

**INTERNATIONAL REFUGEE REGIME AND HOST STATES:
A CASE STUDY OF CANADA AND THE
SRI LANKAN TAMIL REFUGEES**

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CERTIFICATE

This is to certify that the dissertation titled "**International Refugee Regime and Host States: A Case Study of Canada and the Sri Lankan Tamil Refugees**" submitted by **DEEPA RAJKUMAR** in partial fulfillment of the requirement for the award of the degree of **MASTER OF PHILOSOPHY** is her original work and has not been submitted for the award of any other degree of this or any other University.

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INTRODUCTION

The purpose of this study is to determine the effectiveness of the international refugee regime in solving the refugee problem, and in combating the causes of the problem. The study concentrates on the nature, strength and direction of the regime. A case study of Canada, as a host state, and its policies and practices with regards to Sri Lankan Tamil refugees is undertaken. The study aims to determine whether, in the post Cold-War period a change of the regime or a change in (within) the regime has taken place. The meaning of such a change, if any, is analysed and suggestions for an improvement in the regime are made at the end of the study.

It is well known that there is a refugee crisis involving an ongoing and ever-increasing refugee flow including that of internally displaced persons (IDPs) and returnees. According to United Nations High Commissioner for Refugees (UNHCR) 2000 figures, at present there are more than 11.7 million refugees and 20-25 million IDPs in the world. Sri Lankan Tamil refugees make up more than 90,800 of these refugees and more than 6,12,500 of the IDPs.

An international refugee regime does exist to deal with the refugee problem. This regime fits into the regime theorist, Stephen Krasner's definition of a regime, as a "set of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations". Principles are "beliefs of facts, causation and rectitude". Norms are "standards of behaviour defined in terms of rights and obligations". Rules are "specific prescriptions or proscriptions for action". Decision-making procedures are "prevailing practices for making and implementing collective choice".¹

The effectiveness of this regime, however, is in question. This study analyses the international refugee regime within Stephen Krasner's framework of analysis. Krasner states that there are three basic approaches in analyzing the impact of regimes as an independent variable intervening between the causes and the outcome (i.e. the problem). The Realist approach holds that national interests of the states dominate the international system and so regimes have no or insignificant impact on outcomes. The Grotian approach holds that regimes are all-pervasive phenomena based on shared values and beliefs and so have an independent impact on all political systems. The modified-structural approach while holding that states are rational, egoistic and utility maximizing actors, also holds that

¹ Krasner, Stephen D., "Structural causes and regime consequences: regimes as intervening variables" in Stephen D. Krasner, ed., *International Regimes* (Ithaca and London: 1983), p. 2.

once established, under conditions of sub-optimality outcomes, regimes do have an independent impact on outcomes.

Krasner also states that as independent variable regimes are acted upon by egoistic self-interest, political power, general and diffuse norms and principles, usages and customs, and knowledge, which contribute to its development. Further Krasner states that changes of the regime in terms of changes in the principles or norms, and changes in the regime in terms of changes in the rules and decision-making procedures can also take place. He says the regimes can weaken when principles, norms, rules and decision-making procedures become less coherent or if actual practice is increasingly inconsistent with the principles, norms, rules and decision-making procedures. In analysing the international refugee regime, within Krasner's regime framework, a case study of Canada, as a host state to Sri Lankan Tamil refugees, was undertaken.

Since 1921 there have been international efforts to solve the refugee problem. Such efforts led to the establishment of UNHCR in 1951. Today UNHCR is the primary organisation dealing with refugees. The international refugee regime also includes a network of other international intergovernmental organisations, national governments, and international, national and local voluntary and non-governmental organizations (NGOs). This regime seeks to provide the refugees with emergency aid, international protection, long term solutions of voluntary repatriation, local integration or resettlement, and for their sustenance in countries of first asylum, in countries of resettlement and in countries of permanent asylum, and in the countries of origin in the case of IDPs and returnees.

In actual practice, however, there have been discrepancies in the treatment meted out to refugees. Such discrepancies and differential treatment have largely been because of Western (host) states' perceived and actual interests in the country of origin and/ or in the country of first asylum of the refugees. The end of Cold War, and with it the diminished Western interests in these countries, has led to worsening of the situation. Now, there is a policy shift in addressing and managing the refugee problem. The shift has been from a focus on 'reactive, exile-oriented and refugee-specific policy' that concentrated on refugees outside their countries of origin to one that is 'proactive, homeland bound and holistic' which concentrates on country of origin and IDPs.

This research seeks to analyse such changes by focusing on Canada and its relation with Sri Lankan Tamil refugees. Canada is to be studied as an international actor in the regime, as a leading donor to UNHCR, as a signatory to the 1951 Convention and 1967 Protocol, as a host state, as a Western state, as a state comprising refugee-related NGOs in it, as a

state with national legislation relating to refugees, and as a state in which the maximum number of applications for asylum come from Sri Lankan Tamil refugees. Canada's laws relating to refugees include the Immigration Act, 1976-77, the Citizenship Act, 1985, the Refugee Reform Act, 1988 (Bill C-55), and the Refugee Deterrence and Detention Act, 1988 (Bill C-84). Canada deals with refugees through the Immigration and Refugee Board (IRB), the Ministry of Citizenship and Immigration Canada (CIC), the Canadian International Development Agency (CIDA), the Department of Foreign Affairs (FA), the Department of Defense (DD), and the Canadian Centre for Human Rights and Democratic Development (CCHRDD). NGOs and ethnic organisations in Canada are also involved with refugees.

Sri Lankan Tamil refugees have been applying for asylum in Canada since early 1980s. In the period 1990-95 Europe received 98,000 and North America 24,000 asylum applications from Sri Lankan Tamil refugees. In North America Canada received ninety six percent of all applications. Country wise Germany received the maximum applications (thirty one percent) followed by Canada (sixteen percent). However the convention recognition rates for Sri Lankan Tamils was highest in Canada (eighty six percent).

Review of Literature

There are different commentaries on the approaches to the refugee problem and to the international refugee regime in terms of the identification of the causes of the problem and suggestions for the resolution of the problem.

Robert F. Gorman as editor of *Refugee Aid and Development: Theory and Practice* holds economic underdevelopment to be the cause of the problem and suggest greater coordination and cooperation among international developmental institutions and refugee organisations as a solution.²

Aristide R. Zolberg, Astri Surkhe and Sergio Aguayo in *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* lay the blame on structural causes resulting from historical processes i.e. on internal and external forces, and on political strife and improvements in transportation and communication. There suggestions are institutional reforms in refugee producing countries, role for external parties in supporting

² Robert F. Gorman, ed., *Refugee Aid and Development: Theory and Practice* (Westport: Greenwood Press, 1993).

policies of moderation within such countries, regional peace systems and politicisation and demystification of refugee policies.³

Michael S. Teitelbaum and Myron Wiener, editors of *Threatened Peoples Threatened Borders: World Immigration and US Policies* hold deteriorating political and economic conditions in refugee producing countries and the direct and indirect impact of western especially US foreign policy to be the causes for the problem. As solutions they suggest creating independent UN peacekeeping and peacemaking forces, providing UNHCR annual appropriations, creating permanent international tribunals, and enhancing independent deterrence and intervention capabilities of the UN.⁴

Gil Loescher in *Beyond Charity: International Cooperation and the Global Refugee Crisis* has traced the development of the international refugee regime and has pointed out its flaws. He has made a comprehensive summation of the causes of the refugee problem. Loescher looks to a stronger UNHCR, concerted strategy by major countries and to the establishment of new institutions for solutions.⁵

Richard A. C. Cort in his article "Resettlement of Refugees: National or International Duty" analyses international responses to the refugee problem. He says that traditional norms, international initiatives and politics influence host countries' refugee policy. Each country then approaches the problem through traditional approach of burden-avoidance, universalist approach of duty towards the refugees- the approach that has led to the establishment of international legal instruments relating to refugees, regionalist approach of tackling the problem within a region, or the causalist approach of blaming the refugee generating countries. Cort emphasises a burden accepting hybrid approach, that takes into account the merits and demerits of all other approaches, as the approach best able to provide solutions.⁶

³ Aristide R. Zolberg, Astri Surkhe, Sergio Aguayo, *Escape From Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989).

⁴ Michael S. Teitelbaum and Myron Wiener, eds., *Threatened People Threatened Borders: World Migration and US Policy* (Delhi: Universal Book Traders, 1997).

⁵ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York, London: Oxford University Press, 1993).

⁶ Richard A. C. Cort, "Resettlement of Refugees: National or International Duty?" *Texas International Law Journal*, vol. 32 (2), Spring 1997, pp. 307-28.

Research Questions

The following questions are posed in the study:

1. Has there been a change in the international refugee regime in the post-Cold War period?
2. Has there been a change in the policies pursued by Canada, a host state, within this regime?
3. To what extent are the Sri Lankan Tamil refugees affected by such policy changes, if any, in Canada?

Hypotheses

The following working hypothesis have guided the study:

1. In the post cold war period there has been a change in the international refugee regime.
2. The change in the international refugee regime has led to the weakening of the regime.
3. Refugee policy changes in host countries are largely responsible for the change in the international refugee regime.
4. Canada's refugee policies have changed and become more stringent and restrictive.
5. Change in Canada's refugee policies has had some negative impact on Sri Lankan Tamil refugees but this impact has not been that great or very adverse.

Methodology

This study is descriptive and analytical. It is based on both primary and secondary data. Secondary data was collected through an extensive review of literature. Primary data was collected through semi-focused interviews of Sri Lankan Tamils in India.

Sources

Sources for secondary data are primary sources such as UNHCR documents, UN documents and national legal Canadian documents dealing with refugee policies, and secondary sources such as books, articles and journals, UN and UNHCR booklets and pamphlets, newspapers, newsletters and websites related to refugees, Canada and Sri Lanka, and the UNHCR CD-ROM. Sources for primary data include interviews with Sri Lankan Tamils in India, especially those with relatives or contacts in Canada.

Chapterisation

Introduction

Chapter 1 *International Refugee Regime: An Analysis.* This chapter will deal with the origin, the development and the present state of the international refugee regime, and its analysis within Krasner's framework for analysing regimes.

Chapter 2 *An Analysis of the International Refugee Regime and the Host States.* This chapter will analyse host states in general and Canada in particular, especially in its relation to Sri Lankan Tamil refugees, within the broader analysis of the international refugee regime.

Chapter 3 *Canada: A Host State in the International Refugee Regime.* This chapter will deal with Canada's position, legislation and record regarding refugees in general.

Chapter 4 *Canada and its Relation with Sri Lankan Tamil Refugees.* This chapter will deal with Canada's treatment of the Sri Lankan Tamil refugees in particular.

Conclusion

Chapter 1

**INTERNATIONAL REFUGEE REGIME:
AN ANALYSIS**

The chapter consists of ten sections. The first section outlines the international relations theory; the second section deals with the international regimes theory; the third describes Stephen Krasner's regime analysis; the fourth locates the international refugee regime within the Modified-Structural Realist approach; the fifth traces the history of the refugee regime; the sixth section elaborates on the phases of development of the regime. The international refugee regime is analysed in the next sections. The seventh section describes the causal factors that led to the creation of the international refugee regime; the eighth section deals with the autonomy of the regime; the ninth describes the nature of the changes in the refugee regime and the nature of the regime at present; and the tenth section analyses the independent impact of the regime on the state behaviour and international outcomes.

The problem of refugees is a worldwide phenomenon from which no nation is able to escape. Refugees originate in many countries because of internal and external causes, and then cross international borders and take refuge in other countries. This has an impact on the political, social and economic environment countries of origin and in host countries. The effort to tackle this global phenomenon has been mainly through humanitarian means involving cooperation among the nations of the world. Such international efforts to combat the ever-increasing refugee crisis constitute the international refugee regime. To study its effectiveness the regime is analysed based on Stephen Krasner's approach to regime analysis to see if it is consistent with the Grotian, the Modified Structural or the Realist approach.

1.1 Theories in International Relation

In international relations theory there are three main traditional paradigms that analyse international politics. These paradigms are based on different perspectives regarding conflict and cooperation among states. The Realist paradigm views states to be the main actors in an international system. States are self-interested, egoistic, utility maximising rational units that behave according to their short-term national interests. While the classical Realists viewed this behaviour to be a result of 'bad' human nature, the neo Realists state that the structure of international system- comprising of functionally

undifferentiated states distinguishable only on the basis of capabilities, and existing in an anarchic environment- leads to the self-help behaviour of the state, that alone can ensure its power and security in such a system. The order or cooperation that exists in the international system is a result of balance of power that results from the narrow self-interest driven state behaviour. The Realists view this nature of international system as permanent and unchangeable.¹

The Liberal paradigm focuses on change in the international system and believes that international law and international organisations can and do exist facilitating the existence of an international system based on cooperation. The Liberals believe that states are rational but not self-interested and egoistic. The classical Liberals believe in the inherent goodness of man, while the neo Liberals rejected idealism and stress on international transactions, interdependence, international institutions etc. as leading to predominance of international law over national politics.²

The Modified-Structural Realists or the International Society theorists reject the extreme positions of both Realism and Liberalism. To them states are the primary actors in international politics but they also recognise the role of international laws and international organisations in international relations though in a subordinate position. These theorists look at the international system as international anarchic society where along with self-interest driven behaviour, international cooperation and interdependence also exists in areas of common interests- where one states action is not dependent on that of another. This approach views both states and individuals as important. And unlike neo Realism and neo Liberalism, this paradigm uses normative elements in its methodology.³

The other traditional paradigm, the International Political Economy deals with the relationship between economics and politics in international relations. The post Positivist paradigms such as Critical Theory, post Modernism, Feminism etc are critical

¹ Robert Jackson and Georg Sorensen, *Introduction to International Relations* (Oxford: Oxford University Press, 1999), pp. 41-45, 51-53, 68-70, 84-89 and Vinay Kumar Malhotra and Alexander A. Sergounin, *Theories and Approaches to International Relations* (New Delhi: Anmol Publication Pvt. Ltd., 1998), pp. 69, 165-9.

² Jackson and Sorensen, *ibid.*, pp. 36-40, 48-50, 108-10, 129-35 and Malhotra and Sergounin, *ibid.*, pp. 3-5, 7-8

³ Jackson and Sorensen, *ibid.*, pp. 53-56, 140-6.

of the traditional approaches. These theories are not state-centric. They emphasise traditional methodology and address issues such as sovereignty, gender, environment etc.⁴

1.2 International Regime Theories

International regimes are viewed through the three traditional paradigms of realism, liberalism and modified-structural realism.⁵ International regimes have been defined as "sets of governing arrangements" that include "network of rules, norms and procedures that regularise behaviour and control its effects" by Robert Keohane and Joseph Nye; as encompassing a mutually coherent set of procedures, rules and norms by Ernst Haas; as rules and institutions in international society by Hedley Bull, where rules are 'general imperative principles which require or authorize prescribed classes of persons or groups to behave in prescribed way', and institutions help secure adherence to rules by formulating, communicating, administering, enforcing, interpreting, legitimating and adopting them; and as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" by Stephen D. Krasner.

The Liberal and Modified-Structural Realist regime theorists have formulated the definitions. The definitions can be broadly classified into firstly those that consider regimes as existing in every substantive issue area (by Donald Puchala, Raymond Hopkins); secondly those that consider them as existing in given areas of international relations (as by Krasner); and thirdly even more narrowly as those that exist as multilateral arrangements among states to regulate national behaviour within particular issue areas (as by Oran Young).⁶

⁴ Ibid., pp. 57-61.

⁵ Stephen D. Krasner, "Structural causes and regime consequences: regimes as intervening variables" in Stephen D. Krasner, ed., *International Regimes* (Ithaca and London: 1983), pp. 5-10. In this article Krasner has summarised the views and works of authors on regimes from the three traditional paradigms of Realism, Liberalism and Modified-Structural Realism. In the book the views of these authors are elaborated in their articles.

⁶ Stephen Haggard and Beth A. Simmons, "Theories of international regimes", in Charles Lipson and Benjamin J. Cohen, eds., *Theory and Structure in International Political Economy: An International Organisation Reader* (Cambridge, Massachusetts and London: The MIT, 1999), pp. 181-83.

The Realist or the Conventional Structuralist paradigm argues that based on their power in an anarchical international system, states pursue their national interests. All interstate relation/ cooperation is based on the state's capability and interests, and involves a limited number of states that act on their own volition or under duress to form such coalitions, cartels or arrangements. To these theorists, national interest is the primary motivation and regimes are epiphenomenal reflecting underlying distribution of power. Change in the basic causal factors- mainly power structure and national interests- directly leads to change in outcomes and behaviour. Thus the impact of regimes as intervening variable between the causal variables and dependent variables- state behaviour and international outcomes- is minimal and trivial. This view is held by Susan Strange.⁷

The Liberal or the Grotion approach discounts strategic calculations or utilitarian functionalism. It states that shared values and beliefs are the basis of regime creation and persistence. To these theorists regimes are all pervasive affecting all political behaviour. They emphasise the role of elite, and transnational communication network of rules, norms and principles that as regularised social practice acquire normative significance and then constrain self-interested behaviour. The elite is the real actor, and states are only rarified abstractions. The role of power is downplayed and regimes are considered to have an impact on all political systems. This view is held by Raymond Hopkins, Donald Puchala and Oran Young.⁸

The Modified-Structural Realists approach adheres to the Realist perspective about the nature of states. But it also holds that this very nature of states leads to the establishment of regimes in specific areas where the absence of cooperation leads to sub-optimal or undesirable outcomes. These theorists view regimes as originating as a result of state power in its benevolent, or in its coercive or exploitative forms. However once established regimes gain independence from causal variables that led to its creation, and then constrain state behaviour. In zero-sum situations the independent impact of regimes

⁷ Susan Strange, "Conclusions, con and pro" in Krasner, *ibid.*, pp. 337-54.

⁸ Donald J. Puchala and Raymond F. Hopkins, "International regimes: lessons from inductive analysis" in *ibid.*, pp. 61-91 and Oran R. Young, "Regime dynamics: the rise and fall of international regimes" *ibid.*, pp. 93-140.

as intervening variable does not exist. This view is held by Robert Keohane, Arthur Stein, Robert Jervis, John Gerard Ruggie, Charles Lipson and Benjamin Cohen.⁹

Principles and norms distinguish regimes from other forms of cooperation in the international system. Regimes embody some sense of general obligation in the utility function they maximise. It constrains self-interested state behaviour. A regime not a temporary arrangement that changes with every shift in power or interest, especially of powerful states. It is not based on short-term interests.¹⁰

1.3 Krasners Analysis of International Regimes

Krasner is a Modified-Structural Realist.¹¹ His definition of regimes is considered the most comprehensive definition. He has defined regimes as “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations”. Principles are “beliefs of facts, causation and rectitude”. Norms are “standards of behaviour defined in terms of rights and obligations”. Rules are “specific prescriptions or proscriptions for action”. Decision-making procedures are “prevailing practices for making and implementing collective choice”.¹² In his definition principles are "beliefs of facts, causation and rectitude". Norms are "standards of behaviour defined in terms of rights and obligations". Rules are "specific prescriptions or proscription for action". Decision-making procedures are "prevailing practices for making and implementing collective choice".

Krasner has analysed regime creation, persistence and dissipation.¹³ While he takes a conventional realist perspective on the nature of sovereign states, he does not view international relation to be always zero-sum: in some areas the objectives sought by states

⁹ Robert O. Keohane, "The demand for International Regimes" *ibid.*, pp. 141-71 and Arthur A. Stein, "Coordination and collaboration: regimes in an anarchic world" in *ibid.*, pp. 115-40.

¹⁰ Krasner, *op.cit.*, pp. 2-3.

¹¹ *Ibid.*, p. 2. Krasner's analysis of regime creation, persistence and dissipation has been elaborated on based on this article. Where other articles have been used the sources have been duly acknowledged.

¹² Krasner, Stephen D., "Structural causes and regime consequences: regimes as intervening variables" in Stephen D. Krasner, ed., *International Regimes* (Ithaca and London: 1983), p. 2.

¹³ *Ibid.*, pp. 1-21.

are unaffected by the utilities achieved by other actors. In such situations utility maximisation interest of states induces cooperation between states.

Krasner states that in its origin and even in its development the regime is a dependent variable. The causal variables as classified by Krasner are firstly egoistic self- interest i.e. the states' desire to maximise their utility function where that function does not include the utility of another party. Two circumstances, under which unconstrained individual choice provides incentive for cooperation, are firstly when such choice leads to pareto-optimal outcomes (Prisoner's dilemma and the provision of collective goods): a circumstance that requires collaboration i.e. "the active construction of a regime to guide individual decision making"; and the secondly where unconstrained individual decision making leads to mutually undesired outcomes and where choice of one actor is contingent on the choice made by the other (Game of chicken) requiring coordination that need not be formalised or institutionalized.¹⁴

The second major causal variable is political power that may be either power in the service of common good i.e. good of all from the selfishness of each; or the power in the service of particular interest. The first power component is cosmopolitan and instrumental, since power is used to secure optimal outcomes for the system as a whole i.e. to promote joint maximization. The second power component is pluralistic and potentially consummatory with power being used to enhance the values of specific actors within the system.

