in the Refugee policy. Canada was going through a period of economic crisis therefore, the government focus was more on business immigrants than refugees as they could contribute to the economic development of the country. Even though refugees continued to come into Canada refugees took back track as Human

Security emphasized in resolving the issue at country of origin itself, rather than bringing them into Canada. Therefore overseas refugee policy of providing aid became priority in the 1990s.

After 9/11 episode, Terrorism has become the major security issue area for countries throughout the world and this have greatly affected the refugee flow. It has raised new questions about Canada's immigration and refugee policy. As a response to the perceived terrorist threats, a re-examination of the manner in which foreign nationals are permitted entries to and through Canada's borders was on bill C-31, now called Immigration and Refugee protection Act brought in June 2002, it carries a dual mandate: closing the back door entry to suspected criminals and other who could abuse Canada's openness and generosity, while opening the front door to genuine refugees and to immigrants who will help in the development of Canada.

On December 3, 2002, Canada and the US announced they would be working together for common security priorities. National security has become the major issue for the government of the day. The Anti-Terrorism Act passed in 2002, even though not part of the refugee policy has greatly affected the refugee flow the measures designed to create national security in turn creating human rights violation and human miseries for migrants and refugees as they have become vulnerable to detention and prosecution. However, Canada has welcomed immigrants and refugees for long, and therefore, left the doors open for immigrants and refugees in need of protection.

Canadian Refugee Policy (1989-2002)

Canadian Refugee policy has come a long since the Immigration Act of 1976. From receiving Indo-Chinese refugees in the 1970s to challenges of undocumented migrants in the 1980s. Canadian policy makers were under tremendous pressure from general public opinion and pro refugee lobby for liberal policy. However because of the constant abuse and huge backlogs, “The government introduced bill C-84 with provide for the detention and removal of arrivals who posed a criminal or security threat to the nation, detention of unidentified arrivals and security risks; and significant penalties for smugglers of refugees, expanded search and seizure powers and increases in the fines and penalties for than transportation companies bringing into Canada individuals lacking proper identification documents”.¹ Bill C-55 was introduced in 1985, which increased the number of immigration appeal board members who acted as refugee claim adjudicator. The government however, re-introduced bill C-55 which radically restructured the refugee determination process, replacing the Immigration Appeal Board with the Immigration and Refugee Board. However, “both bills were passed by parliament in 1988, but only following some of the most tumultuous and acrimonious political and public debates over immigration policy in the country’s history, both bills came into force on 1 January 1989”.²

¹ Ninette Kelley and Michael Tribilcock, “*The Making of the Mosaic: A History of Canadian Immigration Policy*”, University of Toronto Press, Toronto, 1998, p. 386.

² Ibid., p. 386.

Public opinion, humanitarian organizations, churches protested the bill C-84 and called it draconian claiming refugees will be affected by the provision in bill C-55, government on their part wanted to clear the huge backlog of refugees and also to prevent illegal migrants from abusing their refugee system. "It was clear that government's attitude towards fraudulent refugee claims and undocumented migrants had hardened significantly since the unexpected arrival of the Sikhs and Tamils".³

"The creation of the new refugee status determination process in 1989 still left the Canadian government was an enormous problem: the backlog of claimants that had been expanding since the mid 1980s. At the close of 1988 the backlog stood at 122,00 cases, a number far too great to be handled by the new untried determination process'.⁴

The end of Cold War brought huge influx of refugees from across the world with ethnic conflict, political upheavals, terrorism facing the New World Order in the 1990s, refugees became global phenomenon, but Canada was concern about security issues of the country as Cold War bipolarity ended and world situation becoming volatile with ethnic conflict etc. In 1992, the government introduced yet further major changes to the Immigration Act, in the form of bill C-86. The bill altered the provisions dealing with criminal and medical inadmissibilities, attempting, in the first case, to bar entry to individuals with links to criminal and terrorist organization or suspected of

³ Gerald E. Dirks, *Controversy and Complexity: Canadian Immigration Policy During the 1980s*, McGill-Queen's University Press, Montreal 1995, p. 93.