Within the second power component there are two viewpoints. The first is that pay-offs are fixed and actors' choice of strategy is autonomously determined solely by these pay-offs: to maximise individual (and not joint) pay-offs through distribution of power and the critical role of hegemony in supplying collective function effectively, to enhance their own national values. The second viewpoint is that powerful actors may be able to alter pay-offs of other actors and influence their choice of strategies. Here power is a more central concept, as there is the notion of what Oran Young calls imposed regimes, through a combination of sanctions and incentives.

¹⁴ The two circumstances are as elaborated by Stein, *op.cit.*, pp. 120-32.

General and diffuse norms and principles are also causal variables. In the international system a hierarchy of regimes exist and within this system the superstructures are the general and diffuse norms and principles that condition norms and principles in other specific issue-areas.¹⁵ Sovereignty is the most important and constitutive superstructure in international relations.¹⁶

The other causal variables are supplementary and reinforcing in nature. These are usages and customs, and knowledge. Usages are 'patterns of behavior based on actual practice' while 'customs are 'long-standing practices'. These accompanied by shared expectations, and then infused with normative significance become rule-like and assume legitimacy.

Knowledge is the 'sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal'. It enhances prospects for convergent state behaviour by illuminating complex interconnections not previously understood. It also transcends prevailing lines of ideological cleavages.

According to Krasner, the most prominent of these causal variables are the exogenous variables of egoistic self-interest and power. In addition general and diffuse values and norms may condition behaviour within specific issue-areas. Finally, usages and customs may contribute to the development of regimes.

About regime persistence, Krasner says once regimes originate they tend to create inertia in their favour. They have an impact on international outcomes, state behaviours and even on the causal variables- independent of the causal variables that led to its creation. He says regimes thus are intervening variables. He states that "there need not always be congruity between power distributions and related behavior and outcomes" though "ultimately state power and interest condition both regime structure and related behaviour but there may be wide area of leeway".¹⁷

¹⁵ The concept of superstructure is given by Puchala and Hopkins, *op.cit.*, pp. 64-65. They state that the normative superstructures are reflected in 'functionally or geographically specific normative structures or regimes'.

¹⁶ Hedley Bull, "The Anarchical Society", pp. 8-9, 70, as quoted in Krasner, *op.cit.*, pp. 17-18. According to Bull sovereignty is the concept of exclusive control within a delimited geographical area and untrammled right to self-help internationally' (in Krasner's words).

¹⁷ Krasner, "Regimes and limits of realism: regimes as autonomous variables" in *Krasner, op.cit.*, pp. 357.

Krasner states that regime autonomy, in terms of lags lead to regimes acting as intervening variables affecting behavior and outcomes, and in terms of feedback leads to regimes acting as interactive variable altering the basic causal variables themselves.¹⁸ Lag are “situation in which the relationship between causal variables and regimes become attenuated” so that regimes have an independent exogenous impact on behaviour and outcomes irrespective of changes in power structure and/ or interests. Feedbacks are “processes by which established regimes alter power and interests”.

The significance of lags depends upon their duration. Lags may arise, firstly because of customs and usages that provide support for well established regimes: since states do not constantly reassess their interests vis-a-vis existing regimes; secondly because of uncertainty about: the durability of environmental change, the predictions about the consequences of any new regime, and the prospects for securing acceptance for a new regime in terms of both normative and cognitive legitimation; and thirdly because of cognitive failing when dissatisfied actors are unable to formulate an alternative cognitive framework because of lack of "consensual knowledge".

Feedback become significant only after a regime has been created. There are four feedback mechanisms. The first mechanism is when regimes alter actors' calculation of how to maximise their interests, by changing incentives and opportunities. In other words, after a regime is in place, actor behaviour changes even when interests remain same- because of sunk costs and informational advantages that the extant regime presents.

The second mechanism is when regimes alter the causal interests by increasing transactional flows, which in turn increases opportunity costs of change by facilitating knowledge and understanding so that information disseminated by existing regime structure also brings in new perceptions of interest (which in turn may lead to change in or between regimes), and by creating property rights (the constitutive principle of the international economic system) since regimes that establish property rights create new interest.

¹⁸ Ibid., pp. 359-67.

The third feedback mechanism is when actors with limited national capabilities of states use regimes. When regimes facilitate particular pattern of behaviour it strengthens or weakens the resource of particular actors and becomes a source of power. The ability of the less powerful states to influence behaviour is enhanced as lag develops over time. Regimes also have an impact on specific groups within states by either reinforcing or undermining their position, and thereby altering the power of actors within the state.

The fourth feedback mechanism is when regimes alter the underlying power capabilities of states. By facilitating particular pattern of behaviour the regime strengthens or weakens the resources of particular actors.

Regime dissipation is a function of the changes that take place in a regime. A change of the regime occurs only when its principles and norms change. Changes in (within) the regime occur when there are changes in its rules and decision-making procedures. Regimes weaken when principles, norms, rules and decision-making procedures of a regime become less coherent or if actual practice is increasingly inconsistent with these components of the regime.¹⁹

Krasner says that periodisation and uneven rates of change are important in regime analysis. Regime creation usually occurs at the conclusion of times of fundamental discontinuity in the international system such as at the conclusion of major wars. At this stage lag is minimal. Over time the lag grows. Once a regime is established, in general principles and norms are very durable. However adjustments involving alterations of rules and decisions takes place over time. This leads to evolutionary change in the regime. However, changes in power distribution are more dynamic. So when incongruities between rate of change in power distribution and regimes become very severe, there is likely to be revolutionary change since those with the greatest power capabilities will move to change underlying principles and norms.²⁰

¹⁹ Krasner, "Structural causes and regime consequences: regimes as intervening variables" *ibid.*, pp. 3-5.

²⁰ Krasner, "Regimes and limits of realism: regimes as autonomous variables", *ibid.*, p. 357.

1.4 The International Refugee Regime

An international refugee regime exists in terms of principles, norms rules and decision-making procedures around which actors' expectations converge in the area of global refugee problem.

Principles that underlie international cooperation among nations and other actors in dealing with the refugee problem include acceptance of the fact that refugees are a unique category of human rights victims who need special protection and assistance; and that the global refugee problem affects the countries that receive (host nations) as well as those that produce (countries of origin) refugees.

Global refugee problem is largely a twentieth century phenomenon that until 1950s was largely European in nature. Today most of the world's refugee populations are to be found in the poorest countries. There is widespread acknowledgment that this problem is growing with seemingly no end in sight. There is also the recognition that such a problem poses a major humanitarian and political challenge.

The causes of the refugee problem are wars and persecution, civil wars, colonial legacy in Third World countries, emergence of refugee warriors, separatist movements, Super Power interventions and support for freedom fighter, "push and pull factors"- the positive pull factor being higher standards of living, jobs, freer communities etc. in developed countries, and the negative push factor being conflicts, political instability, social inequalities, poor economic opportunities etc. in developing countries-, refugee policies in Europe and the US, political uses of refugees and their symbolic uses.²¹ Of these causes wars and persecution, and civil wars are recognised as the major cause for the refugee movements.

The rectitude to such a problem is one of humanitarian concern and global response in providing humanitarian aid to the refugees, and in efforts to combat the causes of the problems.

²¹ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York, Oxford: 1993), pp. 12-23.

The principles of non-discrimination i.e. equal treatment of all refugees, of non-refoulement i.e. not repatriating refugees to countries where they are unable or unwilling to return to, and of freedom to practice their own religion and to access courts are the fundamental principles of the international refugee regime.²²

The prevailing norms are the rights given in the 1948 Universal Declaration of Human Rights under Article 13 which includes freedom of movement within and between countries and Article 14 which includes the right to seek and be granted asylum from genuine persecution.²³ The refugees have a right to international protection, primarily protection against forced repatriation.

The UNHCR, other United Nations agencies and bodies, regional organisations, local, national and international NGOs, and national governments as actors in the international refugee regime are obliged to provide the refugees with emergency aid, material assistance in their countries of origin (for the idps and the returnees) and in countries of first asylum and in countries of resettlement countries, and to provide permanent solutions of voluntary repatriation, local integration or resettlement.

The provisions of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees are to be implemented without discrimination based on race, religion, or country of origin (article 3 of the 1951 convention). The states are also obliged to exempt the refugees from the notion of reciprocity (in how countries treat aliens according to how alien countries treat their nationals), to cooperate with UNHCR, and to communicate information on national legislation regarding refugees to the Secretary General of the UN (article 35 of the 1951 Convention and article II of the 1967 Protocol).²⁴ The obligations of the refugees are to conform to the existing laws and regulations, and to measures taken by the authorities for the maintenance of public order (article 2 of the 1951 Convention).²⁵

²² UNHCR, *Information Package: On the Accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva: January 1999), pp. 14-15.

²³ United Nations, *Universal Declaration of Human Rights* (New York: 1988), p. 9.

²⁴ UNHCR, *op.cit.*, pp. 14-16.

²⁵ *Ibid.*, pp. 17-18.

The most important international legal instruments applicable to refugees are those given under the 1950 statute of the Office of UNHCR, the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.²⁶ Other instruments pertaining to nationality, statelessness, asylum and refugees are the Convention on the Nationalities of Married Women, the Convention on the Reduction of Statelessness, the Convention relating to the status of Stateless Persons, the Declaration of Territorial Asylum, and the Declaration on the Human Right of Individuals Who are not Nationals of the Country in which They Live.²⁷

Other legal instruments of relevance include the 1966 International Convention of Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 Protocol Concerning Treatment of Refugees adopted by the Asian-African Legal Consultative Committee, the 1981 Convention on Elimination of all Forms of Discrimination Against Women, the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Optional Protocol to the International Covenant on Civil and Political Rights, Convention on Prevention and Punishment of the Crime of Genocide, International Covenant on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child etc.²⁸

Important regional legal instruments are the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration.²⁹ Most states also have national legislations on aliens while some states have specific legislations regarding immigrants and refugees.

Decision making procedures involved in the international efforts to solve the refugee problem start with the identification of a refugee: who is defined by the UNHCR Statute as “any person who, owing to well founded fear of being persecuted for reasons of race,

²⁶ Ibid., p. 16.

²⁷ Centre for Human Rights, *Human Rights: a Compilation of International Instruments: Vol. I (Part II): Regional Instruments*, New York: 1993, pp. 607-64.

²⁸ UNHCR, *Basic International Legal Documents on Refugees*, New Delhi, 1998) and Centre for Human Rights, *Human Rights: a Compilation of International Instruments: Vol. I (Part I): Universal Instruments*, New York: 1993, pp. 60-65.

²⁹ Centre for Human Rights, *Human Rights: a Compilation of International Instruments: Vol. II: Regional Instruments*, New York: 1993.

religion, nationality, membership of a particular social group or public opinion is outside the country of his nationality and is unable or, owing to such fears or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country". The 1969 OAU Convention on refugees expanded the definition of refugees to include the persons "who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either parts or whole of his country of origin or nationality" have fled their country, the 1984 Cartagena Convention further provides for the inclusion victims human rights abuse in this definition.³⁰ As a result now definition of refugee includes victims of persecution, refugees fleeing natural disasters, violence and war, civil disturbances or political and economic turmoil irrespective of whether or not they have a well-founded fear of persecution. Persons who have been granted humanitarian status and/or temporary protection by national governments are also recognized as refugees.

People of concern to UNHCR, at present, include returnees to their place of origin, asylum seekers, certain specific groups like certain nationals of the former USSR whose nationality is undetermined and the idps displaced within their own countries for reasons similar to those that produce refugees. The decision makers take note of those who are recognized as refugees and decide on measures such as emergency aid and provision of long-term solutions available to the refugees, while protecting the refugees right to non-refoulment. The decision-making has to be in favor of the refugees' right to asylum, and against non-refoulment. It has to protect against the refugees' "rejection at the frontier". It has to emphasise burden sharing of the refugee problem, provide the refugees with judicial help, gainful employment and welfare and take care of administrative matters like travel papers etc. It should not ignore the duty of the refugees too.

Thus an international regime, as a set of implicit or explicit principle norms, rules and decision making process exists in the area of refugees related to the situation of people compelled to leave their permanent places of residence who cannot avail themselves anymore of the national protection of their country, and who thus are in the need of international protection and assistance by other governments, institutions and individuals.

³⁰ Ibid.

1.5 History of the Refugee Regime

Though refugees have always existed, until the beginning of the twentieth century they were largely victims of religious and political upheavals or persecution, and were able to repatriate to their places of origin or find asylum.³¹ The present day refugees, however, arise due to various and complex causes. They are large in numbers and face a bleak future. For them repatriation to their countries of origin, local integration in countries of first asylum or resettlement in third countries is not always possible. Their problem thus requires international cooperation and effort.

After First World War there were large displacements of people as a result of the war, the Russian revolution, the collapse of the Ottoman Empire and the ensuing political and social upheaval. The problem could not be adequately addressed because of the limited capacity of individual government, voluntary organisations and individuals. The refugee movements thus became a source of interstate tension.

In the Western states immigration controls had already been in place in the late nineteenth and early twentieth century. The refugees were subject to increasing government controls (protective barriers and closed borders) that restricted international travel. The result was misery for the refugees (especially the Russians), and friction between European states that violated territorial sovereignty when they pushed refugees across borders. Refugee movements also significantly affected the domestic politics and local economies of host nations, and they aggravated bilateral relations between the sending and receiving states. When the resources of voluntary agencies dealing with the refugees became exhausted, these humanitarian organizations, especially the International Council of Red Cross prevailed upon the League of Nations (the League) to create international machinery to deal with at least some of the refugees.³²

The refugee regime arose as a result of the real and perceived threats to national security of the host nations by the refugee influx from other countries. Mass influxes of refugees endanger social and economic security particularly in countries that are economically underdeveloped, have unstable political systems, and comprise ethnic or social cleavages.

³¹ Loescher, *op.cit.*, pp. 33-34.

³² *Ibid.*, p. 34. The history of the international refugee regime has been summarised from this book.

Refugees have also been the cause of political and military interstate conflict when used as pawns by states, and when they are actively involved in sub-nationalistic activities against their country of origin. Thus the international response to refugees has been mainly a function of security concerns and absorptive capacity.³³

The international efforts to address the refugee problem date from the time of the League. In 1921 the League appointed Nansen Fridjof as the first High Commissioner for Refugees, with specific responsibilities for Russian refugees only, be the League of Nations. Through Fridjof's initiative the number of activities and the functions of the office of the High Commissioner expanded. Governments and voluntary agencies (under the auspices of the League) also assisted financially in the resettlement, employment and in efforts to make financially self-sufficient Greek, Bulgarian, and Armenian refugees.

In 1930, with the death of Nansen, duties involving protection of refugees were placed under the control of the League Secretariat, while responsibility for administering the remaining limited assistance program was transferred to the International Nansen Office. To deal with Jewish refugees following Hitler's accession to power in Germany, in 1933 the League established the High Commissioner for Refugees from Germany, outside the formal structure of the League. The same year, after Germany quit the League the two offices were consolidated into the High Commissioner for Refugees, with very limited powers. This functioned till 1946.

In 1938, the US took interest in the resettlement of Jews and called for an international conference, at Evian, France. It led to the creation of the Intergovernmental Committee for Refugees (IGCR), created outside the League, to negotiate with Germany about Jewish migration. The Commission existed till 1946 alongside the Office of the High Commissioner, with the two staffs sharing common facilities. In 1943, the US and Great Britain had called for another international conference in Bermuda to deal with Jews, but nothing concrete came out of it.³⁴

At the end of the Second World War, millions became displaced, including those displaced by the war, those who returned to their countries of origin, and those displaced

³³ Ibid., p. 36.

³⁴ Ibid., pp. 37-38, 42-45.

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due to postwar conflicts and political changes in Eastern and Southern Europe. Germany absorbed most of this population. But Western European States, particularly Germany, were devastated by the war and the minimal physical infrastructure of these states and the Allied military authorities in the area was strained. Many private voluntary refugee agencies and inter-governmental agencies, however, sprung up to assist the displaced persons (DPs).

In November, 1943 the Western Powers helped set up the United Nations Relief and Rehabilitation Agency (UNRRA) to provide immediate relief to the DPs when the anticipated anti-axis counter offensive and liberation of Europe occurred. From 1944 to 1945 UNRRA provided temporary emergency assistance to the DPs that fell into allied hands. However the Agency was not strictly a refugee agency. It aided all DPs including the refugees. Its main goal was to promote and oversee repatriation. Behind such efforts was the assumption that the refugees sought voluntarily to repatriate and to get rehabilitated in their countries of origin. So UNRRA did not regard individual wishes in its repatriation program. But later the West realised that the fears of many in the camps in Europe who refused to return home were genuine, repatriation almost halted by 1946. This created a relief and security problem for UNRRA.

The US, the main funder of the UNRRA, became critical of its operations, particularly its repatriation policies and rehabilitation program in Eastern Europe. In 1947 the US replaced UNRRA with the International Refugee Organisation (IRO). IRO's chief function was resettlement of refugees and the DPs uprooted by the Second World War and its aftermath. After 1948 IRO's program was expanded to include escapees from Eastern European Communist countries. IRO was largely successful in resetting the refugees. But the refugee problem concerning those who remained in camps and inflow of new refugees remained. At the same time the resettlement opportunities available to the refugees became less.³⁵

In 1951, the UNHCR was set up as a temporary body within the UN to provide protection and assistance to refugees. The US also provided the UN with large funding to set up the United Nations Relief for Palestine Refugees, soon replaced by United Nations Relief

³⁵ Ibid., pp. 46-50.

and Works Agency for Palestine (UNRWA) whose mandate was to only provide aid to Palestine Refugees. The Palestinians were excluded from the competence of the UNHCR. The UN supported by the US also set up the United Nation Korean Reconstruction Agency (UNKRA) that provided a limited service to those displaced in the Korean war and assisted Korea in relocating the refugees from North Korea and the returnees from Japan. UNKRA too tackled a specific refugee issue outside UNHCR's mandate.³⁶

The US set up Intergovernmental Committee for European Migration (ICEM) 1951. In 1952 it set up the United States Escapee Program (USEP) to resettle communist block refugees/escapees.³⁷

Only after UNHCR's handling of the Hungarian refugee crisis of 1956, did the US and the Eastern bloc cooperated in the international refugee regime. All major and minor powers then started supporting international efforts to tackle the refugee problem and recognized UNHCR's role as the primary organization to provide assistance to refugees. Since 1956, an international refugee regime comprising of primarily the UNHCR, and the ICRC, the United Nations Children Fund (UNICEF), the UNRWA for helping Palestinian refugees who fall outside the mandate of he UNHCR, the International Organisation for Migration (IOM) exists. The international refugee regime also comprises a large network of international, national and local NGOs and voluntary organizations (many of which are the implementing partners for UNHCR). State governments as members of international organizations, regional organisations and NGOs, and in their individual capacity are part of the international refugee regime.³⁸

1.6 Phases in the Development of the International Refugee Regime

The development of the international refugee regime can be divided into six phases. These phases are: the post World War II period till 1951, the period between setting up of UNHCR to the 1956 Hungarian Revolution, the period between 1956 to early 1980s, the

³⁶ Ibid., pp. 61-62.

³⁷ Ibid., pp. 62-63.

³⁸ Ibid., pp. 66-71.

period from early 1980s to the end of Cold War and the period from post Cold War until now.³⁹

In the first phase, the international efforts to address the refugee problem were not consistent and varied according to the nationality of the refugees and over time. In the 1920s the High commissioner's Office was temporary. It had a limited mandate to deal only with the Russian refugees (lack of universal definition of refugee's) and was dependent on donor countries for the material assistance it provided to the refugees. The activities of the Office expanded when Fridtjof provided assistance and services to nationalities other than Russians, and provided the refugees with "Nansen passport" i.e. travel documents.

The efforts of the High Commissioner, however, were only partially successful since the right to grant or deny asylum remained the prerogative of sovereign states and even those states that granted asylum did not acknowledge any legal obligation to do so.

Foreign policy interests of the Great Powers (Great Britain and France) and other minor European states- the main source of funding to the Office- ensured that these states were likely to aid those fleeing enemy states and the less powerful states. The assistance thus provided to the refugees from Soviet Union, an enemy state, were opposed to by the USSR. USSR also opposed to the High Commissioner's Office, dismissing it as the creation of the Western powers. International cooperation on the refugee issue, thus, became impossible.

In the 1930's when the refugees were fleeing fascism in Italy, Spain and Portugal, the refugees again faced restrictions: on immigration (including exit controls like those existing in the USSR), of financial support for humanitarian initiatives, and of nations faced with the Great Depression insisting on employing its own citizens. Restrictionism was the way in which most nations tried to preserve their self-interests.