⁴ Ibid, p.95.

criminality, while in the latter case, conferring greater discretion upon medical officers. Additionally, bill C-86 attempted to secure better control of Canadian borders through expanded search and seizure provision; provisions requiring finger-printing and photographing of all refugee claimants, and increased penalties for the smuggling of migrants. Bill C-86 also made significant alternations to the system of refugee-determination, by eliminating some steps in the refugee determination process and by limiting the process of judicial review. Bill C 86 also provoked an intense and passionate series of political and public debates. In these debates over the government's responses to the perceived refugee crisis, the non-governmental organization community, comprising principally legal, ethnic, church, and community organizations, emerged as major and politically sophisticated advocates of immigrants rights.

Canada in the 1990s, "was leading other industrialized countries into yet another worldwide recession, with unemployment rates rising to almost 12 percent, interest rates rising to the 14-15 percent range, and federal and provincial government deficits rapidly escalating".⁵

By early 1994, the recession appeared to be lifting, with the resumption of a healthy rate of growth in gross domestic product and inflation at minimal levels, but the unemployment rate remained obdurately high. Government therefore, encouraged business immigrants who can contribute towards economic development of Canada. Refugees even though continued to come in found it difficult to get in. "In the economic hard times of the early 1990s, the

⁵ Ninette Kelley and Michael Tribilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, University of Toronto Press, Toronto, 1998, p. 382.

national mood an immigration seemed to be hardening, Ottawa tightened up on admissions of refugees claimant and family of those in Canada while promising more immigrants by those with the needed skills or investment capital”.⁶

In 1994, plan was intended to manage the refugee programme separately from other immigration. In addition, efforts were to be made to settle refugees in non traditional areas”. Between 1994 to 1997 there was increase in refugee claimants, Canada admitted about 22-28000 refugees each years. Bosnia Herzegovina lead in source country for refugee status claimant.”⁷

Canada, during the 1990s shifted its attention towards the concept of human security. Under former Canadian Foreign Affairs Minister Lloyd Axworthy, it was recognized that poverty and inequity caused human insecurity. He argued that the Cold War approach to security was not able to bring about peace or security. Thus, “he conceptualized human security as much more than the absence of military threat. It includes security against economic privation, an acceptable quality of life, and guarantee of fundamental human rights. But this approach fails to appreciate that economic globalization often creates conditions from which asylum seekers flee.”⁸ Thus, human security became priority for Canadian foreign policy and refugee took backtrack, while earlier it was Canadian government priority in 1970s and

⁶ Harold Troper, “Canada’s Immigration Policy Since 1945”, *International Journal*, vol. XLVIII: 2 Spring 1993.p.281.

⁷ Jayati Ghosh and Vanessa J. Pyrcce, “Canadian Immigration Policy: Response to Changing Trends”, *Geography*, vol. 84, no. 3, 1999, p. 237.

⁸ Michelle Lowry, “Creating Human In Security: The National Security Focus in Canada Immigration System”. *Refuge*, vol. 21, no. 1, November 2002, pp.29-30.

1980s, now attention shifted to human security and throughout 1990s it remained a high politics issue.

In April 2000 new Bill was introduced in the parliament bill C-31 which later was known as Immigration and Refugee Protection Act. It includes some measures that will improve upon Canada's system of refugee determination. These include an expanded definition of those deserving of protection and an appeal on the merits of rejected claims. However, this bill is made to limiting access to refugee protection in Canada.