The successive international organisations, including the IGCR, faced similar problems of limited mandate, of being a temporary body, and of financial constraints. These offices

³⁹ These phases represent different stages in the development of the international refugee regime. Each phase is set in a particular political context within which different refugee policies were pursued. The history of the international refugee regimes highlighting the state interests, the working of the regime and the shifts in policies have been summarised from chapters two, three and four of *Ibid.*, pp. 32-92.

worked in a politicised atmosphere where security and foreign policy interests dominated humanitarian concerns in government policies towards refugees. Restrictionism and the desire to protect the sovereign states right to exclude or deport aliens grew, and the coordination between political bodies and humanitarian agencies was not sufficient. Governments did not adopt a universal definition for “refugees” since they feared this would lead to the recognition of political dissent in all states, including in the Great Powers. Political conditions in Europe also worsened. The regime thus became ineffective. The Jewish refugees suffered the most because of such policies.

However, twenty years of organisational growth and interstate collaboration had firmly established the idea that refugees needed international protection and assistance. The first international cooperative efforts on behalf of refugees, and the establishment and evolution of international refugee agencies of this period provided the foundations for successor institutions to build on.

In the second phase, the international efforts had limited mandate, and remained temporary. The funding especially by the US for UNRRA and later for IRO was to help Europe in its reconstruction after the devastation of the world war. UNRRA’s efforts at repatriating DPs and helping them in rehabilitation in their countries of origin slowed when Western Powers realized that many returnees, mostly those from Eastern Bloc were unwilling to return. This issue became the focus of political and ideological contest between the US and the USSR during the height of the Cold War. The US resisted moves to repatriate on grounds that it took away the individual’s freedom and right to choice, while the USSR sought to promote repatriation to prevent negative publicity of its domestic policies.

In 1947, the US set up the IRO in UNRRA’s place. Eastern Bloc opposed the IRO since the Bloc preferred repatriation to resettlement, and since programs of repatriation also provided the Eastern Bloc with economic aid. In this political context the concept of refugees changed from the one prevalent in 1920s i.e. from who persons who could not return home because of the unwillingness of governments to take them back, so the refugees were unwilling to go back even though governments wanted them back.

The Western Bloc also prevailed to broaden the definition of refugee to make it a universal and general definition. Individuals who had “valid objections” to repatriation on the basis “persecution, or fear, based on reasonable grounds, of persecution because of race, religion, nationality or political opinion” and objections “of a political nature, judged by the organisation to be valid” were to be regarded as refugees. Concessions to the Eastern Bloc was made by stressing on efforts to repatriate as early as possible the refugees and DPS and by providing “traitors, quislings and war criminals” with international assistance. But the USSR remained discontented with the organisation. In the atmosphere political and ideological divide the US backed IRO did practice a polity that promoted the use of refugees as symbols in the Cold War: to embarrass the USSR. This induced ideological content into IRO. The foreign policy concerns such as anti-communism and the need to restore stability in Western Europe prevailed. As a result besides Western Europe, the US, Canada, Australia and other overseas countries started accepting the DPs.

Though the IRO resettled majority of the refugees within its first year of operation, there still remained in the camps those who were selectively discriminated against (Jews by Chile, Argentine and Brazil, the sick, the handicapped and the elderly). There were also new refugee movements in the wake of heightening of the Cold War from East to West. Thus a temporary problem became permanent especially since Europe was not able to absorb more refugees. The international community especially the US faced ‘compassion fatigue’ as the scale and cost of dealing with the refugee problem increased. The US also did not want the problem to become the sole responsibility of the overseas resettlement countries, especially the US. Thus the US policy shifted from resettlement of refugees to providing for rebuilding of Europe so that Europe could absorb the refugees. The remaining refugees were considered to constitute a temporary problem that the smaller agencies could deal with.

The US concentrated on tackling the refugee problem through bilateral, regional and international arrangements outside the UN to serve its national interests. The effectiveness and the impartial working of the international refugee regime was thus negligible.

In the third phase, in 1951 the UN General Assembly set up the UNHCR at a time when there was no significant international cooperation between East and West. States wanted to protect against threats to their national sovereignty and to avoid new legal and financial obligations. Thus to suit Western Powers, the 1951 Convention restricted international obligation of refugees who arose as a result of the Second World War and prior to 1951: emphasising a narrow definition of refugee on the basis of geographical and temporal factors.

The US pursued its own independent policy of resettlement and the USSR was opposed to any international effort that did not include repatriation. The US however was largely successful in imposing limits on UNHCR's functions, and in making it dependent on the General Assembly approval for appeals for voluntary contribution. Thus initially UNHCR's role was reduced to that of the first High Commissioner.

Where US interest could be served, the US provided support to non-European refugees as well, through UNRWA and UNKRA to stabilise strategically important areas against the spread of communism. The US did not face demands for resettlement from these regions. Other large-scale refugee movements did not generate much international response and were met with indifference from the US and Western Powers. Such problems were considered to be national problems of the affected states.

The US opposition to UNHCR was because it did not consider the UN as the best forum to promote its interests, its own candidate had not been elected the High Commissioner, and because they felt that the High Commissioner Van Heuven Goedhard was too independent-minded. Western Europe did support the UNHCR, but the organization was largely sidelined because Europe did not want to commit itself financially, and its population feared competition for jobs and services from the refugees and the DPs. The USSR claimed that the US and the UNHCR were working to exploit the refugee problem for political, economic and military purposes and so had nothing to do with the UNHCR.

The American opposition to the UNHCR had a negative impact on the willingness of major voluntary agencies, (many of them American) to cooperate with UNHCR. Most agencies willingly utilised the US government funds and implemented programs that largely served US interests. The UNHCR as a result turned the private sector for help

and in 1952 Ford Foundation helped the UNHCR through its monetary contribution. Thus UNHCR's activities were severely restricted and the organization had a minimal impact until 1956.

In the fourth phase, for the first time, in 1954, the UNHCR benefited from the East-West ideological struggle. The USSR had started a 'Soviet redefection campaign' and followed a generous policy towards returnees to the Eastern Europe, to entice the escapees. To counter the Soviet move and to promote its own escapee program, the US funded and supported the UNHCR's United Nations United Nations Refugee Fund (UNRF)- to help the DPs in Europe in their resettlement- and thus promoted liberal asylum policies. The US however ensured that the financial burden would be spread out and that some degree of international control existed over the use of the funds. It remained the main donor and the most powerful member of UNRF's Executive Committee. The US decision to cooperate with UNHCR encouraged other states to do likewise. The successful establishment of UNRF represented the first major international recognition of the centrality and importance of the UNHCR in solving the refugee problem.

In this period Third World came to dominate the UN General Assembly. They recognised the UNHCR as being a potentially useful body in addressing their own refugee problems. The USSR supported the third world countries, and for the first time in 1955 it abstained and not opposed a vote to extend UNHCR's activities which resulted in the resolution getting passed without opposition.

UNHCR's credibility increased with its effective and swift handling of the refugee crisis that arose following the 1956 Hungarian Revolution. It demonstrated that it was the only international agency capable of handling large-scale international undertaking for solving the refugee problem. The international responsiveness was largely a result of anticommunist sentiment in the West, personal qualification of the Hungarians (young, skilled and educated), and favourable economic conditions in countries of resettlement. The High Commissioner, Lindt using diplomacy, made the UNHCR, for the first time, directly useful to a Communist state when it undertook the first successful repatriation program to an Eastern European country. So finally UNHCR got international acceptance

and recognition. [All Hungarians *prima facie* were considered by the UNHCR as refugees since individual identification was impossible.]

In addition to the East-West refugee movement the UNHCR also faced South-North refugee movement in the late 1950s. These refugee problems were unlike those in Europe earlier. They were a result of conflicts in which one or more Western Powers were involved. These refugees were also not covered in the 1951 convention. To tackle the refugee problems of the South, the General Assembly granted authority to the High Commissioner to deal with them. For the next two decades the UN turned to the UNHCR whenever its service was required to deal new and different groups of refugees and DPs.

The High Commissioner was first authorised to use his “good offices” by the General Assembly to deal with the Chinese refugees in Algeria in Hong Kong (and later in Algeria). This set a precedent that led to expansion of the High Commissioner's authority to assist refugees in the developing countries. A series of General Assembly resolutions also enabled the expansion of the UNHCR's authority. The High Commissioner was freed from depending on the General Assembly approval to seek voluntary contribution, he was given authority to finance and coordinate permanent solutions to all refugees under his mandate on a continuous basis, and a new emergency fund was established.

In 1959, for the first time the UNHCR distinguished between refugees falling within the UNHCR mandate and those who did not. The instrument of 'good offices' was used to assist those refugees who were outside the UNHCR's mandate, and in avoiding undesirable political consequences of making refugee determination in the Third World that might damage relations with some principal Western supporters of the international refugee regime. The international action however was confined to emergency relief and material assistance only, and not extended to providing of long-term solution to the Third World refugees. The Refugee Fund Executive Committee was replaced by a larger body, the Executive Committee (EXCOM) that advised and provided direction to the agency's annual programs. With this UNHCR gained greater prominence.

In 1965 the distinction between mandate refugees and ‘good office’ refugee was removed when the General Assembly requested the High Commissioner to provide protection and permanent solution to all groups within his competence. In 1967, the Protocol was

quickly adopted and ratified by a large number of government so that the UNHCR had a universal mandate. The UNHCR's interest in the Protocol's rapid adoption was also in part spurred by OAU's efforts at drafting its own refugee convention that the UNHCR feared might supersede or compete with the 1951 Convention.

At this time Western governments were not facing any major resettlement demands. Until the 1973 oil crisis, these countries also experienced an economic boom and felt a need for cheap labour. The Third World refugees thus could be absorbed by the Western powers as immigrants too. However, these governments continued to narrowly define refugees on the basis of the UNHCR Statute and the 1951 Convention.

In the 1960s and 1970s Third World refugees (except those from Indochina and Southern Cone of Latin America) remained in their regions of origin, either returning home or being given long-term asylum in neighbouring countries. In most cases the poor host nations supported to the refugees in their territory, but were in need of external assistance from Western countries, which continued to determine international refugee policy and action through their control of UNHCR. The new refugees (except the Cubans and the Vietnamese) were not seen as serving the political or ideological interest of the US or the Western Powers. So overseas resettlement was not a major issue. Besides most of these refugees did not want to resettle overseas. Thus the refugee policy during the 1960s was emergency assistance and in 1970s was repatriation, and in cases where it was necessary and possible of local integration and in host nations.

During the 1960s and 1970s the UNHCR saw sustained growth in its acceptance, functions, operations and geographic reach. However, humanitarian assistance became its primary consideration and protection became secondary.

In the fifth phase, major and minor powers became directly or indirectly involved in local and regional conflicts. The refugee population that arose as a result of these conflicts came to serve the strategic and political interests of the west, particularly of the US: in legitimising resistance movements in Communist states. The humanitarian support for refugees coincided with the objectives of the West.

During the 1980s, however the Western Powers and the Third World countries were in conflict as the western donors states were unwilling to negotiate with the refuge

producing states that were its political and strategic enemies. So in the absence of political negotiations, voluntary repatriation programs became difficult to implement and the burden of the refugee problem fell on neighbouring host states or on host nations overseas. But permanent local integration was not easy because of the sheer number of refugees, and the political and security implications of hosting refugees from adjoining countries. Overseas resettlement too did not take place except for the Vietnamese refugees.

In the 1980s the refugee problem was politicized and this precluded any easy solution to the problem. The inadequacy of the prevailing international refugee regime became apparent only in the 1980s when there was a demand for political asylum in industrialized countries by the Third World countries.

In the sixth phase, with the end of the Cold War, there was optimism that refugee flow would stop and that repatriation could take place. However a new refugee crisis arose following national disintegration, ethnic and communal fragmentation all over the world. The present day conflicts are different in nature in which mediation is not always easy. In 1990s, internal wars have also used denial of international aid to the affected people, as a weapon. Political issues and questions such as how to prevent refugee movement, how to assist IDPs when governments opposed international intervention, how to determine the appropriate long-term solution for the refugees, have remained unanswered in this context.

Refugees now face increased international efforts at preventing them from crossing borders. They also face bleak prospects of repatriation (i.e. the refugees and the IDPs), and of local integration in countries of first asylum, and of resettlement in third countries (mainly overseas).

Western countries are adopting more restrictive policy towards, resettlement to prevent the increasing number of asylum seekers from gaining asylum in their territories. The restrictive practices include restrictive visa policies and carrier sanctions, setting up of 'international zones' in airports where physical presence does not amount to legal presence, creation of 'safety zones' inside conflict ridden countries to stop outward movement of refugees, narrow interpretation of the principle of non-refoulement (as in the

case of Haitian refugees by the US) 'safe third country' concept in Europe through the Dublin Convention and the Schengen Convention, holding asylum seekers in offshore camps (right free zones) and through a restrictive interpretation of the definition of refugees given in the 1951 convention.⁴⁰

The evolution of the international refugee regime coincided with significant political developments. It originated in response to unprecedented refugee crisis in the wake of the First World War and its aftermath. The second of the regime followed World War II and its aftermath. The third phase followed the intensification of the Cold War. The fourth phase was in response to major political transformation when the cold war shifted its location from Europe to the Third World countries, and when the Third World countries came to be the dominant voting power in the General Assembly. The fifth phase followed a rise in internal and regional conflicts mainly in the Third World in which the Super Powers and other powers were directly or indirectly involved. The sixth phase followed the end of Cold War.

1.7 Causal Factors Affecting the Creation of the Refugee Regime

The international refugee regime, in its origin and development has been the result of certain causal variables. It is a result of egoistic self-interest of countries, which wanted to preserve their sovereignty and protect their economic, social and political security from perceived and real threats by refugees.

Political power is also a cause for the development of regimes, especially power in the service of particular interests. The US to maximise its individual interests, i.e. the propagation of Western liberal thoughts, and preservation of its national sovereignty used political power. The objectives at stake were however was cosmopolitan i.e. the solution of the refugee problem.

The US tried to present the USSR and the Communist nations negatively- as perpetrators of political persecution- and thus to some extent induced refugee movements (through the provision of 'safe haven' in the Western world). In its efforts to prevent the refugee

⁴⁰ B. S. Chimni, "International Law" in *Seminar*, vol. 463, March 1998, pp. 21-22.

producing and receiving countries from succumbing to USSR's influence and becoming communist states, the US first opposed the refugee regime by unilaterally following its own assistance programmes and foreign policy with regard to the refugees (mainly the East European refugees in the pre 1956 scenario), and later supported the UN led refugee regime in the Third World countries.

The hegemon i.e. the US provided the collective goods especially financial resources for the regime to function. In certain ways the US has been able to alter international outcomes through its control of aid. The US has also been able to influence state behaviour through its leadership in the regime. This is evident from the fact that after the 1956 Hungarian refugee crisis, with greater US involvement in the UNHCR many other countries followed suit.

The general norms and principles, especially those of sovereignty and of human rights, operating as superstructures helped in the creation, persistence and transformation (i.e. change) of the regime.

The supplementary causal variables of usages and customs gains are of relevance because refugees have existed since organised societies did, and refugees were treated mostly with sympathy (and at times with suspicion) and were offered some form of humanitarian help. With the development of the regime the usages and customs in each phase of the international refugee regime contributed to the further development of the regime.

Knowledge especially of the root causes of the refugee problem, of the political and humanitarian solutions, and of the difficulty in implementing such solutions helped in broadening the function and scope of the refugee regime.

1.8 Autonomy of the Refugee Regime

After its creation the impact of the regimes, as an intervening and interactive variable, depends on its autonomy from dependence on causal variables in terms of lags and feedback. The lag in the international refugee regime was minimal till 1956. Since then the international refugee regime provided refugees all over the world with humanitarian assistance and international protection. However the duration of this significant lag was for less than two decades (from 1956 to mid 1970s). So it did not develop sufficiently for

the regime to function totally independently of changes in power structure. The interests of the major powers (the US in particular) dictated much of the functioning of the regime, especially in the prevailed in the pre 1956 and from 1980s periods.

Because of considerations of national interests the assistance and protection available to the refugees has become increasingly restricted. The regime has also not been successful in intervening in political conflicts or in providing political solutions. Thus the problem has been addressed only partially, and in terms of material assistance provided to the refugees.

The regime has been undergoing evolutionary changes in terms of changes in rules and decision-making procedures under the influence of major power (especially the US), but the principles and norms have largely remained intact. But in the post Cold War era, the US interests are not being served by the underlying principles and norms of the international refugee regime. As a result there might even be a revolutionary change in the regime. Already the principle of non-refoulment and the institution of asylum are threatened.

There are however certain feedback mechanisms in place through which the refugee regime affects the causal variables of power and interests themselves. The most important feedback mechanism of the international refugee regime is that through the regime Third World actors with limited power have a greater voice. Through the General Assembly and its resolutions, and through the EXCOM recommendations and reports, the power equations have been partially altered in addressing the refugee issue. The regime has also strengthened the voices of actors- NGOs and individuals- within the Third World, and within the industrialized countries that support humanitarian and political solution for- a situation where refugee related policy does not take political national interests of states into consideration. Further, the regime has some impact on state behaviour though the interests of the states have not changed much. The states that are a part of the regime are bound to some extent, because of international rebuttal, to behave according to the policies and practice of the refugee regime.

1.9 Changes in the Refugee Regime

The change in the international refugee regime have been from the post World War I period, when the refugee regime with limited mandate, authority and finance was restricted to repatriation and then to resettlement efforts; to the post World War II era when the mandate of the refugee regime broadened to become universal and included the non-Europeans since 1960s, while the limitations of finance and authority persisted; to the post Cold War era where refugee aid is becoming even more difficult to come by, and there is a shift in the mandate of the UNHCR. The UNHCR that was earlier reactive, exile-oriented and refugee centric now has a proactive homeland oriented (largely in efforts to prevent idps from crossing the border) and holistic approach. This shift in focus is not only the result of inadequacies of the earlier traditional approach but also the result of change in strategic interests of Western Powers, host country concerns and disquiet among donor (mainly Western states). The shift in focus and mandate of the international refugee regime is significant because in the post Cold War era when there are no ideological differences between East and West, refugees do not serve national interests of the host states.

1.9.1 The International Refugee Regime: A Weak Regime

The international refugee regime is a weak regime. Its decision-making procedures are not systematic and consistent, but are based on each refugee, and to an extent dependent on the interests of the US and other major donors in the country of origin and in the country of refuge. The UNHCR efforts to repatriate refugees to a country where life-threatening situations that led to their becoming refugees in the first place still exists, are inconsistent with the UNHCR's mandate to protect the refugees. The UNHCR's broadened mandate to deal with idps also suffers from because of limited authority and competence in changing the life threatening situations in the refugees' countries of origin. The ultimate decision-making power lies with the state and not the international refugee regime (which is mainly the UNHCR- of which states are members). The notions of

security and sovereignty thus play a large role in determining the effectiveness of the regime.

The international refugee regime thus fits into the Modified-Structural realist approach- there being realistic reasons for its development, which has led to establishment of pervasive principles and norms in the area of refugee crisis. But other realistic considerations of national interests, especially of US, had led to the regime not playing as effective a role as it could. Its role has not been significant especially in terms of sustained and consistent assistance provided to refugees and has had negative impact in addressing the basic causes of the refugee problem. With the end of the cold war the regime has weakened further and is in the danger of collapsing- if efforts are not made to develop the international cooperation to deal with refugee problems through burden sharing and by addressing the causes of the problem in every practical way.

1.10 Independent Impact of the International Refugee Regime

The international refugee regime arose with the recognition that in face of global mass movements of refugees the sovereignty of nations is threatened. There are also the real and perceived threats- social, economic and political- to the host nation while the country of origin loses human resources. Refugee movements many a times can also cause inter-state tensions. States realise that in such a situation, uncoordinated behavior motivated by self-interest, would lead to mutually defeating outcomes. So despite sovereign states seeking to maximize their interests and power, states have cooperated in a regime to solve the refugee problem. The regime is based on universally accepted principles and norms. The international refugee regime, thus, was established to serve the interests of governments, and to facilitate burden sharing and coordination of policies regarding the treatment of refugees.

The independent impact of the refugee regime on international outcomes and state behaviour, as an intervening variable between the causal variables and outcomes, in terms of it being a constraining factor on the behaviour of countries of origin of refugees that lead to the refugee problem in the first place, on the behaviour of unresponsive host states, or in improving the conditions for and of the refugees, however is suspect.

The international refugee regime is being overwhelmed by the unprecedented refugee crisis that began during the past decade. It is insufficiently equipped to address either the causes or consequences of the problems involved. Host countries feel that the economic, social and political costs of dealing with refugee problems have become too high. The traditional hospitality of many Third World countries has been replaced by intolerance and restrictionist policies. Industrialized countries have become increasingly reluctant to finance international refugee aid, to resettle refugees especially from the Third World, or to admit asylum seekers and to consider their claims fully.

The international cooperation that helped resolve the post World War I refugee problem in Europe, and alleviate refugee crisis in Africa, Asia and Latin America during the 1960s and 1970s are becoming more difficult to obtain. In reality the major responsibility for providing protection, assistance and long-term solutions lie with states. With governments seeking to preserve their territorial sovereignty by controlling their borders there is not much that international refugee regime and in particular UNHCR can do to contain the deteriorating situation.

The global refugee problem is not only a humanitarian problem. It is also a political problem requiring political solutions. Moreover the problem cannot be separated from other areas of international concern such as migration, human rights, international security, and development assistance.