“Under its provisions fewer people will be able benefit from Canada's asylum procedures. This is a consequence of increased overseas interdiction of those seeking to come to Canada to make refugee claims, an expanded definition of who is ineligible to have his or her claim heard by the Immigration and Refugee Board, and limited access to a new pre-removal risk assessment”.⁹

As the bill was under way, US was struck with terrorist attack on September 11, 2001, this had great implication of Canadian immigration policy. “While the Act itself was not directly influenced by the terrorist attack in New York and Washington, it nevertheless contained reforms interested in curbing the potential dangers that refugee allegedly pose to Canada”.¹⁰ Post-September 11 jitters have also resulted in several new national security measures aimed at new comers, including the proposed Safe Third Country

⁹ Michael Bossin, “Bill C-31: Limited Access to Refugee Determination and Protection”, *Refuge*, vol. 19, no. 4, February 2001.p.55.

¹⁰ Michelle Lowry, “Creating Human Insecurity: The National Security Focus in Canada's Immigration System”, *Refuge*, vol. 21, no. 1, November 2002, p. 28.

Agreement, which will go even further in limiting the rights of asylum seekers to meaning representation, due process, and protection.

Human Security, National Security and Canada's Refugee Policy

Security concerns of Western states have traditionally focused on the primacy of territorial security and sovereignty and on the belief that a state can achieve security through arms and deterrence. This external security focus heavily relied on military security and the activities of the state's intelligence community. However, recognizing that traditional security concerns did not create peace or stability in the world, public interest groups, non-governmental organizations, and activists transformed the concept of security into a concern with human security. In Canada, human security entered the vocabulary of the liberal government in the mid 1990s and soon because the focus of Canadian foreign policy. Under former Canadian Foreign Affairs Minister, it was recognized that poverty and inequity caused human insecurity. However, "response to that insecurity were based on neo-liberal economic policies. More recent conceptualization of human security explicitly combined the human security agenda with national security interests".¹¹ Axworthy failed to recognize the costs of globalization to poor and marginal. His Conceptualization of human security also had no understanding of how gender relations, gender roles, and oppression perpetuate human insecurity for women.

"Within the last few years Canada's approach to human security has shifted. Canada continues to promote market based strategies and to own

¹¹ Ibid., p. 29.

economic interests abroad.”¹² Canada has chosen to focus its human security agenda on promoting safety for people from threats of violence. In 2002, major threats to human security are further being defined as terrorism, drug trafficking, and the illicit trade in small arms. This new generation of threats shows no respect for national borders and inevitably becomes the source of Canada’s own insecurity. Thus, protection of Canada’s borders is understood to be both a human security and national security concerns. National security agendas and human security needs are not compatible in the lives of those seeking asylum, as national security measures can in fact contribute to human insecurity. It negatively impact human security of asylum seekers in Canada.

“The Canadian government understands human insecurity as something to be gained in other places, as something needed by other people. However, Canadian government needs to recognize and address the human insecurity its causes for asylum seekers in its domestic refugees and border control policies.”¹³

In the Post Cold War period refugee discourage has since shifted to the security of Canadians and the need to protect themselves from false claimants and those who abuse the system. Within Canadian refugee policy concerns about the threats that asylum seekers pose have manifested in various strategies to prevent them from gaining access to Canada. This was brought about by the

¹² William, W. Bain, “Against Crusading: The Ethnic of Human Security and Canadian Foreign Policy”, *Canadian Foreign Policy*, vol. 6, no. 3, (Spring 1999), pp. 85-98.

¹³ Michelle Lowry, “Creating Human Insecurity: The National Security Focus on Canadian’s Immigration System”, *Refuge*, vol. 21, no. 1, November 2002, p. 30.

New Immigration and Refugee Protection Act of 2002 and also through the Anti- Terrorism Act.

Post September 11 Refugee Policy of Canada

“September 11 has dramatically reconfigured government agendas in the US and among its allies, including Canada. New laws that redraw on the one hand and security on the other have been rapidly passed in a number of Western Countries.”¹⁴

September 11, is said, has caused a reversal of Canada’s priorities. A human rights and humanitarian discourse surrounding refugee movements has quickly been superseded by a national security discourse, with dire consequences for genuine refugees. Harmonization of immigration security policies and practices with the US, as part of a perimeter security agenda to avert economically costly border controls, would, some have argued, undermine Canadian Sovereignty, and make them less liberal, less tolerant, more like the security conscious American.

The bill C-31, the Immigration and Refugee Protection Act, which preceded September 11, already “Casts a wide net over non citizens rendered inadmissible on security grounds, expands the detection power over designated security risks, and reduces access to independent review of ministerial security decisions.”¹⁵

¹⁴ Reg Whitaker, “Refugee Policy after September 11: Not much New,” *Refuge*, vol. 20, no. 4, August 2002, p. 29.

¹⁵ *Ibid.*, p. 30.

Another bill C-36, the Anti Terrorism Act that had nothing directly to do with immigrants or refugees but with human and economic rights, however, it had an impact on refugees and immigrants. “This legislation was criticized because it seemed to undercut much of the primacy Act intended to protect the privacy of individuals with respect to personal information about themselves held by a government institution and to restrict access to that information”.¹⁶ The expansion of law enforcement powers to arrest, detain, force those arrested to talk and other initiatives all challenges the core tenets of civil liberties and the restriction to police powers at the center of our conception of democracy.

Refugee policy in Canada have long been formulated within a discourse that gives a privileged place, an overriding priority, to national security humanitarian, consideration have never been absent, but neither have they ever been dominant, in the past or the present. Post War refugee resettlement was within the political context of the Cold War. In this context, the effect of September 11 has been to strengthen the conservative critics, while weakening the liberal case.

Then, is post September 11, refugee policies abandoning or severely curtaining, and its humanitarian commitments. The refugee security discourse has itself been premised upon humanitarian considerations. However, the biggest worry for the refugee support community has been that the United States and Canada have finally agreed to implement the Safe Third Country provision already in Canadian legislation. Since 75 per cent of refugee

¹⁶ Howard Adelman, “Canadian Borders and Immigration Post 9/11” *International Migration Review*, vol. 36, Spring 2002, p. 18.

claimants in Canada arrive through the United States, refugee support groups either totally oppose its implementation or insist on condition.”¹⁷

Terrorism had going on for long. Terrorist had attack at US earlier but the September 11, attacks demonstrated that they had been highly prepared and coordinated, for the success of the attacks depended on well structural surveillances, clear and unequivocal decisions and planning, and an effective logistic support operation. It is therefore, clear that terrorism aimed at North America is a real threat and both aggressive and defensive measures must be taken to combat it. Though some of those defensive measures include enhanced immigration controls, there is virtually no evidence linking global terrorism with refugees. “Global terrorists have not exploited the refugee determination system to gain access to Canada though several tried. Entering Canada via the refugee stream exposes a refugee claimant to authorities, to a security clearance to divulging information in filling out a refugee claim form.”¹⁸

There is even more evidence that the security threat which is real and palpable has been used as a cover to cut down on the entry of refugee claimant coming to Canada whether through visa controls or through the implementation of safe third country system. “If there are justification for this indirect cut back by greater restriction on access to the system, one of them is not security; the security issue is a rationale rather than a reason.”¹⁹

¹⁷ Howard Adelman, “Refugees and Border Security post-September 11”, *Refuge*, vol. 20, no. 4, August 2002, p. 9

¹⁸ *Ibid.*, p. 11

¹⁹ *Ibid.*, p. 11

Immigration and Refugee Protection Act

The immigration and Refugee Protection Act which came into effect in June 2002, was introduced in the parliament in April 2000, included measures that will improve upon Canada's system of refugee determination. These include an expanded definition of those deserving of protection and an appeal on the merits of rejected claims. Under bill C-31 fewer people will be able to benefit from Canada's asylum procedures.

Since 1989, there has been an eligibility screening for all refugee claimants in Canada. That is, not all persons claiming to be refugee are allowed to have their claims heard by the Convention. Refugee Determination Division (CRDD) of the IRB. Under the current legislation, those previously determined not to be convention refugees can overcome this obstacle to eligibility by remaining out of the country for ninety days. After that period, failed refugee claimants returning to Canada will again have access to the CRDD for determination of their claims.