The role of UNHCR is limited. The UNHCR has been effective only in providing emergency aid and technical support or in offering legal protection to asylum seekers. While it brings together affected governments and international agencies for consultations on appropriate international response (even of long-term development assistance), and provides the administrative medium for more effective cooperation on refugee issues. In the long-term the UNHCR is ineffective in not being able to resolve the political causes of the refugee problem. For this a greater role and willingness governments, the UN and the regional organisations dealing with security, peacekeeping and peace making and human rights to counter and react effectively to refugee crisis worldwide is necessary.

UNHCR's ineffectiveness is a result of structural and organisational problems of resources constraints, planning, ambiguity of international law and norms, the restricted nature of its state membership, and the chronic tension that exists between the humanitarian tasks of UNHCR and the political context in which it works. But UNHCR has tried to be involved in all the refugee problems worldwide. It has tracked (in terms of expenditure allocation priorities too) the shifts in geographic distribution of refugees around the world- from focussing on Europe in the 1950s and 1960s; to Horn of Africa, Southern Africa and Central America in the late 1980s; and to the Persian Gulf, former Yugoslavia and the Horn of Africa in the 1990s.

1.10.1 Conclusion

The refugee regime is not a temporary arrangement, having arisen in 1920s and continuing till date. The regime is more than an ad-hoc agreement since it has evolved over time and is permanent and facilitates agreements in efforts to promote as wide an international cooperation as possible to address the refugee problem. It is also not based on short-term interests but in the interest to resolve the refugee problem in the long run for the benefit of all.

To the extent the refugee regime arose out of realistic compulsions through spontaneous and negotiated efforts at international cooperation and then developed accepted principles and norms, that is prevalent as the intervening variable between causes of the refugee problem and the resulting outcomes and behaviour in terms of response to the refugee problems, the refugee regime exists and follows the Modified-Structural approach in regime analysis. To the extent that the regime actually has some independent impact on the resulting outcomes and even on the causes itself the regime follows the Modified-Structural approach. But to the extent that it is ineffective and is losing its capacity to address the refugee problem in its totality in the long term, the regime has a minimal impact on the causes or the outcomes of the refugee problem and there is thus, a direct link between the causes (power and interests of individual states acting rationally) and the resulting outcome (the refugee problem). The refugee regime to this extent follows the Realist approach.

On the whole the international refugee regime fits into the Modified-Structural regime approach. The reasons for its origin and development have been the considerations of national interests, especially of the US, that led to the regime not being effective: in providing consistent and sustained assistance to refugees, and in the minimal impact it has had on the basic causes of the refugee problem. However, there is some independent impact of the regime on the outcomes and even in some cases on the causes of the refugee problem. The independent impact was demonstrated in some cases of successful repatriation such as the repatriation of refugees from Cambodia, Namibia, Nicaragua and Mozambique.

With the end of the Cold War the regime has further weakened and is in the danger of collapsing: if efforts are not made to sustain and develop the international cooperation to deal with refugee problem through burden sharing and by addressing the causes of the problem in every practical way. There thus remains much need to further develop international cooperation among the various actors, especially between national governments and the dominant powers (mainly the US), to develop fully into a functioning regime that can in the long run solve the refugee problem and eradicate its causes.

Chapter 2

**AN ANALYSIS OF THE HOST STATES IN THE
INTERNATIONAL REFUGEE REGIME**

This chapter deals with the Western host states' policy and practice with regards to the refugees. The chapter is divided into three sections. The first section deals with the costs involved for the host states in accepting refugees. The second section deals with the changes that have taken place in how the host states treat the refugees. The third section goes into the details of how the West approaches the refugee problem.

2.1 Refugees and Costs to the Host States

At the beginning of the 21st century, the total population of concern to the UNCHR was 22,257,340. Of these 11,475,380 were refugees; 3,968,700 were idps; 2,509,830 were returned refugees; 1,435,290 were returned idps; 1,181,600 were asylum seekers; and 1,486,540 were other groups of concern to UNHCR. The refugees, asylum seekers, and others of concern seek refuge in host countries outside their countries of origin.¹

The majority of the refugees seek and find refuge in neighbouring countries: the Iraqi Kurds in Turkey, and Iran, the Somalians, Sudanese and Ethiopians in Kenya, the Myanmar Muslims in Bangladesh, the Togolese in Benin and Ghana, the Yugoslavians in Croatia, Serbia, Montenegro, Slovenia and the former republic of Macedonia. The other refugees (a minority) travel large distances from their home countries to seek refuge.

Large-scale refugee influx leads many a time to political, social and economic pressures on the host nations. But despite this fact many countries have been granting refuge generously. The African nations are especially generous.

The costs of providing protection to refugees is the highest for countries that are faced with "poverty, economic decline, political instability and environmental degradation" i.e. mostly the Third World countries of first asylum that are generally the most magnanimous. The industrialised and richer West hosts relatively a small number of refugees and asylum seekers. The economic costs incurred by them results from increase in number of asylum seekers, expensive judicial refugee determination system, and welfare provisions for shelter and support to refugees and asylum seekers. The Western response to such costs has been to pursue measures to reduce the inflow of refugees, especially the spontaneous and independent arrival of asylum seekers into its territory.

¹ UNCHR, 'Refugees and others of concern to UNHCR: 1999 statistical overview', <http://www.unhcr/statist/0002>.

Most Western states have been pursuing such a policy since late 1980s i.e. in the changed refugee scenario of the post Cold War era.²

2.2 Refugees in the Post Cold War Era

In the post Cold War era, there have been radical geopolitical shifts, enormous growth in refugee flows, the prevalence of refugee emergencies in situations of armed conflict, and the shrinking opportunities for permanent large-scale integration in countries of asylum.

In the 1990s, the Cold War era proxy wars have continued in an altered form. These wars that occur all over the world are characterized by a predominance of violent clashes based on ethnicity, ideology and simple power struggle. At present, however “the perceived interests of the influential powers are not at stake” in these conflicts. As a result the emerging issues regarding the refugee problem are that the refugee problem is essentially a human rights problem; the climate of receptivity for refugees has cooled in many asylum countries; the refugees are considered a part of a complex stream of migration; the refugees are often interspersed with other people who need humanitarian assistance; the humanitarian assistance is increasingly becoming an important aspect of protection; and that prevention of the problem is better than cure.

The post Cold War response to the refugee problem is largely one of providing ‘temporary’ refuge in countries of first asylum (generally neighbouring states) to mainly prima-facie refugees. The assumption is that most refugees will return once the situation in their home countries improves. Thus, of the three long-term solutions voluntary repatriation is thought of as the most practical and satisfactory. But for voluntary repatriation to be truly voluntary the root causes of the refugee movement, the violent situation in home countries has to be alleviated so that the returnees do not face a danger to their lives. The second solution of local integration practically not feasible because of the lack of resources and infrastructure in most countries of first asylum, and the resulting political, social and economic costs. The third option of resettlement in third countries is available only to a few who are selected by host countries, mainly in Europe and North America. Asylum is also granted to some refugees who spontaneously enter the territories of overseas countries and seek asylum on grounds of persecution.

² UNHCR, UNHCR Ref world-REFERENCE Information. REFWORLD CD ROM, 1998.

The majority of asylum applicants are to be found in Europe, followed by North America. The rate of acceptance for convention refugees is however the lowest in Europe, though Europe does grant a large number of applicants humanitarian status. The overall acceptance rate is the highest in Africa and the lowest in Oceania.³ In 1999, Africa received 51,090 asylum applications, of which 21,270 were accepted (56.5% overall- 54.5% accepted as refugees while others were either granted humanitarian status or allowed to remain on humanitarian grounds). Asia received 38,580 cases, of which 11,790 were recognised (40.4% overall- 38.5% accepted as refugees). Europe received 4,61,240 cases, of which 1,02,770 were accepted (30.7% overall- 12.6% as refugees). Caribbean, Central America and South America received 3,090 cases, of which 1,200 were accepted (51.6% overall- 34% as refugees). North America received 1,11,040 cases, of which 32,760 were accepted (54.1%- all refugees). Oceania received 11,550 cases, of which 2,300 were recognised (23.1%- all refugees) and 15,540 cases were pending. Globally, 1,09,640 asylum seekers were granted refugee status and recognised as Convention refugees, and 62,350 were granted humanitarian status or allowed to remain on humanitarian grounds. The acceptance rate was thus 36.2% (23.1%- all refugees) while 7,64,700 cases were pending. Of the 3,02,670 rejected asylum seekers most (80%) have been allowed to remain in host countries pending improvement of conditions in their countries of origin.⁴

The developing countries not only host asylum seekers and the resettled refugee, but as neighbouring states to countries facing conflicts also host a large majority of the refugees. In addition they host the locally integrated refugees as well. The West, on the other hand, hosts only those refugees it resettles and the asylum seekers: they make up a relatively small number of all the displaced.⁵

In the post Cold War period, many host nations, particularly in the West, and increasingly in the South and East as well, are not receptive to refugees and asylum seekers because of “economic difficulties, the (fear of) resurgence of ethnic tensions, and the rolling up of the ideological welcome mat for refugees from the communist countries.”⁶

³ Ibid.

⁴ UNCHR, ‘Refugees and others of concern to UNHCR: 1999 statistical overview’, *op.cit.*

⁵ UNHCR, UNHCR REF WORLD –REFERENCE Information, *op.cit.*

⁶ Ibid.

In the 1950s and 1960s, other than the large-scale refugee movements into Western Europe from Hungary in 1956 and Czechoslovakia in 1968, relatively few refugees and asylum seekers from the poorer nations sought asylum in the host countries. It was only in the second half of 1970s that larger numbers of non-Europeans refugees mainly from Indo-China and South America entered the West. In the early 1980s the West perceived the increasing number of asylum seekers as constituting an asylum crisis. The real crisis was, however, in the poorer regions that were faced with unprecedented increase in refugee populations.⁷

In the 1980s, opportunities for migrating to the West began diminishing. But the pressure in poorer countries to migrate because of economic stagnation or decline, political instability, social violence and armed conflict increased. Better global communication network, cheaper transportation, and the presence of diaspora communities in the West provided the incentives and means to migrate.

The distinction between the genuine asylum seeker and the economic migrants has become blurred. In the minds of the officials and the public in the West the asylum seeker is confused with the economic migrant. Governments and political parties (for electoral gains) have exploited this fact.⁸

While individuals do have a right to asylum, states are under no legal obligation to grant asylum. Granting of asylum is thus dependent on states discretion, which in turn depends on “the level of demand, the origins of the people who apply, the perception of their motives, and other preoccupations and –pressures of the time.”

During Cold War, the West was satisfied with the generalised and abstract 1967 refugee definition. During this Cold war period, only a small number escaped from the European bloc into the West and the industrialised nations did not doubt the claims of these individuals who risked their lives to escape “unquestionable political persecution.” For the Africans and Asians the distance and the expenses were too much for large-scale

⁷ UNHCR, *The State of the World's Refugees, 1997-98: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997), p. 189.

⁸ *Ibid.*, p. 190.

migration to the West.⁹ Thus, during the Cold War the West equated granting of asylum with permanent settlement.¹⁰

The end of Cold War resulted in political and social instability in the Third world and Eastern Europe which triggered mass refugee movements: East Germans into West Germany, those fleeing the ethnic conflict in Bosnia- Herzegovina, the Cuban refugee flow to the US in 1994 etc. In the post Cold War era the West is increasingly resistant to asylum seekers, is suspiciously of their motives, and is anxious about the consequence of mass exodus. Perceiving refugees as “competitors for local resources and as a threat to the cultural identities”, the West is interpreting its obligation to international laws narrowly and is formulating responses to the refugee crisis correspondingly.¹¹

2.3 Approach of the West towards Refugees

The West, at present, is following a general objective regarding refugees (and forced and illegal migrants) of reducing “the number of asylum claims to be treated by any refugee determination system.” The sub objectives are a law enforcement objective operating on the belief in the West that only 10 percent of all asylum seekers are bonafide refugees, and a cost-reduction objective. A decrease in the number of asylum claims (minimizing the input) and an increase in the number of rejections or removals (maximising the output) meets such a goal.

The ‘minimize the input’ mechanism includes visa requirements (on all refugee producing countries), reinforced border controls, carrier sanctions and training of carriers and airport personnel to verify travel documents, short stop operations to filter passengers in airports in South, police cooperation in Southern countries, readmission agreements, economic cooperation agreements, war and armed intervention.¹²

The ‘maximize the output’ mechanism employed by the West includes removals (deportation), accelerated mechanism of eliminating ‘manifestly unfounded claims’, safe third country concept, safe country of origin concept, suppression of appeals procedures,

⁹ Kenneth Regensburg, “Refugee Law Reconsidered: Reconciling Humanitarian Objectives with the Protectionist Agenda’s of Western Europe and the United States”, *Cornell International Law Journal*, vol. 225, 1996, pp. 231-32.

¹⁰ UNHCR, UNHCR REFWORLD-REFERENCE Information, op.cit.

¹¹ Regensburg, op.cit., pp. 226-27.

¹² Francois Crepeau, *International Cooperation on Interdiction of Asylum Seekers: A Global Perspective*, Ottawa: CCR Interdiction workshop, February 1996, pp. 2-8.

reduction of lawyers assistance, reduction of welfare benefits, reduction of access to the labour market, readmission or refoulment agreements, asylum sharing agreements, and temporary protection.

Reformation of asylum laws- by the Dublin Convention of 1985 to harmonise the immigration and asylum policy of the members of the European Union, and by changes in the national legislation such as the “amendments to the German Constitution’s liberal guarantee of a right to asylum”, Interdiction of asylum seekers at high sea (as by the US of the Cuban and Haitian refugees), and humanitarian intervention in source country (Iraq and former Yugoslavia) are also measures to restrict access of refugees to asylum systems in the West.¹³

Regarding to those who are still able to access the asylum system, the industrialised countries are basing selection for recognition of asylum seekers as refugees on the narrow basis of ‘persecution standard’ and are applying a narrow definition of persecution. The assumption is that people in search of better opportunities or escaping poverty are abusing refugee protection provisions.¹⁴

In the West, asylum and illegal immigration control are increasingly being as considered “one element of a wider security package that also comprises drug trafficking, smuggling, money laundering, terrorism and international criminality etc.” Among the Western states, especially within Europe, there is ‘intense cooperation’ on asylum and illegal migration control. “The net result is that Western states believe that they should not be held responsible for most asylum seekers and are now openly taking steps to implement this new protection attitude.”

The security of actual and potential asylum seekers is jeopardised by such actions of the West. Visas, carrier sanctions and preboarding checks have resulted in genuine refugees being unable or unlikely to escape across borders; restriction on departure and admissions have led to ‘refugees in orbit’ i.e. “asylum seekers who are shuttled from one country to another, trying to find a state which will assume responsibility for examining their claim to refugee status”, and to ‘chain deportation’ i.e. “the repeated removal of an asylum seeker from one state to another, on the grounds that he or she could have submitted a claim to refugee status in previous country of transit.” The asylum seeker thus faces considerable psychological, physical and material strain.

¹³ Regensburg, *op.cit.*, pp. 227, 235-239.

¹⁴ UNHCR, UNHCR REFWORLD-REFERENCE Information, *op.cit.*

The restrictive policies of the West have not addressed the asylum problem but have only diverted it. The asylum seekers are now applying in large numbers to the more lenient Western states, to low and middle-income countries including the Commonwealth of Independent states (CIS). But most of the poorer states are not well equipped to deal with asylum seekers.

Growth in human trafficking has also resulted from the restrictive asylum policies. 'A relatively visible and quantifiable flow of asylum seekers' has been converted into a covert flow of irregular migrants that is even more difficult for states to control. Traffickers operate all over the world and move people mainly to North America, Europe and Japan by ships, planes and trucks. Most of those trafficked (Chinese, Afghanis, Iraqis, Nigerians, Somalians, Sri Lankans and Sudanese) are those who face human rights violation at home countries.¹⁵ Besides, because the pursuance of restrictive measures leads to increased costs, the costs involved in the already expensive asylum system in Western states have increased.

The number of asylum applications in Europe, North America, Oceania, Japan and South Africa were 1,79,680 in 1980. This number increased to 4,35,260 in 1989 and to a high of 8,48,630 in 1992 from which point it fell to 5,37,650 in 1999. The recognition rate from 37.9 percent in 1980 increased to 52.4 percent in 1982, then decreased to 28.2 percent in 1989, and reached a low of 18.3 percent in 1999. In 1999 the acceptance rate shot up to 35 percent. But the acceptance rate was high because of a 70 percent acceptance rate in North America (because of a sudden increase in refugee recognition in the US). Europe accepted 31 percent of those recognised, though it granted Convention refugee status to only 10.5 percent. In 1984 the convention recognition rate for Europe had been 49.8 percent¹⁶

In the US, restrictive measures were first introduced in early 1980s when it faced increased asylum demands from the Caribbean and the Central America. Till then the US was one of the most generous host nations in terms of number of refugees admitted, and in its contribution to refugee assistance overseas. Political considerations of the Cold War, however, were the reason for the generosity.¹⁷

¹⁵ UNHCR, *The State of the World's Refugees, 1997-98: A Humanitarian Agenda*, op.cit., pp. 196-202.

¹⁶ UNCHR, 'Refugees and others of concern to UNHCR: 1999 statistical overview', op.cit.

¹⁷ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York, Oxford: Oxford University Press, 1993), pp. 99.

Among the Western states however, the degree of restrictive practices varies from state to state. Canada follows a relatively nondiscriminatory and fair procedure for refugee determination. The West is trying to balance the rights of the refugees to a fair determination with its need to maintain an effective immigrant control mechanism. The enforcement measures of the West however have only been partially successful: the number of asylum seekers in these countries has not reduced but has only increased. Very rigid refugee policy could also lead to social tension their own countries and will have negative international repercussions.¹⁸

The West, especially the US, makes up the leadership of the international refugee regime. It also forms the bulk of the financial contributors to the regime. However, as host countries and with its perceived interest in the post Cold War era diminishing, the West has increasingly been resorting to restrictive measures that have led to changes in the rules and in the decision-making procedures of the regime. This has led to the weakening of the regime. A continuation of such policies by the West could threaten the norms and principles of the regime itself especially the principle of non-refoulment. This would lead to the change (i.e. collapse) of the regime itself.

¹⁸ Ibid., pp. 127.

Chapter 3

**CANADA: A HOST STATE IN THE
INTERNATIONAL REFUGEE REGIME**

This chapter deals with Canada's treatment of refugees. The chapter consists of three sections. The first section describes Canada's efforts in dealing with refugees overseas and within Canada itself, and the procedure for refugee determination in the country. The second section outlines the history of Canada's refugee policy emphasising the changes in its refugee determination procedures. The third section evaluates of Canada's refugee policy and practice.

3.1 Canada's Policy towards Refugees

Canada addresses the refugee problem through its asylum and resettlement policies, through its developmental aid packages to the countries of asylum and countries of origin of the refugees, and through diplomatic and peace-keeping efforts. Canada is also a member of international organisations like the UNHCR, IOM, and ICRC to which it makes contributions of funds, personnel and expertise to deal with the refugee problem. Besides Canada also has a number of national and local NGOs, ethnic organisations and churches that individually or as groups address the refugee problem.

There are six Canadian ministries and agencies that deal with refugees. These are the Department of Citizenship and Immigration Canada (CIC), Immigration and Refugee Board (IRB), The Canadian International Development Agency (CIDA), the Department of Foreign Affairs (FA), The Department of Defense (DD), and the Canadian Centre for Human Rights and Democratic Development (CCHRDD).¹

The IRB and the CIC deal with Canada's asylum and resettlement policies and programs. CIDA provides overseas assistance to refugees in the countries of origin and the countries of first asylum. It is independent of the Canadian resettlement mechanisms. It provides funds for care and maintenance, local integration and repatriation of refugees through its International Humanitarian Assistance (IHA) Budget (which is intended for assistance to victims of both natural and human disasters). It also provides non-cash assistance in the form of food aid from its Food Aid Centre through World Food Programme for UNHCR's care and maintenance programs. The humanitarian aid is in support of peace efforts in the countries of origin. "The budget of the IHA is fixed at two percent of the Overseas

¹ Howard Adelman, "The Rights of Repatriation: Canadian Refugee Policy: The Case of Rwanda", *International Migration Review*, vol. 30(1) (Spring 1996), pp. 290.

Development Budget, which is approved by Parliament on annual basis". All IHA funds are channeled through international organisations and Canadian NGOs. Only occasionally are bilateral funds made available.²

The FA pursues Canada's foreign policy goals through diplomatic means. It applies diplomatic pressure on countries of origin through provisions of foreign aid, initiation of preventive diplomacy and pressure on governments to repatriate refugees, or it may also promote local integration in countries of first asylum. Its efforts may also facilitate or hinder resettlement in Canada.

The DD is involved in assisting refugees overseas through its contribution of the leadership and personnel to the peacekeeping missions in the countries of origin. The CCHRDD assists refugees overseas by financially supporting human rights organisations and movements in their countries of origin, and by supporting international investigation of human rights abuse in countries of origin.³

One of Canada's foreign policy goals is "to encourage the peace process globally". Regarding refugees "Canada is committed to supporting voluntary repatriation as the chief durable solution". It considers local integration as the second most desirable solution. Its developmental, diplomatic and humanitarian efforts are thus largely to enhance and provide access to the "services and structures set up for the host population" and to provide "generalised assistance to the host country to help defray the burden"⁴ Canada's third and the least preferred choice of durable solutions for refugees is resettlement and provision of asylum in Canada. These solutions are the functions of the CIC and the IRB.

The IRB is the largest independent statutory tribunal in Canada. It "receives its mandate under Part IV of the Act to Amend the Immigration Act, 1976" (passed in July 1988 and in effect from 1 January 1989). The Board consists of three divisions independent in their decision-making but affiliated administratively. These are the Convention Refugee Determination Division (CRDD or the "Refigure Division"), the Immigration Appeals to Division (IAD or the "Appeals Division"), and the Adjudication Division.

A claimant to refugee status is referred to the Refugee Division for determination of the Convention Refugee Status by a two-member panel or a single member panel by the

² Moira Hart, "Canadian Overseas Assistance for Refugees" in Howard Adelman, ed., *Refugee Policy: Canada and the United States* (Toronto: York Lanes Press Ltd., 1991), pp.114-16.

³ Adelman, op.cit., pp.304-07.

⁴ Hart, op.cit., pp. 115-16.

claimant's consent. The Immigration Appeals Division provides an "independent legal administrative process for hearing" "appeals by certain individuals against removal orders by the Board's Adjudicators or CIC officials" (such cases constitute thirty percent of the workload of the Appeals Division), "appeals by Canadian citizens or permanent residents sponsors against the refusal of CIC officials to land a close family member" (sixty nine percent of the cases), and "appeals by the Minister of Citizenship and Immigration against decision either to grant admission to, or not to order the removal of, people seen at an immigration inquiry" (one percent of the cases). In the Adjudication Division immigration inquiries and detention reviews are conducted by the adjudicators who are independent decision makers. "Inquiries are held, at the request of the CIC immigration officials, on persons seeking admission at a Canadian port of entry believed to be inadmissible or persons in Canada believed to be removable". "Detention reviews are held for persons who have been detained because they are considered unlikely to appear for an examination, inquiry or removal or to be a danger to the public". These appeals can be made only on the grounds of law and equity.

The IRB programs are influenced by the CIC's activities through its influence on the immigration and removal appeals made to the Appeals Division; by the world situation, and by the actions and policies of other host countries which determine the work load of the Refugee Division in terms of the number of claimants; and by the CIC activities, and global immigration and economic factors which affect the caseload for the Adjudication Division.

The IRB's head office is in the National Capital Region. Its regional officers are in Montreal, Toronto and Vancouver. It also hears cases in other municipalities and itinerant points of service throughout Canada. The chief executive of the Board is the Chairperson who reports to Parliament through the Minister of Citizenship and Immigration. There are two Deputy Chairpersons, one each from the Appeals Division and the Refugee Division. These Divisions are headed by Assistant Deputy Chairpersons while a Director General heads the Adjudication Division.⁵

The CIC that was created on Nov. 4, 1997, "develops immigration policy, manages immigration levels and participates with other federal departments in developing related policy... facilitates and controls the admission to Canada of visitors, permanent residents

⁵ Immigration and Refugee Board, *1994-95 Estimates: Part III: Expenditure Plan*, Ottawa: Ministry of Supply and Services Canada, 1994, pp. 9-11, 13.

and refugees, and assist with the settlement of permanent residents and refugees. It is also responsible for protecting Canada against the entry of persons who may endanger the health and safety of Canadians or the security of Canada.” It promotes “the concept and values of Canadian citizenship”, and it “provides services to immigrants who want to become Canadian citizens”. It further assists newly arrived immigrants to adapt and settle in Canada. In all its activities, it cooperates with other levels of government, other national governments, and with NGOs and inter-governmental organisations.

The Department functions through its two programmes, the Immigration Program and the Citizenship Registration and Promotion Program. The activities of the Immigration Program are categorized as Inland Services, Settlement, International Services, Policy and Management, and Corporate Service. Each of these activities has sub-activities. The sub-activities under Inland Services are Port of Entry Control, Selection and Inland Control, and Enforcement; under International Services are International Operations, Health Programs, Program Development and Coordination, Operation Planning and Management; under Policy and Management Services are Policy, Operations Management and Management Services; under Corporate Services are Departmental Affairs, Finances, Human Resources, Informatics, Administration, Audit and Evaluation, and Communication. The Citizenship Registration and Promotion Program is involved in the Citizenship Regulation and Promotion Activity.

The mandate for the Immigration Program is received through the Immigration Act, 1976 (and its amendments by Bills C-55 and C-84 in 1988, and by Bill C-86 in 1992), and the Immigration Regulations, 1978. The authority for the Citizenship Regulation and Promotion Program is the Citizenship Act, 1985, and Regulations. The “pertinent programs and services” of the CIC are authorised under the Annual Appropriations Act.

The objectives of the Immigration Act and certain policies and directives related to external factors influence the Immigration Program. These external factors are economic, humanitarian, social, legal and cultural factors. The economic factors in Canada determine the skills (for the independent skilled worker immigrants) and investments (for the business immigrants) required for national and regional economic development. The humanitarian factors arise out of Canada’s international obligation towards refugees, as a signatory to the 1951 Convention and the 1967 Protocol on refugees. The social factors include the pressure created by human movement (mostly refugees and economic migrants) around the world, and the pressure for Canadian response to such movements as

a member of international bodies (UNHCR, IOM, Organization for Economic Cooperation and Development (OECD) depending on the cost and availability of programs “that help new comers adjust to Canadian life”. The legal factors that impose legal obligations on Canada are the Section 95 of the Constitution Act, 1867 that states “immigration is, constitutionally, a responsibility shared by the federal government and the provinces, with primary responsibility being given to the Parliament of Canada”; the Immigration Act, that provides for agreements of the federal government with a province or a group of provinces “to determine the roles and responsibilities of the provincial and federal governments regarding immigration to provinces in Canada”; the criminal code; the Charter of Rights and Freedom; the Canadian Human Rights Act; and the Bill C-86. The cultural factors that influence Canada’s immigration policy are those specified in the Section 3 of the Immigration Act which states that “Canada’s immigration policy shall be administered in accordance with the bilingual character of Canada, and that it shall be non-discriminatory on grounds of race, national or ethnic origin, color, religion or sex”, and in the provisions of the Canada Quebec Accord Relating to Immigration and Temporary Admission of Aliens that allows Quebec to independently select immigrants: their policy is based on non-discrimination and tries to ensure that it takes in immigrants corresponding to the province’s share of the population.⁶

The activities of the Department are managed at its National Headquarter (NHQ). The Minister of Citizenship and Immigration reports to Parliament. The Deputy Minister, Citizenship and Immigration reports to the Minister. The Inland Service, International Service, Policy, and Corporate Management are managed by Assistant Deputy Ministers while Assistant Deputy Minister, Inland Services, manages Settlement and the Citizenship Registration and Promotion Program.⁷

In the refugee determination procedure Board adjudicators or the CIC officials assess whether claimants are admissible to Canada, after which admissible candidates are assessed by the CIC officials as to their eligibility for refugee determination. Eligible claimants are referred to the Board.⁸

The refugee claims are made to the CRDD of the IRB. Each applicant must submit a completed Personal Information Form to the Division. This form includes a narrative to

⁶ Citizenship and Immigration Canada, *1994-95 Estimates: Part III: Expenditure Plan*, Ottawa: Ministry of Supply and Services Canada, 1994, pp. 1-2-1-3, 3-16, 3-18-3-19.

⁷ Citizenship and Immigration Canada, *op.cit.*, pp. 1-2.

⁸ Immigration and Refugee Board, *op.cit.*, pp. 10.

explain the basis of the claim. The documents required for the case generally include personal identity documents, family documents, medical documents, expert evidence, and country documentation and/or human rights reports about the country conditions of the country of origin. The onus to prove the claim is on the refugee claimant.

The CRDD members are “largely lay persons appointed by the government for a term of office; only ten percent of the members are required to be lawyers. The proceedings at CRDD are less formal than in courts and the formal rules of evidence do not apply”. The rules of the proceedings are made and published by the Board. The rules of natural justice and due process i.e. the right to counsel, the right to present evidence, and the right to make submissions are also applicable to the applicants. The Legal Aid facilities however vary from province to province.⁹

Those claimants meeting the conditions of refugee status are then sent to the CIC for screening for health and security criteria, before they are granted permanent resident status. The CIC also determines if unsuccessful refugee claimants should be allowed to remain in Canada on humanitarian or compassionate grounds.¹⁰

3.2 History of Canada’s Response to Refugees

Canada is a country of immigrants. Besides economic immigrants, Canada also chooses refugees specifically for resettlement. From the 1980s asylum seekers have also been arriving in Canada.

In late eighteenth century, Canada provided sanctuary to the first refugees, the ‘Loyalists’, who arrived in Canada from the US following the break-up of British North America. Later, it also provided refuge to some runaway slaves from the US, prior to the 1860 American Civil War. But most of Canada’s efforts in dealing with the refugees were in the post World War II period.¹¹

Howard Adelman has categorised Canada’s history of dealing with international refugees into the “Euro-centred” period from 1933 to 1968, and the “World-centred” period from

⁹ “Documenting a Refugee Claim”, Toronto: Centre for Refugee Studies, June 13, 1998. This is part of the material provided for the Summer Course on Refugee Issues in the Centre for Refugee Studies, York University.

¹⁰ Citizenship and Immigration Canada, op.cit., pp. 1–3.

¹¹ Charles Stastny and Gabrielle Tyrnauer, “Sanctuary in Canada” in Vaughan Robinson, ed., *International Refugee Crisis: British Canadian Response* (Houndmills, Basingstoke, Hampshire and London: The Macmillan Press Ltd., 1993), pp. 117, 179.

1969 onwards. The first period is further sub-divided into the period from 1933 to 1947: “Pre and immediate post war rejection of Jews”, the period from 1948 to 1956: “West-European anti-communism”, and the period from 1957 to 1968: “East-European anti-communism”. The second period is sub-divided into the period from 1969 to 1977: “Rights for Convention refugees and access for humanitarian refugees”, the period from 1978 to 1987: “Procedures for Convention refugees and programs for humanitarian refugees”, and the period from 1988 onwards: “Convention refugees vs. humanitarian refugees”¹²

From 1933 to 1947, Canada shut its door to Jewish refugees from Europe. It admitted only around 5,000 of them in this period. In 1947 Canada became a member of IRO and contributed about \$ 18.1 million to the organisation. From 1947 to 1952, Canada took in about ten percent of the non-Jews displaced persons from Europe following the Second World War. Those thus resettled in turn sponsored relatives and the total intake in Canada reached more than 186,000. But in 1949, Canada refused to consider 18 refugee Arab families for resettlement. It also did not consider for resettlement the one million and more refugees from North Africa, Middle East and Asia.

In 1950 the Department of Citizenship and Immigration was established. It was the first formal institution to facilitate immigrant and refugee services.¹³ At this time international efforts were also underway to draft a convention to regulate the legal status of refugees. The Canadian delegate chaired the nine-man *ad hoc* committee set up by the Economic and Social Council (ECOSOC) to prepare the draft. Canada also participated in the special conference of twenty-six governments held in Geneva from July 2 to 25, 1951 that led to the Refugee Convention being adopted on July 28, 1951. But Canada and eleven other governments did not sign the convention.¹⁴ In December 1951 Canada, along with fifteen other countries, was a founding member of the ICEM.¹⁵

¹² Howard Adelman, “Canadian Refugee Policy in the Postwar Period: An Analysis” in Howard Adelman, ed., *Refugee Policy: Canada and the United States*, pp. 186-217. The History of Canada’s refugee policy and practice has been largely taken from this source. In instances where the sources are different from Adelman’s article they are duly acknowledged.

¹³ Michael Lanpheir, and Oleh Lukomsky, “Settlement Policy in Australia and Canada” in Howard Adelman, Allan Borowski, Meyer Burstein and Lois Foster, eds., *Immigration and Refugee Policy: Australia and Canada Compared*, (Toronto and Buffalo: University of Toronto Press, 1994), Vol.2, p. 341.

¹⁴ Freda Hawkins, *Critical Years in Immigration: Canada and Australia Compared* (Montreal and Kingston, London, and Buffalo: McGill-Queens University Press, 1991), edn. 2, p. 157.

¹⁵ *Ibid.*, p.160.

In 1956 Canada “wholeheartedly and with dispatch” responded to the refugee crisis resulting from the Hungarian Revolution. In April 1958 the EXCOM was established by ECOSOC, and Canada has been its member ever since. In 1962 Canada withdrew from the membership of ICEM. From 1951 to 1962 Canada had made annual contributions of approximately \$215,000 to ICEM. From 1962 to 1965 it made an annual contribution of \$60,000 to ICEM, and from 1963 it decided to channel the funds to UNHCR instead.¹⁶

In 1966 the White Paper on Immigration was brought out¹⁷. In 1967, Canada passed its first Immigration Act. The Act established a “universal criteria for admission based on a point system”. Its overt intention was to not discriminate among immigrants on the basis of race, religion or national origin. In 1968, Canada responded to the Czech refugee crisis by resettling Czech refugees. In the mid 1960s it also took in Vietnam War resisters from US.

In 1969, Canada signed the Geneva Convention and its Protocol. In 1970, it came out with new guidelines for admission of refugees “based on both the Convention and relaxed immigration criteria”. The guidelines made available assistance from both the public and the private sector, and stated categorically that the “refugees would not have to be outside their country of origin”. In 1970 Canada resettled several hundred Tibetans, between 1972 and 1973 more than seven thousand Ugandan Asian, in 1973 more than seven thousand Chileans, and in 1975 more than nine thousand Vietnamese refugees.

In Canada until 1972, following a 1967 Immigration Act guideline, the applicants rejected for landed immigrant status, had an automatic right to appeal to the Immigration Appeals Board. But in 1972 when a backlog of 20,000 cases developed, the Canadian government revoked this provision. However, it allowed those who claimed that their return to their countries of origin would subject them to persecution to have their “claims heard by a senior immigration officer and reviewed originally by a committee within the Department of Manpower and Immigration and subsequently by the Interdepartmental Committee on Refugee Status, an Interministerial Committee from Immigration and External Affairs. Thus there were two levels of appeal.

The Green Paper of 1974, recommended that “Canada’s obligation under the Geneva Convention should be incorporated into domestic law”, while the procedures of legal

¹⁶ Ibid., p.161.

¹⁷ R.A. Girard, “Canadian Refugee Policy : Government Perspectives” in Adelman, Howard and Michael C. Lanphier, eds., *Refugee or Asylum: A Choice for Canada* (Toronto: York Lanes Press Ltd., 1990), p.113.

determination should be a matter of regulation. The 1976 Immigration Act, promulgated in 1978, incorporated the Convention definition of refugees. The Act gave Canada the discretion to select refugees on humanitarian grounds to enter its territory. The previously *ad hoc* policy was also incorporated into the domestic law through the guidelines in the Act for “designated class” immigrations that allowed “the selection and intake of humanitarian refugees under relaxed criteria and through special programs”.

The Act also set up the Refugee Status Advisory Committee (RSAC) to replace the Interdepartmental Committee on Refugee Status. The RSAC had a representative of UNHCR as a member. RSAC’s mandate was to advise the Minister on the validity of refugee claims. The claimants had to “first make a request for refugee status during the course of a removal inquiry when his or her status had already been determined to be illegal . . . The removal inquiry was (would be) adjourned, and the refugee claim would be taken under oath by an examining officer in the presence of a lawyer and an interpreter, if required, and forwarded to RSAC for consideration. The claimant would also receive a copy of the transcript, and written submissions and evidence by way of an affidavit that could be forwarded to correct, clarify or amplify the claim. If the claimant received a negative decision, an appeal could be launched with the Immigration Appeals Board and subsequently, with the Federal court”.

This Act was criticised as being restrictive and limited in dealing with the Convention refugees. In 1979 the regulations were changed to allow a claim to be made as an “in-status” claim prior to the initiation of a removal inquiry. In-status claimants however were barred from obtaining work permits. A rejected in-status claimant was eligible for a second claim during removal inquiry. Further RSAC had to provide a rejected claimant with a written explanation, and RSAC began employing an independent full time officer to adjudicate claims.

In September 1980, Lloyd Axworthy, the Minister of Employment and Immigration, set up a Task Force (on Immigration Practices and Procedures). In November 1981, its report recommended that “the norms of procedural justice available to Canadians be incorporated into Convention refugee hearings”. For the first time attention was directed towards issues arising from inland refugee determination. In 1981 Robinson also reviewed the process of inland refugee determination and recommended that claimants be protected “from a decision-making process which might too summarily dismiss their cases”.¹⁸

¹⁸ Michael C. Lanphier, “Asylum Policy in Canada: a Brief Overview”, *Ibid.*, pp. 83-84.

These recommendations led to a gradual alteration of rules of procedures to benefit the claimants. Thus, in 1982, RSAC started operating independently of the Employment and Immigration Commission, there was access to training and resource centre for full-time members hearing claims, persecution was to be interpreted liberally to include actions such as deprivation of livelihood, individuals did not have to prove being singled out for persecution, the “benefit of doubt” was granted to the claimant, and inconsistency, misrepresentation, or concealment, not germane to the claim were to be disregarded.

“The overseas applicants were classified as applicants, eligibles and selecteds”. Applicants were screened by immigration officers for eligibility according to the criteria for refugee status. From those eligible not all were selected for resettlement in Canada. Those eligible but not selected could not appeal unless these case was freshly raised “either by interested parties in Canada or by advocates at the overseas venue”.

The refugee status claimants in Canada, are however “self-selected prior to the determination process.” The issue is of eligibility. An eligible claimant gained landing status when conferred the refugee status. An ineligible claimant could appeal at his or her own expense. Failure to appeal or an unfavourable ruling after appeal meant departure from Canada within a fixed period of time for the claimant. This procedure, however, was cumbersome and full of difficulties for the claimant.¹⁹

In 1983 oral hearing projects were started. These also involved cumbersome procedures subject to many levels and were full of delays. A backlog of cases then built up. In 1984 Rabbi Gunther Plaut was commissioned to review past legislation and practices concerning refugee determination. This resulted in the 1986 Plaut Report. In 1984 a task force on Program Review as also set up. The resulting twenty-one volume Nielsen Report included a section on “Immigration and Citizenship”. In November 1986 the Nansen Medal was awarded to Canada in “recognition of their major and sustained contribution to the cause of refugees”.²⁰

In 1987 Bill C-55 drafted by the Immigration Department was passed. It provides for an initial screening of each case within seventy-two hours of a claimant’s arrival in Canada. At the screening the claimant had to present an argument to a two-member panel consisting of an immigration adjudicator and a member of a refugee board. The panel screens for prior rejection for refugee status in Canada, refugee status obtained elsewhere,

¹⁹ Ibid., pp. 84-85.

²⁰ <http://www.web/~ccr/history.html>

and residence in Canada for over six months. It then decides whether the case is strong enough to be heard before a three-member refugee board. A unanimously negative decision at the screening stage meant removal of the claimant to their home country or to a “safe third country” if applicable. Leave to appeal the decision in a Federal court can be granted only on matters of law. The same court makes decisions on the refugee status claim and immigration cases.²¹

In 1987, a Bill was tabled by Benoit Bouchard, Minister of Employment and Immigration, was passed. This Act established a new refugee determination procedure and created the IRB. In 1988 Bill C-84, was passed. This Act “criminalises many acts that could be viewed as assisting or encouraging refugee claimants.” The Bill is not only a law about refugees. Its purposes are stated as protection of those in genuine need for protection, control of the abuse of the refugee determination process, discouragement of smuggling of persons, and the respecting of security concerns.²²

On May 23, 1990, Canada became a full member of the IOM (as the ICEM was finally called in 1989 after having being renamed Inter Government Committee for Migration (ICM) in 1980).²³

On February 1, 1993, Bill C-36 was promulgated. It made the adjudication of immigration inquires and detention reviews, that was part of the mandate of Department of Employment and Immigration, the responsibility of the IRB.²⁴ In November, 1993, Department of Citizenship and Immigration (CIC) was created” as a part of the Canadian government’s restructuring announcement” through an Order-in-Council. CIC’s Immigration Program had previously been a part of the Department of Employment and Immigration, and its Citizenship Registration and Immigration Program had previously been a part of the Department of Multiculturalism and Citizenship.²⁵

In 2000, Bill C-31 (Immigration and Refugee Protection Act) was debated to replace the Immigration Act that has been amended thirty times. The Bill has a separate section on refugees dealing with objectives relating to refugees.²⁶ The Bill seeks to impose severe

²¹ Ibid., pp. 85.

²² Julius H. Grey, “Refugee Status in Canada” in Vaughan Robinson, op.ct., pp. 126.

²³ Hawkins, op.cit., p. 161.

²⁴ Immigration and Review Board, op. cit., pp. 9.

²⁵ Citizenship and Immigration Canada, op. cit., pp. 1–2.