In bill C-31, Convention Refugee Determination Division, became Refugee Protection Division of IRB. In addition to determining people to be convention refugees, the division also has the power to declare applicants to be persons in need of protection; bill C-31 had no provision for taking into account the political context in which crimes abroad were committed, when determining ineligibility by reason of serious criminality. In the Immigration and Refugee Protection Act, there is an acknowledgement that persons found

ineligible due to serious criminality may still be at risk if returned to their country of origin and, as a consequence, in need of protection.

In terms of protection, it is doubtful that referring serious criminals to pre removal risk. Assessment will be as effective as a referring to refugee protection division.

“In Bill C-31 former CIC Ministers Elinor Caplan said that one of her goals was to close the backdoor to those who would abuse the system.”²⁰ The Canadian state is interdicting people whom it simply does not want, self-selected asylum seekers, because once an asylum seeker makes a claim on Canadian soil, his or her case must be heard.

There is a tendency for Canadian politicians to appear tough as well as fail in their approach to immigration reform. Ideally, measures meant to curb abuse of the immigration and refugee system should not diminish country’s effectiveness in dealing humanely with those seek asylum in Canada. Michael Bossin is of the view, “the restrictions in bill C-31 on access to the refugee determination process and to refugee protection in general, do just that”.²¹ The Immigration and Refugee Protection Act, which preceded September 11, casts a wide net over non-citizens rendered inadmissible on security grounds, expands the detention power over designated security risks, and reduces access to independent review of ministerial security decisions.

²⁰ Michelle Lowry, “Creating Human Insecurity: The National Security Focus in Canada’s Immigration System,” *Refuge*, vol. 21, no. 1, November 2002, p. 33.

²¹ Michael Bossin, “Bill C-31: Limited Access to Refugee Determination and Protection”, *Refuge*, vol. 19, no. 4, February 2001, p. 60.

Conclusion

Refugee policy of Canada has undergone major change since the 1970s when it was formulated; from 1989 Refugee policy of Canada had become controlled and restrictive with the implementation of bill C-55, bill C-84, and bill C-86. During the 1990s refugees were not on high politics as human security became priority for Canada. Refugees were continuously received, but government encouraged skilled workers during this period. There was continuing pressure on refugees, as they are faced to detention and human rights violation. After 9/11 episode, terrorism has become one of the major issue area for countries throughout the world and have greatly affected the refugee flow. National security became the issue for the government of the day and refugee took backtrack. They have become vulnerable suffer miseries and human rights violation. However, Canada will not ignore the refugee issue as they have been receiving them for long. Even though back door had been closed, Canada has kept her open policy for people in need of humanitarian assistance, and will continue to take in genuine refugees.

CHAPTER – V
CONCLUDING OBSERVATIONS

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CONCLUDING OBSERVATIONS

Migration of people has been going on since time immemorial and since the emergence of Nation-state people migrated from country to country. Refugee question is by no means a new one; throughout human history people have been forced to leave their homeland Governments gave protection depending upon questions of specific solidarity and political interests.

The 20th century marked a change from ad hoc responses and selective solidarity to a universalization and institutionalization of the refugee problem. With the creation of the League of Nations at the close of First World War came the notion of the International Community's global responsibility to rid and protect refugees. The end of Second World War left an estimate of 30 million people homeless, mostly Europeans. This led to the adaptation of the United Nation's Convention Relating to Status of Refugees in 1951.