²⁶ “Bill C-31: What is new in the proposed Immigration and Refugee Protection Act”, <http://www.cic.gc.ca/english/about/policy/c31new/e.html>

penalties on people trying to abuse the system including fines upto C\$1 million and life imprisonment for human traffickers, and bars people convicted of serious crimes from applying for asylum. It proposes to establish a Refugee Appeal Division to handle all aspects of the refugee claim, taking into consideration the 1951 Convention and the 1984 Convention Against Torture. This Bill aims to cut the time taken to decide on asylum claims. The Bill provides for cases to be handled by a single IRB member.²⁷

In 2001, Bill C-11 (Immigration and Refugee Protection Act), modified version of Bill C-31 was introduced in the Parliament. It proposes to make the refugee determination procedure faster, protect the refugees and to be tougher with human traffickers.²⁸

3.3 Evaluation of Canada's Refugee Policy and Practice

Canada's initial immigration policy was racist and discriminatory. The first federal Chinese Exclusion Act, 1885 imposed a head tax on Chinese immigrants; the 1907 Canadian agreement with Japan limited Japanese emigration; the 1908 Order-in-Council excluded from immigration people not directly traveling to Canada (targeting Indians); the 1911 Order-In-Council (never proclaimed) prohibited immigration of those belonging to the 'Negro' race; the 1923 Chinese Immigration Act almost totally prohibited Chinese immigration; and the 1919 prohibited the entry of the Doubhobors, Mennonites and Hutterites.

Until 1960, Canada chose its immigrants on the basis of their racial categorisation and gave preference to immigrants from Northern Europe, especially the British. The least preferred were the "black and Asiatic race" while sometimes even those from Central and Eastern Europe were not preferred.²⁹ Some Afro-Americans escaping slavery in the US through the underground railroads, however were exceptions. Till 1960s, Canada followed the same discriminatory policy towards refugees.

The 'loyalists' from the US found Canada to be a natural country of asylum because of its affinity to Britain. Canada welcomed the loyalists for political and strategic reasons and because in Canada their immigration would lead to hardly any social conflict. These

²⁷ Roy Wilkinson, "Give me . . . Your Huddled Masses . . ." in *Refugee*, (Geneva: Public Information Section, UNHCR, 2000), vol. 2 (119), pp. 8-9.

²⁸ <http://www.cic.gc.ca>

²⁹ Canadian Council for Refugees, "Report on Systemic Racism and Discrimination in Canadian Refugee and Immigration Policies", 1 November 2000, <http://www.web.net/ccr/antiracrep.htm>

loyalists however, were not strictly refugees since they chose (and were not forced) to resettle in Canada.³⁰

The evolution of the refugee policy and practice in Canada however, is largely a post World War II phenomenon.³¹ From 1933 to 1947 it followed an anti-semitic policy of rejection of the Jewish refugees. Bureaucrats (Fredrick Blair) and politicians (Mackenzie King, the Prime Minister) were anti-semitic. "Canada's refugee policy was motivated by discrimination and implemented by political leaders and mandarins with broad general public support and only the opposition of leading religious leaders and some newspaper editorials".

Canadian response from 1947 to 1956 to resettle the displaced in Europe was against the backdrop of the Cold War, and other international events that were seen as strengthening the Soviet Union. At this time Canada exclusively resettled only those from Western Europe. The rest it considered "alien and unacceptable for adaptation to Canada."

In resettling the West Europeans, the main motivating factors may have been humanitarianism and a sense of obligation, but self interest-for labour in its rapidly expanding and industrializing economy, and racism were also factors.

At this time refugees did not have any rights in Canada. This was because Canada saw itself as a country of permanent resettlement for immigrants while refugees were seen as individuals fleeing persecution who were given temporary asylum, and because Canada did not sign the 1951 Convention as it wanted to maintain control over who entered its territory.

During 1956 to 1958, in dealing with the Hungarian refugee problem humanitarianism was main factor that influenced Canada's response. There was support from the public, members of the Cabinet, and the media. The NGOs, Universities, local communities, private sponsors, and the provincial and federal government all worked in coordination. Cold War ideological undertones too influenced the policy, but the "security bias" that the Soviets would infiltrate the refugees with spies was officially put aside by Jack Pickersgill (Minister for Immigration). Economic conditions in Canada were also favorable for the resettlement of the Hungarian refugees. The rise in unemployment and weakening of the

³⁰ Stastny and Tyrmaver, *op.cit.*, pp. 177-79.

³¹ Adelman, "Canada and Refugee Policy in the Postwar Period: An Analysis", pp. 186-217. The analysis of Canada's refugee policy is summarised from this source. In instances where the sources are different they are duly acknowledged.

economy in 1957, however, did lead to cut backs in government-sponsored immigration but the media and the public opinion remained positive. As a result Canada took in 37,000 Hungarian refugees i.e. twenty percent of the Hungarian refugees in Austria.

In 1968 the same *ad hoc* policy that was applied for the Hungarian refugees was applied for the Czech refugees. But the casualties and economic devastation in Czechoslovakia had been lesser than in Hungary, and the opportunity to flee was also less. Canada took in 12,000 Czech refugees i.e. one-third of them. Where Czech refugees were concerned, however, the Canadian leadership was lacking and economic factors motivated the resettlement efforts. Canada responded to UNHCR's appeal, public opinion and newspaper editorials but it screened refugees for skills and talents. Those selected were largely young, well-educated and possessing technical and professional skills. In this period Canada shifted its focus from Western Europe to Eastern Europe. Ideology was a major factor and security considerations decreased. Canada's humanitarian measures were aimed at embarrassing the Soviet Union, and serving its economic priorities (in the case of Czechs).

In the period 1969 to 1977, Canada's overt immigration policy became non-discriminatory with the promulgation of the Immigration Act in 1978. With the signing of the 1951 Convention and Protocol in 1969, Canada had an obligation towards refugees under the international law. Canada followed a non-racist policy in resettling Tibetans, Ugandan Asians, Chileans and the Vietnamese.

Canada resettled 4,875 Ugandan Asian by the end of 1972 and totally 7,069 Ugandan Asians. Such a response was because of obligations to Britain, the "mother country". But because of its quick response Canada took in young, educated, experienced and highly qualified Ugandan Asians who were quickly resettled. Newspaper editorials had supported the resettlement, which did not meet with any racial backlash. In this case Canadian humanitarianism and self-interest were convergent. In the early 1980s, however, very few Ugandan Asians were accepted (20 in 1982, 83 in 1983 and 117 in 1984). This was in part because of OAU's preference to resettle African refugees in Africa. Another reason was that self-interest gained more importance than humanitarianism in influencing Canada's policy. In fact in the period between 1977 and 1980 of Obote's oppressive regime, the CIDA provided more than C\$ 1.1 million to Uganda.

Where Chileans were concerned, Canada gave asylum to them in the Canadian Embassy in Chile, announced special programmes for them including their right to immigrate under

relaxed criteria, and took in a hundred political prisoners who were technically not refugees since they were in their home country. But only a few were allowed safety in the Embassy (50 Chileans) and fewer were flown to Canada (17), and there was a long delay in announcing the special programme and in processing applications in Chile. Canada also carried out security checks on the Chilean refugees, which deterred prospective applicants. Such a response was because of an External Affairs policy against allowing the embassy to be used for sanctions (the policy continues till now), the role of the Canadian Ambassador (pro coup), foreign policy considerations (because of Canadian economic interests and investments in Chile), and ideology since left wing refugees were involved.

In Canada's refugee policy towards the Chilean refugees, "ideological considerations replaced racial criteria as a discriminatory factors". Canada carried out a programme for Chileans because of domestic pressures especially from Quebec, the Mission of Enquiry in Chile, the objective evidence of the new regimes ruthlessness, and the pressure from UNHCR. Churches, labour unions, and academicians also had some influence on Canada's policy.

Canada responded to the Vietnamese refugees by initially accepting 5000 refugees because of "an obligation to demonstrate token solidarity with US". The number of intake was less because Canada did not support the US role in Vietnam and felt that the refugees were American responsibility having stemmed because of their alliance with the Americans. Anti-communist ideology did not play a role in Canada's policy.

Overall, in the period between 1969 and 1977, the refugee policies of Canada were neither ideology driven nor principle driven. Prime Minister Pierre Trudeau advocated realism in Canada's foreign policy to replace its earlier role of an international mediator. The foreign policy was guided by self-interest, and thus international policy became subordinated to domestic policy.

In this period the Convention refugees did not have rights accorded to them in the domestic laws in Canada. With the signing of the Convention however there began a movement towards incorporating their rights in the domestic laws. This culminated in the Immigration Act of 1976. This period thus saw the evolution of the Canadian refugee policy towards providing access to humanitarian refugees into Canada and towards providing rights to Convention refugees.

During the period 1978 to 1987, Canada's obligation towards the 1951 Convention, and the Convention refugees was in 1976 incorporated into Canada's domestic law. The

Immigration Act that came into effect in 1978 “allowed Canada the discretion to select refugees on humanitarian grounds for entry into Canada”. Previous *ad hoc* policy was incorporated into the provision for “designated class” immigrants, and into the provision for special programs for humanitarian refugees.

Canada’s obligation to its procedural justice and its international obligation to the 1951 Convention led to the expansion of the right to protection and the development of procedures that guarantee the protection of the state when a claim has been successful: by granting the refugees the right to become a citizen and not just protection from non-refoulement. These obligations were influenced by “the development of international standards for the treatment of refugees, and by the recognition of responsibility to help UNHCR find solutions for the refugees”.

After the 1974 Green Paper was tabled, a policy group in the Immigration Department was given the responsibility of developing the regulations and procedures governing determinations. The group did not want to develop detailed provisions since they thought that this would lead to many claims, abuse of the system, and the development of a backlog. They wanted the refugee claim not to be a right but a matter of the discretion by the Canadian government. The aim was not just to deter abusers or economic migrants but also to not facilitate large influx of Convention refugees into Canada.

As a result, Canada slowly and reluctantly developed a set of Convention refugee determination procedures. The setting up of RSAC was criticised on grounds such as: the location of proceeding not being at the point of arrival, lack of oral hearing that prevented the claimants from getting a full opportunity to state their cases, lack of counsel and training for immigration officers about the specific situations producing refugees and procedural norms, quality of translators, non-issue of written transcripts, lack of opportunity for refugees to correct the transcripts, the Board being an advisory body, and that cases were not referred to an Independent Review Board. In 1976 regulations were changed. Following the recommendations of the Task Force of 1980 rules of procedures were further gradually changed to benefit the claimant.

The 1983 oral hearing pilot project created a backlog. This led to abuse of the refugee determination procedures since “refugee claimants could drag their cases for years before obtaining a hearing, and in the meanwhile could get married to a Canadian, or perhaps benefit from an amnesty”.

To check the backlog of early 1980s that increased to 20,000-30,000 cases per year, visa requirements were introduced from 1983. These requirements were severely criticized when they were applied to the Guatemalans who came from a refugee producing country and had a low rate of abuse of the refugee determination procedure. The policy was also criticized when visa requirements were not imposed on the Portuguese claiming to be persecuted Jehovah Witnesses: so as to not upset the Portuguese community in Canada and the Portuguese government with whom Canada enjoyed good relations, and when they were not imposed on the Turks despite the belief that the Portuguese and the Turks were abusers of the system.

With the liberalisation of the determination procedure the number of claims forwarded to RSAC did not rise. In 1986, however, a significant increase in claims occurred—mainly from Portugal, Sri Lanka, El Salvador, Turkey and Iran. But there was no corresponding increase in cases forwarded to RSAC— the numbers of such cases only came down after reaching a highpoint in 1985. Thus a logjam occurred at the Department of Immigration in their refugee determination procedures and not in the RSAC. But the 1986 situation was perceived as a crisis.

The RSAC was being sent fewer cases but it dealt with them expeditiously. The refugee determination system however failed because of the ideological belief of the key mandarins, the ideology of the right-wing conservatives who came out with the Nielsen Report, the measures taken all along to deter the genuine refugees and abusers, and mainly because of the tardiness in dealing with clear cut cases of abuse. This “suggests that both senior politicians and senior mandarins was (were) out to cut any refugee determination system down in size or even to eliminate it. They used passive action to allow the backlog to become a complete embarrassments.”

In February 1987 new measures to deal with refugee claimants were proposed. These measures followed the Nielsen Report of 1985. The authors of the Report had an “anti-immigration bias” and their ideological position was made clear in their statement that Canada had an “absolute and sovereign right to determine who to admit as immigrant and who shall become a Canadian citizen.” They also stated that the new immigrants and refugees would compete with the Canadians for jobs which would lead to arise in unemployment among the Canadians and leave them dependent on welfare. The Report recommended that Canada should do away with government sponsorship and that the Convention refugee claimants should be permitted into Canada only if they were in hot

flight i.e. coming directly to Canada. The goal of the 1980 Task Group was to reduce the intake of the Convention refugees and the humanitarian refugees, and to re-establish Canada's control over who enters the country. Thus self-interest, without being balanced by humanitarianism and international obligation, was to be the guiding motive.

Accordingly Bill C-55 was designed to reduce the arrival of the genuine Convention refugees and the abusers by "reducing the numbers allowed into the system and by making the system operate with a short turnaround time". It was not introduced "simply to provide fair hearing for refugees" in accordance with the Ratushny Report and the Plaut Report. Bill C-84 focused not on the refugees but on those who would assist them.

These bills followed three policy announcements that had the same aim. The first announcement was for canceling the B-1²³ list of countries to which Canada would not deport refugees. It also stated that all claimants would proceed directly for determination and could no longer obtain Minister's permit at the port of entry. The second announcement was that claimants crossing over from the US would have to wait for the hearing in US. The third announcement stated the requirement of transit visas for those passing Canada enroute to some other destination.

Canada's approach towards humanitarian refugees was different from its approach towards Convention refugees. The 1976 Immigration Act contained provisions for immigration of refugees as designated classes. Besides the government, that decides who and how many are to enter Canada, groups of five individuals can sponsor undesignated or designated individuals or groups of individuals.

Those fleeing Cambodia, Laos and Vietnam were admitted into Canada as the Indochinese designated class. In 1978 Canada viewed the Vietnamese refugees differently from what it had earlier in 1975. It looked at them as fleeing Vietnam because of North Vietnamese policies, and not because of their involvement with the previous regime.

Canada resettled Vietnamese refugees who were being driven out of the countries of first asylum. The Canadian government, mandarins, churches, media and public supported such efforts, and private sponsorship efforts such as project 4000 and Operation Lifeline. Because of the unprecedented response for the first time private sponsorship was emphasised. "The government led the public and responded in a timely fashion as public support built up." Humanitarianism was the key factor for Canada's response. What little opposition there was, was due to economic insecurity and racism and even during the

recession from 1982 to 1983, Canada continued both government and private sponsorship, though in smaller numbers. The numbers after reaching a lowpoint in 1982 increased.

The special programs for Sri Lankans in 1983 was originally restricted to those from Colombo. Later this was extended to those from Jaffna and the North. Humanitarianism was the key motivating factor since the Tamils in the North unlike those in Colombo, were not well educated or conversant in English. (Canada's policy towards the Sri Lankans is dealt with in detail in Chapter 5). Where the Iran program of 1982 is concerned, the 20,000 member Baha'i community in Canada sponsored the persecuted Baha'is.

Canada's Special program for El Salvador in 1982 helped 3,300 Salvadorians. A special program for political prisoners helped 296 former prisoners (of the 500 released) and their families through resettlement. Canada's position on El Salvador was similar to the UNHCR's position: that the problem was temporary and with stabilization of the conditions in El Salvador the refugee problem would normalise. Canada was also influenced by the US policy towards this refugee movement. The overall pressure from the church, a sense of obligation, and foreign policy consideration towards the US and El Salvador led Canada to pursue a "modest policy". This policy was not motivated by self-interest since the Salvadorians were neither educated nor professionally skilled.

For the Guatemalan refugees, special measures included relaxed criteria for selection of immigrants, opportunity to apply for permanent residence from Guatemala, and a moratorium on deportation to Guatemala.

Thus in the period between 1978 and 1987 procedures to deal with Convention refugees evolved and special programs for humanitarian refugees were created.

From 1993 onwards the federal and provincial governments have made a series of policy changes. Measures such as increasing restrictions on family class immigrants, measures to restrict entitlements of immigrants and refugees to social assistance, the downloading of federal obligation for immigration settlement to provincial or local levels, and the transfer of major costs to immigrants and refugee applicants, have had a deterring effect on refugee claimants.³²

The draft of Bill C-31 has been criticised on the grounds that "it will make it more difficult for arrivals to enter the asylum system and once there they would face an increased threat of detention because of lack of proper documentation or security

considerations”, and that it might lead to “criminalizing of those trying to escape persecution”. The positive aspects of the Bill are that it seeks to streamline and expedite the refugee determination procedure. But such changes could also result in the refugee claimants not being able to present their case fully.³³

There are some aspects of the refugee determination process that are inherently discriminatory because of the “different and negative impact” that these aspects have on some racialised groups. These include policies such as the requirements of identity documents, the Right of Landing fee (expensive), the visa requirement of some countries’ nationals. Structural issues (the CIC and the IRB organisation) such as visa posts and accessibility resources of refugees taken into Canada (59% of the government assisted refugees in 1998, were from Europe), representation of visible minorities in the CIC and the IRB, too have differential impact. The application of policies such as the visa requirements, the refusal of visitor visas to family members, the DNA testing to establish family relationship targets certain groups. Group profiling to determine how CIC or IRB treats people- instead of making decision’s an individual cases- as in cases of deportation on grounds of ‘danger to public’, extra security checks, criminality checks is another discriminatory practice. Other inherently discriminatory issues include issues beyond the CIC and the IRB such as the recognition of prior educational and professional qualification of immigrants; the public opinion issues such as certain government statements, the coverage of immigration and refugee issues in the media, the failure of the government to respond to xenophobia and racism in the media; and the issues at the intersection of gender and race such as identity documents, fees and financial criteria for sponsorship which makes certain immigrants (women refugees) doubly disadvantaged.³⁴

Canada has a reputation for fairness in refugee determination. This is mainly because of the protection offered by the system to the refugees, through oral hearing of cases before an independent decision maker. The IRB has demonstrated leadership in dealing with specific refugee issues like gender persecution and minor claimants, and in its “authoritative publicly available documentation”.

“The fundamental weakness in the Canadian refugee determination process lies at the beginning and end of the process, rather than in the refugee determination itself.” The

³² Avvy Go, “Discussion Paper on Immigrants, Refugees and Public Perception”, Toronto : Urban Forum on Immigration and Refugee Issues, September 29-30, 1997, p. 6.

³³ Ray Wilkinson, *op.cit.*, pp. 9-10.

³⁴ Canadian Council for Refugees, *op.cit.*, pp. 5-14.

barriers to access the system and be heard by the IRB are because of interdiction measures, eligibility provisions, and inadequate and inequitable legal aid coverage.³⁵

The interdiction measures include imposition of visa requirements on countries from where refugee claimants start arriving: without considering whether the claimants are refugees or not, insistence on valid travel and identity documents which refugees may not possess, carrier sanctions and enlisting the assistance of transportation carriers especially the airlines to check for proper documents for entry into Canada, Canada's "global" control strategy of posting immigration officers abroad to check for valid travel documents, and training of transportation companies, local police and immigration officials and the "safe third country" provision in the 1976 Immigration Act (Canada however has never named any country as a safe third country).³⁶

The eligibility criteria are such that these could discriminate against genuine refugees and push them back into situations where they face the same persecution that they are trying to escape. Canada has reversed the 1951 Convention and put the "exclusion arguments" before those of inclusion. This increases the chances of excluding protection to genuine refugees.

The main problem at the end of the refugee determination system, is the absence of an appeal on merit. The judicial review avenue is not sufficient. It is by leave, the body is not specialized in the area of refugee determination, and a single member panel reduces the chances of protection to the refugee. The risk review is also insufficient if carried out without expertise on country conditions, international human rights standards and standards of procedural fairness, and especially when carried out before refugee status is determined.³⁷

3.3.1 Conclusion

In general international laws are subordinated to domestic laws. In Canada the domestic laws on refugees in part developed as a result of obligation to international law. In its further evolution however by and large self-interests have played a major role, especially in creating some barriers to refugees in accessing the Canadian refugee determination system that is in tune with the international laws.

³⁵ Canadian Council for Refugees, "Brief to Immigration Legislative Review" (July 1997), p. 8.

³⁶ Canadian Council for Refugees, "Interdicting Refugees" (May 1998), pp. 23-25, 28-30.

³⁷ Canadian Council for Refugees, "Brief to Immigration Legislative Review", p.10.

Canada also tends to treat the Convention refugees and humanitarian refugees differently. Its policy towards humanitarian refugees, who are mostly chosen by the government, are not riddled with the procedural difficulties that the 'self-selected' Convention refugees face. Canada, however, has continued with its refugee policy to take in both the Convention and humanitarian refugees though the focus of its policy is on limiting the entry of refugees into Canada, especially the Convention refugees.

Compared to other Western states, Canada follows a relatively nondiscriminatory and fair procedure for refugee determination.³⁸ The restrictive provisions in its Bills C-55 and C-84 have either been allowed to expire or were never implemented (for example the safe third country concept). The Refugee Determination Division of the IRB set up through these Acts and the Documentation Centre that contains "extensive information on human rights conditions in countries of origin" are positive features of the Canadian determination system. The acceptance rate in Canada is among the highest in the world.

Canada, however like other Western countries utilises deterrent mechanism like the visa requirements, has a large backlog, and is attempting agreements with other Western states for collective deterrence since majority of the asylum seekers originate outside the Western hemisphere and reaching Canada (and other Western states) directly seeking refuge.³⁹ As a result in the future Canada's policy, under increased pressure due to increased numbers, could become more restrictive.

³⁸ *Ibid.*, pp. 127.

³⁹ *Ibid.*, pp. 108-10.

Chapter 4

**CANADA AND ITS RELATION WITH
SRI LANKAN TAMIL REFUGEES**

This chapter deals with how Canada has been treating the Sri Lankan Tamil refugees. The chapter is divided into three sections. The first section deals with the refugees in general in Canada; the second section with the ethnic conflict in Sri Lanka and the resulting flow of refugees from there; and the last section with the Canada's efforts towards the Sri Lankan refugees in Canada and in Sri Lanka.

4.1 Refugees in Canada

Since 1852 Canada has pursued a policy of immigration, to meet its economic need i.e. labour demand in response to its economic growth. From the post War period, it has also been resettling refugees as a part of a larger immigration policy. From 1980s Canada has been providing asylum to those claiming persecution in their countries of origin. Canada's refugee policy has been in tune with its humanitarian and foreign policy consideration.

Immigrants to Canada are categorised as business immigrants, independent skilled immigrants, family reunification cases and refugees. Refugees are further categorised as Convention refugees and humanitarian refugees who may in turn be of the designated class or those covered by the special measures of the Canadian government. Besides such government-sponsored refugees, refugees gain entry into Canada through family reunification or through private sponsorship. Asylum seekers, who can request for asylum either at Canada's border or within Canada, are also granted refugee status after the refugee determination process. Some refugees gain entry through the independent skilled category. They, however, are considered immigrants and not refugees. Among those rejected asylum some are granted permission to remain in Canada on humanitarian grounds. Canada recognises only individual and not prima-facie refugees.

From 1947 onwards, Canada has been resettling refugees. Excluding family reunification cases and including resettlement on humanitarian grounds Canada resettled 2,38,470 refugees in the 1980-89 period and 160,730 in the 1990-99 period. Prior to 1980 there were 3,24,840 refugees who were resettled. Thus till 1999 the total number resettled were 7,24,040. In 1999, 17,077 refugees were resettled but of these 9,777 were resettled under its annual programme and 7,300 were Kosovars (5,057 under UNHCR's Humanitarian

Education Programme (HEP) for the Former Yugoslav Republic of Macedonia, and 2,249 under Canada's special needs and family reunification programme for Kosovars.¹

Asylum seekers started arriving in Canada mainly from the 1980s. The total number of asylum applications was 1,74,330 from 1980-89, and 2,77,140 from 1990-99. From 1980-99 the total number of asylum applications in Canada totalled 4,51,470. Of these 1,44,890 asylum seekers were granted refugee status in this period (12,980 in 1980-89 and 1,31,910 in 1990-99). The rejected applications numbered 1,04,721 (23,100 in 1980-89 and 81,620 in 1990-99). Cases closed for other reasons were 39,660 (390 in 1989 and 39,270 in 1991-99). Thus the number of substantive decisions were 2,49,610 (36,080 in 1980-89 and 213,530 in 1990-99). Canada grants only refugee status to the asylum seekers it recognises. It does not grant recognition to asylum seekers on the basis of any other legal status.

Canada grants asylum to those it recognises as Convention refugees. From 1980-99 it recognised 48.9 percent of the asylum seekers (36 percent in 1980-89 though this rate was highest at 89 percent in 1989, and 61.8 percent in 1990-99 though the rate has come down to around 55 percent from 1996-98 and rose to 58 percent in 1989).

The Government of Canada, through the IRB decides on the refugee status of the asylum seekers through only one instance of determination. At the end of 1998, 23,290 cases were pending from 1998, and in 1999 an additional 29,390 cases were submitted. Of these 12,950 were granted refugee status, 9,380 were rejected on substantive grounds, 5,600 cases were otherwise closed. Thus 27,930 cases were decided in 1999 and 24,730 cases pending. This is an increase of 6.2 percent in the number of pending cases from 1998.

The total number of refugees in Canada at the end of 1999 were 1,23,300. Of these 1,20,700 were granted legal status according to the 1951 convention. These include the 13,000 spontaneous arrivals, the 9,800 resettlement arrivals and the 2,570 asylum seekers allowed to remain in Canada on humanitarian grounds. In 1999, 1,800 Kosovar refugees were repatriated from Canada by UNHCR. In Canada the total population of concern at the end of 1999 was 148,030 including the 24,730 asylum seekers whose cases were pending.

¹ UNHCR, 'Refugee and others of concern to UNHCR: 1999 statistical overview', <http://www.unhcr/statist/0002>. This site contains tables on refugees and others of concern to UNHCR, refugee population and major changes, individual asylum applications and refugee status determination, and on resettlement. The data used in this chapter is from this site in all cases except where otherwise mentioned.

At present Sri Lankan Tamils form the third largest immigrant community in Canada, after the Chinese and the East Europeans.² The Sri Lankans, particularly the Sri Lankan Tamils, make up the bulk of the asylum applications in Canada. They are the most significant asylum seeking population in Canada, both in terms of number of applications and in terms of recognition rate. Of the refugees from 52 countries who applied for asylum in Canada in 1999, Sri Lankan applications (2,920) were the largest in number. Of the 3,090 cases were decided in 1999, 2,360 were granted refugee status, 560 were rejected for substantive reasons and 170 cases were closed for other reasons. 2060 cases were still pending at the end of 1999 a decrease of 7.9% pending cases from 1998.

The recognition rate for the Sri Lankan Tamils at 80.9 percent is among the highest in Canada. Nationalities with higher acceptance rates are Afghans (97.9 percent), Somalians (93 percent), Sudanese (92.1 percent), Rwandans (88.2 percent), Cubans (88.1 percent), Yugoslavians (86.9 percent) and Iraqis (86.9 percent). But the number of applications from these countries is much less than those from Sri Lanka (the highest number of application among these countries was from 530 by the Somalians).

Substantial number of applications for 1999 were made by asylum seekers from China (2,440), Pakistan (2,340), Hungary (1,580), India (1,350) and Mexico (1,170). But the recognition rate for these asylum seekers is much lower than that for Sri Lankans (the highest acceptance rate was for the Chinese at 58.4 percent).

The number of the Sri Lankan Tamils resettled in Canada, however, is negligible. For the Fiscal Year 1998-99 Canada's target for resettlement was 7300 (933 from Africa, 1593 from Middle East, 3720 from former Yugoslavia, 80 from Asia, 41 from Latin America, 35 from European Union, and 294 others). But that year no Sri Lankan refugee was resettled from Sri Lanka or elsewhere.³ A number of Sri Lankan refugees, however, enter Canada as family reunification cases (as father, mother, spouse, fiancée/fiancé, children, and siblings of less than eighteen years of age). Some Sri Lankan Tamils also enter as independent skilled immigrants (these refugees cannot be distinguished from the Sri Lankan immigrants).

² N. Ketharan, a Sri Lankan Tamil granted asylum in Canada, Interview, 1 June 2000, Madras.

³ "Refugee Resettlement Programs: Canada", <http://www.unhcr.ch/resettle/progscan.htm>

4.2 Sri Lankan Ethnic Conflict and Refugees

Sri Lanka is a multiethnic/cultural country. In 1981 it had a population of 15.2 million. The Sinhala Buddhist majority (approximately 74 percent of the population) is concentrated in the southern and western parts of Sri Lanka. Of the 2.7 million, largely Hindu Tamils (approximately 18 percent of the population) more than fifty percent are concentrated in the northern and eastern regions. The Tamil speaking (but ethnically different from Tamils) Muslims (approximately 8 percent of the population) and others such as the Malays and the Burghers (of mixed native and colonial ancestry) make up the rest of the population of Sri Lanka.⁴

The Ceylonese Tamils are the Sri Lankan Tamils who settled in Sri Lanka more than thousand years ago. They are different from the Indian Tamils, brought in from the state of Tamil Nadu in India plantation workers in the last hundred and fifty years and living in Sinhala dominated areas. Among the Sri Lankan Tamils there are distinctions between the Jaffna Tamils in the north (with a population of over 95 percent of the total population in the northern province), the Batticaloa Tamils in the east (who live among Muslims and Sinhalese in the eastern province) and the Colombo Tamils in the South (who are a minority living among Sinhalese).⁵

4.2.1 Ethnic Identities in Sri Lanka

The Sri Lankan ethnic conflict is mainly a conflict between the Buddhist Sinhalese and the Hindu Tamils (particularly those from the northern province). In reality the Sinhalese and the Tamils have racial and cultural similarities. Physically they look the same. The Sinhalese, in the initial years- about two thousand five hundred years ago, were probably Indo-European language speakers. The later arrivals were mostly Tamil speaking South Indians. These people got assimilated into the Buddhist Sinhalese community. Thus among the Sinhalese Buddhists there exists South Indian influence: Sinhalese kinship patterns and marriages are Dravidian. Other cultural similarities are in the early caste system and the political system. Buddhism too came to Sri Lanka from India. The Tamils in Jaffna Peninsula and East Coast came to Sri Lanka between tenth and fourteenth

⁴ Jones, Allen K., "Time for decision: Sri Lankan Tamils in the West", Issue Paper, U. S. Committee for Refugees, (American Council for Nationalities, 1985), p. 2.

⁵ Gananath Obeyesekere, "The Origins and Institutionalisation of Political Violence", in James Manor, ed., *Sri Lanka: In Change and Crisis*, (London and Sydney: Croom Helm, 1984), p. 155.

centuries AD. They came from all over South India but now claim to have come from Tamil Nadu.⁶

The Sinhala and Tamil identities based on ethnic lines evolved over time through selective interpretation of history by the two communities. The Sinhalese identity had the following postulates: that “there is an unbroken Sinhala identity reaching from the arrival of prince Vijaya and his followers (from North India in the fifth Century BC) to all Sinhala today”; that “Sri Lanka is the island chosen by the Budha to become *dhamma dipa*, the island of teaching (dhamma) of the Budha, and the Sinhala are the people chosen to defend the dhamma”; and that “the Buddhist Sinhala are therefore the legitimate inhabitants of the whole island, ruled in the past by a king, and today by an elected government”. The Tamils are viewed as invaders and intruders whose homeland is Tamil Nadu.

The Tamil identity has the following postulates: that “Sri Lanka is socioculturally and linguistically a part of South India, from whence it was postulated in a number of historical waves”; that “Tamils are the legitimate inhabitants of Sri Lanka”; and that Tamil society eventually concentrated in Jaffna peninsula and along the northern parts of the eastern and western coast; this so-called home land of Tamils forms a unity”.

The contrasts in the identity that emerged over time are that “Tamils come from South India, Sinhala from North India. Tamils are non-Aryans (but are Dravidians) Sinhala are Aryans. Tamils are Hindus, Sinhala are Buddhists. Tamils speak a Dravidian language, Sinhala an Indo-European one. These two broad nationalist identities differ in that the Tamils place a high value on language and literacy and the Sinhala on language and religion (Buddhism).⁷

Thus a clear distinction between the Tamils and Sinhala has evolved. However within these identities there exists differences: in the Sinhala identity between the Buddhist and Christian Sinhala; and in the Tamil identity between castes, between Hindu and Christian Tamils, and between Ceylonese and Indian Tamils.

⁶ Ibid., p.154-55.

⁷ Peter Kloos, “Publish and Perish: Nationalism and Social Research in Sri Lanka”, *Social Anthropology*, 3 (2), pp. 1-14

4.2.2 History of the Sri Lankan Conflict

Before the Portuguese invasion in the early sixteenth century AD, there existed in Sri Lanka a Tamil kingdom in the North and several Sinhala kingdoms in the south. All these kingdoms sought to control the entire island. As a result the boundaries between the kingdoms were never very clear. The Portuguese captured the north and portions east of Colombo. The Dutch colonists later captured this land from the Portuguese. In 1796 the British captured this area from the Dutch and by 1815 occupied the whole of Sri Lanka.⁸

During the course of British rule, especially in the late nineteenth century, feelings and ideas of ethnic identity evolved. Under the Britishers commercial and educational opportunities increased. The statewide administrative structure in Sri Lanka too became unified. This produced a colonial English-educated elite. Both the Tamil and the Sinhalese elite were mainly the higher castes and urbanised (many of the urbanised were Christians), and thus alienated from the rural population.⁹

In the early 1920s, these elites were united in demanding greater autonomy for Sri Lanka from the British. They founded the Ceylonese National Congress in 1999. In 1922, however, the party fragmented along ethnic lines into Sinhalese and Tamil ethnic parties.¹⁰

The Tamils had a numerical advantage among the English-educated and so dominated business, the professions and the bureaucracy. During deliberations on electoral set up in Sri Lanka they demanded the drawing up of parliamentary constituencies on communal lines so that they could equally share power with the Sinhalese in terms of parliamentary representation.¹¹ But in 1931 universal adult franchise was introduced.¹² This led to domination of the Tamil parties in the north and of Sinhalese parties in the south: i.e. polarisation along ethnic lines. In Sri Lanka as a unit, the Sinhalese parties dominated, fueling fear among the Tamils of marginalisation at the centre. The Tamil leaders, however, remained involved in the parliamentary process.¹³

⁸ Obeyesekere, op.cit, p.155.

⁹ Urmila Phadnis, "Role of State in Ethnic Conflict in Sri Lanka", in Peter Schalk, ed., *Lanka*, (Uppasala: Uppasala University Press, 1990), pp. 241.

¹⁰ Ibid., pp. 241-42.

¹¹ P. Saravanamattu, "Instability in Sri Lanka", *Survival*, vol. 32, no. 5, September/October 1990, p. 455.

¹² Obeyesekere, op. cit., p. 156.

¹³ Saravanamattu, op. cit., pp. 455-56.

At the time of the Sri Lanka independence, in 1948, there were several Tamil parties that had an exclusive ethnic base. The ruling United National Party (UNP), that formally was non-ethnic too had its (Sinhalese ethnic base.¹⁴ On coming to power, the UNP passed the Citizen's Act (1948), the Indian and Pakistani Residents (Citizenship) Act (1949) and the Parliamentary Elections Amendments Act (1949): "the first two acts denied citizenship to the majority of the Indian Tamils, and the third one disenfranchised them". Tamil Congress split as a result (on issue of support to these acts) and S. J. V. Chelvanayagam formed the Federal Party (FP).

In 1952 S.W.R.D. Bandaranaike broke away from the UNP and formed the Sinhalese National Freedom Party (SLFP).¹⁵ In 1956 he led the party to power with the support of the Sinhalese rural elite and Buddhist Sanghas. He fought on an anti-English, anti-Christian, Sinhalese-Buddhist platform. That year he made Sinhala the official language of Sri Lanka. This led to an escalation of the tension between the Tamils and the Sinhalese as this measure fueled Tamil fears regarding their education and employment. The Tamils demanded equal status for both the languages and for greater autonomy for the Tamil areas. This demand generated a fear among the Sinhalese about a Tamil separatist movement with external support from Tamil Nadu: this they thought would undermine Sri Lankan integrity. In 1956 the first Sinhalese-Tamil riots took place.

In 1957, the Bandaranaike-Chelvanayagam Pact was signed, providing for special measures for the use of the Tamil language and the devolution of power to regional councils. When this pact failed Sinhalese-Tamil riots again broke out in 1958.¹⁶ In 1959 a Buddhist monk unhappy at the pace of implementation of the Sinhalese-Buddhist policies, assassinated Bandaranaike.¹⁷ In 1960 his widow, Sirimavo Bandaranaike became the Prime Minister. During her tenure, till 1964, the Sri Lankan government implemented the official language policy, and did not reintroduce the devolution proposals of the Bandaranaike-Chelvanayagam's Pact.

¹⁴ Obeyesekere, op. cit., p. 156.

¹⁵ Marshal R. Singer, "Sri Lanka's Ethnic Conflict: Have Bombs Shattered Hopes for Peace?", *Asian Survey*, vol. 36, No. 11, November 1996, p. 1147.

¹⁶ Phadnis, op.cit., p.246.

¹⁷ Obeyesekere, op.cit., p. 156.

In 1965 FP joined the next government, the UNP. Subsequently legislation on Tamil language was passed. But FP withdrew from the government in mid 1969 because legislation on devolution of power was not put through in the Parliament.¹⁸

S Bandaranaike came back to power in 1970.¹⁹ As a part of a majority coalition the SLFP amended the Constitution in 1972. The new Constitution guaranteed Sinhala language and Buddhism supreme position in Sri Lanka. The Bandaranaike coalition also implemented an “ethnic preference programme” that made it easier for the Sinhalese to gain admission in Universities.

In 1970’s Sri Lanka faced problems of “economic hardships, unemployment and the rise of discontented youth groups”.²⁰ The youth groups arose in both the north and south Sri Lanka. Just after the 1970 election, the Janatha Vimuktha Peramuna (JVP), a radical Sinhalese youth groups, led an uprising against the Sri Lankan government: it was protesting against unemployment. This rebellion, however, was controlled since all political parties in Sri Lanka condemned them and several foreign governments also helped Sri Lanka in crushing the JVP.

In the north the Tamil youth was increasingly sidelined educationally and professionally. It was also frustrated with Tamil politicians for their inability to gain regional autonomy for the Tamil areas. As a result by the late 1970’s groups of armed Tamil youth started demanding total independence from Sri Lanka and employed violence to try and achieve this goal. As the Tamil youth gained popularity among the Tamil population, the Tamil parties also took up the goal of total independence, and changed their names (incorporating ‘Eelam’ in their names). The FP became Tamil United Liberation Front (TULF).²¹

Among the militant Tamil youth groups was the ‘New Tigers’. In 1976 this group split into the Liberation Tigers of Tamil Eelam (LTTE/ Tigers) and the Tamil Eelam Liberation Organisation. (TELO).²²

In 1977 J. R. Jayawardene-led UNP won the elections. He introduced a new Constitution and established an executive presidency in Sri Lanka. The new Constitution recognised

¹⁸ Singer, op. cit., p. 1148.

¹⁹ Sarvamattu, op. cit., pp. 456-57.

²⁰ Singer, op. cit., p. 1148.

²¹ Obeyesekere, op. cit., p. 156.

²² Singer, op. cit., p. 1148.

Tamil as a national language while Sinhala remained the official language.²³ Jayawardene promised to convene an all party conference to address Tamil grievances. This conference however was not convened. And a District Development Council Scheme that was proposed was rejected by the TULF (the largest opposition party at the time) as inadequate.²⁴

With Jayawardene coming to power the Jatika Sevaka Sangamaya (JSS), a trade union, was patronised by the UNP. It “adopted and promoted the Sinhalese-Buddhist nationalist ideology” and used unprecedented militancy in order to make Sri Lanka the home of only the Sinhala-Buddhists.²⁵ Sinhala-Tamil riots took place all over Sri Lanka in 1977. In 1978 LTTE was proscribed. In 1979 another riot broke out in the north. That year the Prevention of Terrorism Act (POTA) was also passed, and emergency was promulgated in Jaffna. In 1981, the UNP government introduced the District Development Councils (DDCs) as a step towards decentralisation- but these councils did not constitute real devolution of power.²⁶ In 1981 Sri Lanka again witnessed ethnic riots. On 23rd July 1983 the LTTE killed thirteen soldiers. Following the funeral of these soldiers, anti-Tamil riots on an unprecedented scale broke out in Sri Lanka: Colombo was most affected. Tamil leadership and much of the Tamil population fled to refugee camps, to the north, to India and overseas.²⁷

During the 1983 riots, there were reports of “acquiescence and participation of sections of security forces in the terror, and allegations that elements within the ruling party were behind its instigation”. The delayed government response was thought of as a move to placate Sinhalese chauvinism. The government, to prevent antagonising the Sinhalese, passed the Sixth amendment to the Constitution, outlawing the advocacy of secessionism. And to counter adverse international publicity it blamed the ultra-leftist groups for the riots.²⁸

India, under Indira Gandhi’s leadership, offered to mediate to quell the ethnic violence of 1983. On the one hand, India presented itself as an impartial mediator, and on the other hand, offered sanctuary to the Tamil guerillas- because of considerations of its foreign

²³ Sarvamattu, *op. cit.*, p. 457.

²⁴ Eric Meyer, “Seeking the Roots of the Tragedy,” in Manor, *op. cit.*, p. 145.

²⁵ Sarvamattu, *op. cit.*, p. 458.

²⁶ Obeyesekere, *op. cit.*, pp. 160-62.

²⁷ Phadnis, *op. cit.*, p. 249.