Refugees during this period was considered a European phenomenon. However, this assumption soon proved erroneous, and refugees continued to flow from different parts of the world. In 1960s and 1970s the United Nations High Commission for Refugees had to assist refugees from the Third World. People were uprooted by wars of decolonization and secession and also fleeing commission. The Cold War brought two opposing blocs and

therefore, Western democratic countries were assisting and accepting refugees fleeing totalitarian regime in order to embarrass Soviet Union and presenting them as brutal and despotic. In mid 1970s new crisis erupted as a result of liberation struggles in the developing world, complex class and ethnic struggles followed by economic crisis in many countries of the world. These factors led to huge influx of refugees knocking as the door of stable developed Western, Industrialized countries.

United Nations by 1960s realized that refugee phenomenon was not temporary therefore, brought about 1967 Protocol and enlarge the definition of refugee. The 1970s, saw mass exodus of people fleeing from Africa, South East Asia, Latin America etc. These movements posed distinctive problem for international community. As they realized that refugees were destined to remain indefinitely, the Industrialized countries therefore, accepted select refugees groups and Indo-Chinese benefitted through major resettlement programme. Ideology played a dominant role in accepting refugees. Western countries accepted refugees fleeing Communist regime and it was often criticized by rightist regime refugees that there was ideological bias in selecting refugees.

In the 1980s there was change in policy of the First World governments, faced with immense refugees flow and growing discontentment of citizens and economic recession and growing expenditure of government to provide aid to refugees, the governments began to discuss

the possibility of joint action and cooperative policies to cope with actual or threatened massive population upheavals originated in Third World.

Government established regulatory procedures operating in defence of what they perceive to be public interest to be selective, welcoming those who are useful for them and preventing those whom they consider to be burden.

The collapse of the Cold War marked an astounding rise in refugees. In 1992, estimate of 16.4 million refugees and 23.7 million internally displaced people an against this, there was 9.7 million refugees and 5 million internally displaced in 1969. In the 1990s refugee problem took a major turn as new areas of conflict emerged. There were refugees from Myanmar, Afghanistan, Tajikistan, Azerbaijan, Georgia, Bosnia-Herzegovina, Chechnya, Liberia, Somalia, Sudan, Burundi, and Rwanda etc.

Post Cold War era, witnessed crisis in Middle East. New Intra-State war unleashed. Armed rebellion, ethnic cleansing and environmental degradation in the third world produced millions of refugees. Western countries who once took refugees became increasing reluctant. The tandem of aid and resettlement which had been the cornerstone of refugees policy for three decades has been replaced by words of repatriation and prevention. Another phenomenon of Post Cold War period was state formation process also religious divide seem imminent in many state in Middle East.

In order to bring solution to the refugee problem in the Post-Cold War period, collective action through regional or international organization

came to force. The concept of humanitarian intervention has attracted renewed interests as a means of dealing with refugee producing situation in the developing world. UN has expanded its mandate and institutional capacity to address humanitarian emergencies, including involving large-scale population movement. Internalization of refugee movement through humanitarian aid to refugees in the country of conflict seemed to be preferred solution.

It can therefore be stated that governments are following a parochial policy to prevent the refugees from coming to the country and thereby denying the basic human rights. States have demonstrated a lack of political commitment to solving refugees problems, as long as there will be lack of political commitment and parochial policy refugees will be a problem and continue to exist.

Canadian Response

Canada has a history of people coming to the country but the first influx of refugees were the United Empire Loyalist. During the 19th century Mennonites, Hutterites and Doukhobors came to Canada and they were resettled. Chinese and Japanese came to Canada and were given work in construction of railways and worked in dangerous jobs. In 1880s, Jews flee Russia and Canada though slow to acknowledge finally responded in frenzy.

During the 19th and early part of 20th century Canada followed a racist and restrictive immigration policy. Canada's anti-refugees stance found

expression not only the stringent enforcement of certain immigration regulations but also in its refusal to let Jewish refugees fleeing Hitler's regime. Even after the Second World War ended Canada's door remained closed to Jewish refugees. By 1948, Canada came under irresistible pressure from her United Nations allies as well as from domestic ethnic communities to accept large number of displaced persons.

Canada participated in the drafting of the 1951, Geneva Convention Relating to Status of Refugees and 1967 Protocol but did not accede to United Nations definition. Canada continued to follow her 'White Canada' policy. In 1960s Canada finally abandoned her racial discrimination policy and began moving in the direction of universality. In 1969, Canada finally acceded to United Nations definition of refugees and the principle of non-refoulement.

Between 1945 and 1978 Canada admitted more 250,000 refugees from Hungarians, Czechs, Ugandan Asian and Chilean refugees. By the 1970s there was worldwide glut of refugees and therefore Canadian government was forced to nationalize its policy. After a decade of hearings, reports, white papers, Green papers and mass meetings, a new immigration Act appeared in 1976. The Act adopted the Geneva Convention definition of refugee and established a formal procedure for determining refugee claims, recognizing and sheltering people who were refugees under the convention definition became required by the full force of Canadian law.

The 1976 Act also had provision for humanitarian refugees under designated refugees. Canadian refugee policy evolved with the passing of the Act. Canada was far more humanitarian in her response to the plight of the boat people. Canada admitted 77,000 Indo-Chinese between 1975 and 1981. Although ideology played a role in admitting of Indo-Chinese apart from humanitarian grounds. The Canadian government during this period of followed one of the most liberal refugee policy in the world and Reg Whitaker called it the 'Golden Era', apart from Indo-Chinese, El Salvadorians, Guatemalan were also admitted. In the 1980s, Canada was faced with economic recession, unemployment and huge influx of undocumented migrants; this posed a major challenge for Canada's refugee determination system. There was constant abuse to the system and government policy by bogus refugees. The government therefore introduced the Deterrence and Detention bill C-84 and bill C-55 for a new Refugee Determination System however, there was public outrage over this bills as it contained numerous Draconian measures. Government, however, passed bill C-84 and bill C-55 in 1989. Government even though followed a Liberal Refugee policy was faced with huge backlog and humanitarian policy was severely challenged. It imposed restriction and controlled its policy towards fraudulent refugees.

The end of Cold War brought new challenges to Canada's refugee policy with ever increasing refugee claim. Canadian Government now looked for measures to restrict refugees. In the 1990s Canada was going

through economic recession and unemployment problem. Therefore, Government by now encouraged skilled workers and entrepreneurs who could contribute towards economic development of Canada. Refugees even though continued to come to Canada were decreasing in preference. In 1992, Canadian government introduced bill C-86 which brought security measures in the refugee policy. Human security became the priority of the government in the 1990s, and they believed that cold war approach to security was no more valid.

In April 2000, a new bill was introduced in the parliament, bill C-31 which was designed for a New Immigration and Refugee policy. The Immigration and Refugee Protection Act included measures to improve the refugee determination system, however, the bill was made to limit access to refugee protection in Canada. When the bill was under way, US was struck by terrorist attack of September 11, 2001 and this had greatly influenced the Immigration and Refugee Protection Act when it came to force in 2002.

In the aftermath of September 11, attack refugee flow was greatly affected, as new questions were raised to perceive terrorist threats, a re-examination of the manner in which foreign national are permitted entries to and through Canadian borders as on bill C-31 now called Immigration and Refugee protection Act. While Canada has kept her doors open for genuine refugees and migrants, refugees were faced with detention and human rights violation under the new Canadian environment.

On December 2002, Canada and the US announced they would be working together for common Security priorities. National Security has become the major issue for the government. The Anti-Terrorism Act passed in 2002, even though not part of the refugee policy has greatly affected the refugees flow. The measures designed to create national security in turn creating human rights violation and human miseries for migrants and refugees as they have become vulnerable to detention and prosecution. However, Canada has welcomed immigrants and refugees for long. Former Prime Minister Pierre Trudeau in Particular, has left the doors wide open for immigrants from countries other than those in Europe, an act that has been hailed worldwide. Canada therefore will continue to taken in genuine refugees and continue with her humanitarian tradition.

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