²⁸ *Ibid.*

policy goal as a regional power and its domestic Tamil Nadu constituency.²⁹ The militants were also supported by the expatriates.

In early 1987 Sri Lankan government imposed economic blockade in the north. This led to hardships for the civilians. In May 1987, there followed a fresh military offensive in the north. The Indian government under Rajiv Gandhi, became directly involved in the conflict after the Indian Air Force air drops of April 1987.

Under Indian pressure Sri Lanka agreed to the Indo-Sri Lankan Accord on 29 July 1987. "The crux of the Accord was the substitution of provincial autonomy for Tamil secessionism". The Accord provided for the Tamil language to be given official status with English as the link language; the setting up of provincial councils; confinement of the Army to the barracks once the militants surrendered their arms; merger of the northern and eastern provinces into one administrative unit. India was to guarantee the Accord. On Sri Lankan government's request India sent an eight thousand strong Indian Peace Keeping Force (IPKF)- its strength later rose to fifty thousand- to implement the Accord. India also "obtained a virtual veto over Sri Lanka's foreign policy".

At the outset, LTTE partially surrendered weapons, but following an Indian offensive, the Tigers reverted to guerrilla warfare. The IPKF became entangled in a war against the LTTE. The IPKF had already lost much of the goodwill among the Tamils because of 'its arrogance and ignorance'. It

The presence of IPKF in Sri Lanka also led to second JVP led armed rebellion, because of 'unwarranted

Indian intrusion in Sri Lankan affairs', and opposition to provincial autonomy for the northern and eastern provinces. From 1987 to 1989, the JVP was involved in political assassinations and economically crippling strikes. The government responded with unrelenting counter terror and in 1989 finally crushed the rebellion.³⁰

From April 1988 the Sri Lankan government and the LTTE leadership started unofficial contact. This led to a temporary realignment of political forces based on shared needs of the government and the LTTE to get rid of the IPKF. In November 1988 elections were held in Sri Lanka. This was boycotted by the LTTE, and India's preferred political party,

²⁹ Sarvamattu, op. cit., p. 459.

³⁰ Ibid., p. 460.

the Eelam People's Revolutionary Liberation Front (EPRLF), a eastern province-based party, won the election in the north and east. In 1990 IPKF withdrew from Sri Lanka.

Till April 1990 the government-LTTE contacts continued. The Sri Lankan Government made conciliatory gestures like abrogating the sixth amendment, and dissolving the Provincial Council and calling for fresh provincial elections. To take part in the election the LTTE formed the Popular Front of Liberation Tigers. But this peace was short lived. The government and the LTTE maintained hard lined stand and viewed each other with suspicion. The LTTE then returned to its goal of total independence of Tamil homeland and total dominance of the Tamils through insurgency. A war followed between the Sri Lankan government and the LTTE.³¹

In 1994 Chandrika Bandaranaike Kumaratunga-led People's Alliance came to power, on a platform to negotiate an end to the conflict. Shortly after this she approached the LTTE for talks. On 19 April 1995 the LTTE called off the ensuing truce. It then engaged in a military offensive against the Sri Lankan army. In August 1995 Kumaratunga unilaterally announced a peace package in which she offered regional autonomy to the Tamils. But in October 1995 the government launched an offensive on the LTTE. It took Jaffna City in December, and subsequently most of the Tamil population left the area. In January 1996 a modified version of the peace package was submitted to the parliament. The Tamils were opposed to this modified proposal since it spelled out authority for the centre to move against any region that tries to separate from Sri Lanka.

In January 1996 the LTTE attacked Colombo.³² The government and the LTTE have been involved in Military action against each other ever since. From May 2000 Norway has been trying to mediate between the government and the LTTE to try and resolve the conflict.³³ In October 2000, C. Bandaranaike came back to power but in July 2001 her coalition government lost its majority in the parliament.³⁴

The Sinhalese-Tamil ethnic divide does not seem amenable to resolution. 'Mistrust, doubt and uncertainty regarding inter-group relations' mark the Sinhalese-Tamil relationship. There exists a self-perceived minority complex among the Sinhalese because of the "proximity and cultural linguistic affinity" of the Sri Lankan Tamils with the Tamils in

³¹ Ibid., p. 462.

³² Singer, op. cit., pp. 1150-51.

³³ <http://www.timesofindia.com>

³⁴ Nirupama Subramanian, "Chandrika's Challenge", *Frontline*, July 20, 2001, p.53.

India, and their view that the Sri Lankan Tamils as invaders in Sri Lanka.³⁵ “There is the fundamental premise that Sri Lanka is inherently and rightfully a Sinhalese state; and that this is, and must be accepted as, a fact and not a matter of opinion to be debated”.³⁶ The Tamils too have a minority complex. They feared that the majority Sinhalese rule would jeopardise their colonial position of relative advantage in the Sri Lankan society.³⁷ Subsequent actions of the Sri Lankan government confirmed their fears, and led to a hard-liner stand among the Tamils for a separate independent Tamil homeland- the Eelam.

At present though most Tamil parties have changed their stand from demand for secession to regional autonomy but the most powerful militant group the LTTE is inflexible on the issue of secessionism. The war in Sri Lanka is thus largely fought between the government and the LTTE, with both of them sticking to their respective stands without compromise. At the root of the problem lies the marginalisation of the Tamils, from 1948 onwards by the Sri Lankan government. In the warlike situations that thus arose, the Tamil civilians are the ones who are most affected.³⁸

4.2.3 Sri Lankan Tamil Refugees

The Tamils have been migrating for over a century, in five migratory waves.³⁹ The first wave was of the “missionary-imparted English- educated” Tamils to Myanmar and Malaysia. They formed the core of the Diaspora. The second wave followed the enactment of the 1956 Sinhala Only Act. Educated Tamils left to settle in UK, Australia, Canada and the USA. During this period educated Sinhalese, Burghers and Muslims also migrated, seeking better economic opportunities. The third wave followed the ethnic riots of 1956, 1958, 1961, 1977, 1979, 1981 and especially the riots of 1983. The fifty two percent of Tamils, who lived outside the north-east till 1983, returned to the north-east or fled to India. At its peak, they were 2,25,000 Sri Lankan Tamil Refugees in India. The fourth wave followed the successful LTTE ban on the functioning of TELO, EPRLF, PLOTE and all other Tamil groups including the TULF (but excluding EROS Balkumar faction). The

³⁵ Phadnis, op. cit., p. 239.

³⁶ Singer, op. cit., pp. 1150-53.

³⁷ Phadnis, op. cit., p. 241.

³⁸ Sarvamattu, op. cit., p. 464.

³⁹ Rohan Gunaratne, “Impact of the Mobilised Tamil Diaspora on the Protracted Conflict in Sri Lanka”, In Kumar Rupesinghe, ed., *Negotiating Peace in Sri Lanka: Efforts, Failures and Lessons* (Colombo: International Alert, 1998), pp. 304-06.

LTTE killings resulted in 20, 000 militants seeking asylum in Europe and Canada: 8,000 former militants are in Canada and 5,000 in UK seeking refuge from LTTE. The phenomenon of Tamil militants seeking asylum overseas, however, had started from the 1970's with police crackdown on Tamil militancy. The Tamils leaving for Europe, North America and Australasia went either directly from Colombo or indirectly from India. The fifth wave of migration followed the IPKF period (July 1987-March 1990), Eelam War II (June 1990-December 1994) and Eelam War III (April 1994 till date). This resulted in more than 300,000 Tamils leaving Sri Lanka, despite LTTE imposed restrictions to prevent people from Jaffna Peninsula (after the Eelam War II).

Besides the massive displacement of the Tamil population from and within Sri Lanka, the mono-ethnic policy of the LTTE also resulted in displacement among the non-Tamils in the north-east, especially of the 60,000 Muslims in 1990. By 1997 there were more than 40,000 IDPs in Sri Lanka.⁴⁰

The Sri Lankan Tamil Diaspora is largely an asylum Diaspora.⁴¹ At present about one fourth of the Tamil population lives overseas. Most of this population is a result of the intensification of insurgency and counterinsurgency in Sri Lanka. And about ninety percent of them originate from the Jaffna Peninsula.

In 1997 the Tamil Diaspora population exceeded 2.4 million. Of this population more than 2,50,000 live in Europe, more than 2,20,000 in North America, 90,000 in India and 40,000 in Australasia (New Zealand, Papua New Guinea, Fiji). The Sri Lankan Tamil Diaspora totalled 200,000 in Canada, 90,000 in UK, 60,000 in France, 50,000 in Germany, 35,000 in Switzerland, 20,000 in the US, 20,000 in Norway, 15,000 in Denmark, 10,000 in the Middle East, 10,000 in Africa, 5,000 in Sweden and 500 in South Africa. Tamils are also present in Malaysia, Singapore, Myanmar, Morocco, Indonesia, Martinique, Saudi Arabia, Kenya, United Arab Emirates, China, Guyana, Thailand, Senegal, Egypt, New Caledonia, Tahiti, Trinidad and Mauritius. In the development of a pan- Tamil identity, LTTE is in the forefront. Its objective is "to radicalise the Sri Lankan Tamils both in-country and overseas both to oppose the Sri Lankan state and to demonise the Sinhalese" to galvanise pan-Tamil support.⁴²

⁴⁰ Ibid., p. 302.

⁴¹ Ibid., pp. 301, 308.

⁴² Ibid., p. 303.

The Tamil Diaspora, after the Jewish Diaspora is the most influential internationally. This Diaspora, directly through money transfers or indirectly, provides assistance amounting to more than US \$ 120 million to the Tamils in Sri Lanka. The Diaspora also supports the LTTE, providing for more than sixty percent of its procurement budget. The LTTE mobilises this support a state-of-the-art global network and international infrastructure in forty-two countries. Early political and financial support for secession mainly came from the 12 states (Sweden, Norway, France, West Germany, UK, Canada, the US, Australia, Malaysia, India, Zambia and Nigeria) was the Tamil Diaspora settled in the 1970s. The support for secessionism had increased because of the political scenario in Sri Lanka that led to ethnic polarisation.⁴³

4.2.4 Sri Lankan Tamil Refugees in India

Following the July 1983 riots 2000 Tamils were killed and 200,000 people displaced. 27,000 to 30,000 Sri Lankan Tamils fled to India where they were the Tamil Nadu government openly welcomed them and put them up in refugee camps. Additionally, between 10,000 to 40,000 Tamils who could afford to, fled to Europe and North America and sought asylum.

In the period between 1983-87 the number of Sri Lankan Tamil refugees in India reached 1,35,000. Of these 60-70,000 Tamil refugees resided outside of the camps in Tamil Nadu.⁴⁴ And of those residing in the camps most about 50,000 were repatriated to Sri Lanka under the Accord from 1988 to 1990.⁴⁵

Following the escalation of fighting between the Sri Lankan forces and the LTTE in 1991, 8,80,000 people were displaced. 2,10,000 of these refugees fled to India. However, after Rajiv Gandhi's assassination by the LTTE in 1991, the Indian government was less welcoming of the Sri Lankan Tamil refugees. It imposed strict restriction on their movements (these restrictions were unofficially relaxed after the 1996 elections when a new state government was formed in Tamil Nadu).⁴⁶

⁴³ Ibid., p. 307.

⁴⁴ "Sri Lanka: Island of Refugees" in Hiram A. Ruiz, "People Want Peace: Repatriation and Reintegration in War Torn Sri Lanka", (Immigration and Refugee Service of America, January, 1994), p. 15.

⁴⁵ "1999 Global Appeal/South Asia: Sri Lanka Operation", <http://www.unhcr.ch> (this data was downloaded in March 1999 and is not available in the same form now)

⁴⁶ Ruiz, op. cit., p. 5.

From 1992 to 95, 54,000 Tamils were repatriated from India. The repatriations in 1992 were criticised as not being voluntary for all cases. In mid 1993 India permitted the UNHCR to interview the repatriates before departure, to verify their willingness to return to Sri Lanka. The repatriations then resumed. It continued on and off till mid 1995 when it was suspended following escalation of fighting in Sri Lanka.⁴⁷

In 1991 and 1992 the Sri Lankan Tamil refugee population in India was the highest at 2,00,000. This figure went down to 55,100 in 1995 following repatriation. But with inflow of Tamil refugees from Jaffna and later from Wanni districts due to increased ethnic conflicts, their figures reached 70,300 in 1998. Their number however came down to 66,400 in 1999. Besides the refugees residing in the camps across Tamil Nadu, around 40,000 Tamil refugees stay outside the camps in Tamil Nadu.⁴⁸

4.2.5 Sri Lankan Tamil Refugees in the West

In 1999 16,310 Sri Lankan asylum applications were submitted in Europe and North America while 11,810 more Sri Lankan asylum applications pending from 1998.⁴⁹ Of the cases 3,840 applicants were granted refugee status and another 630 were otherwise recognised. 6,670 cases were rejected for substantive reasons and another 3,630 were closed for other reasons. A total of 14,120 cases were decided and 1,22,020 cases were pending at the end of 1999. This is a 3.5 percent increase in the number of pending cases. The recognition rate for the Srilankan as refugees was 34.5 percent. With additional recognition in other legal categories the recognition rates was 40.1 percent. This rate of acceptance for the Sri Lankans is high when compared to that of most other nationalities.

Out of the 16,310 Sri Lankan asylum applications that were made in 1999, 2,920 were in Canada. And out of the 3,840 Sri Lankan Tamils granted refugee status, Canada granted refugee status to 2,360 Tamils. The acceptance rate for the Sri Lankans is, thus, the highest in Canada and much less in Europe and the US: though the bulk of the applications submitted by Sri Lankans are in Europe (12,660 in 1999). In 1999 substantial applications were made in United Kingdom (5,130 cases only), France (2,000), Switzerland (1,450), Germany (1,250), Czech Republic (960), and Netherlands (860): In 1999, the largest number of Sri Lankan asylum seekers were in UK followed by those in Canada.

⁴⁷ "India", <http://www.unhcr.ch> (This 1996 data is also not available at site in the same form now).

⁴⁸ <http://www.unhcr.ch>

⁴⁹ "Asia: Sri Lanka" <http://www.unhcr.ch>

The acceptance rate for the Sri Lankan Tamil asylum seekers varied in different countries. In New Zealand it was 100 percent (of the 80 applications that were decided in 1999), in the US was 65.2 percent (of the 370 decided applications), in France was 43.2 percent, in Austria 14.3 percent (of the 220 cases), in Germany 8.4 percent, in Poland 7.7 percent (of the 99 cases), in Switzerland 3 percent, in Denmark 2.3 percent (of the 100 cases), and zero percent in Austria (of the 220 cases), in Czech Republic, in Hungary (of the 170 cases), in Norway (of the 110 cases) and in Slovakia (of the 80 cases) were none of the asylum seekers were recognized. Besides 10 Sri Lankans were resettled in Ethiopia in 1999, 10 were resettled in Thailand in 1998, and 10 others in Philippines in 1997.

The total number of Sri Lankan asylum applications in Europe from 1980-99 was 2,25,650 (1,05,450 in 1980-89 and 1,50,200 in 1990-99). In 1985 maximum number of applications (28,800) were lodged. Germany received the largest number of all applications (97,150) for the period 1980-99. From 1993 to 1999 the number of Sri Lankan applications in Europe has been between 12-13,000 per year.

The Convention recognition rate for the Sri Lankan Tamils, however, fell from 41 percent in 1991 to 12 percent in 1995. In countries that grant humanitarian status the Sri Lankans were largely accorded 'humanitarian status' than the Convention status. 12,000 Sri Lankan asylum seeker were granted humanitarian status in Europe: mainly in Denmark, Finland, Netherlands, Norway, Sweden and UK- where only 350 Sri Lankans were granted Convention status.

From 1990-95 in North America Sri Lankan asylum seekers made up three percent of all the asylum applicants. Ninety six percent of such applicants however were in Canada (24,000 or 24% of all the Sri Lankan asylum seekers in Europe and America). Canada was second to Germany in terms of the number of Srilankan asylum applications received.

Canada granted recognition to almost all the Sri Lankans recognised as Convention refugees in North America (20,000). Canada recognised over eighty percent of the Sri Lankan applicants. The recognition rate in for these asylum seekers in Europe was the highest for France (64 percent) and Germany (33 percent). The French rate of recognition, however, had fallen from hundred percent in 1990 to twenty eight percent in 1995, while the German recognition rate rose from one percent in 1990 to sixty nine percent in 1995.⁵⁰

⁵⁰ "CDR Background Papers on Refugees and Asylum Seekers from Sri Lanka," Geneva, March 1997, <http://www.unhcr.ch/refworld/contry/cdr/cdrka.htm>.

In the West the rejected asylum seekers face deportation or may be granted temporary residence on humanitarian grounds pending an improvement in situation in the country of origin. By and large the West has not deported the Sri Lankan asylum seekers. However from 1983 many European countries have been attempting to, and have done so: mainly due to domestic pressure.

In 1984 when the Sri Lankan Tamil refugee population in Switzerland rose to 2,000, the Swiss government announced that those Tamil application whose claims were denied would be repatriated. While the Swiss officials in early 1985 did send back some potential asylum seekers from Sri Lanka, Switzerland suspended the 'return' policy in December 1984 due to the continuing violence in Sri Lanka. The UNHCR appealed to the European countries and USA not to deport the Sri Lankans. The applicants in the US, however did not face imminent deportation at the time.

Most Western governments acknowledged the extreme nature of Sri Lanka's ethnic violence. They, however, did not believe that the Sri Lankan government was actively persecuting the Tamils and thus supported Jayawardene's handling of the situation. They also believed that the Sri Lankan Tamil asylum seekers were very often 'using' the asylum mechanism to regularise their residence in the West where they have better economic opportunities.⁵¹

In 1992 following the UNHCR's involvement in repatriation of Tamils from India, and with UNHCR reversing its earlier policy of objecting to Western governments deporting Tamils denied asylum, some European countries started exploring the repatriation options. UNHCR in June 1992 declared Colombo to be relatively safe for Tamils, and agreed to undertake "passive monitoring" i.e. look into any reported security problems that the returnees faced in Colombo. In 1993 around 300 rejected asylum seekers including 100 from Romania were deported to Sri Lanka.

On 12 January 1994 the Swiss government became the first Western government to negotiate a mandatory return agreement with Sri Lanka.⁵² In August 1998 Denmark also signed such an agreement. By late 1997 Switzerland had deported a few hundred Sri Lankan Tamils. Of the 300 rejected Tamils asylum seekers involuntarily returned from

⁵¹ Jones, *op. cit.*, p. 13-14, 17-18.

⁵² Ruiz, *op. cit.*, p. 20-2 and 'Srilanka', <http://www.unhcr.ch>.

Europe, 215 were from Switzerland. In 1998 500 more Tamils were returned from Europe.⁵³

The estimated 2,00,000 to 300000 Sri Lankans in Europe and North America are residents, refugees, asylum seekers, rejected asylum seekers who have been granted permission to stay on or without documentation, including those who have gone underground.⁵⁴

While the Sri Lankan Tamils do seek economic opportunities abroad, in Sri Lanka, they face a situation that is lacking in economic opportunities and education, an environment of continued fighting and shelling, inadequate nutrition, water, health care and shelter, restriction of freedom of movement, with their lives being dominated by security concerns such as check points, passes, curfews, restrictions. The relation between military and civilians is generally poor. There have been a large number of disappearances, among them many are young people. People also fear the LTTE that attacks civilians it believes to be collaborating with the Sri Lankan forces.⁵⁵

At the end of 1999, there were 612,500 IDPs in conflict areas in Sri Lanka. The UNHCR and the Sri Lankan government are assisting them. Various other international organisations such as UNICEF, UNDP, WFP, FAO, UNFP (working as a part of UNETF-United Nations Emergency Task Force), and implementation partners including international, national and local NGOs assist the IDPs.

The assistance is restricted in LTTE controlled areas because of the restrictions that are placed on movement of goods from government controlled areas to these areas. Since 1987 the UNHCR has been involved in assisting returnees from India in Sri Lanka. From 1997 it started assisting in the reintegration of 140,000 returned IDPs to their place of origin (mainly in Jaffna with the violence spreading to Wanni district)⁵⁶. But as there is an ongoing ethnic conflict, such efforts are limited and do not provide a 'safe internal alternative to flight' for the Sri Lankan Tamil refugees abroad.

⁵³ Andrew Bruce Kendle, "Protecting Whom? The UNHCR in Sri Lanka: 1987-97", in *The Round Table*, 1998, vol. 348, p. 535, <http://www.refugees.org>, and 'Srilanka' (1997), <http://www.unhcr.ch> (from 1999 website).

⁵⁴ "India", <http://www.unhcr.ch> (1999 website).

⁵⁵ "Srilanka" (1996), <http://www.unhcr.ch> (1999 website).

⁵⁶ "Asia: Sri Lanka", <http://www.unhcr.ch>.

4.3 Canada and the Sri Lankan Tamil Refugees

The Sri Lankan Tamils in Canada, prior to 1983, were well-to-do immigrants. At the time their population in Canada was considerably less than that in Europe and the US.

Following the Sri Lankan riots of 1983, the Canadian Red Cross provided assistance to the displaced persons in Sri Lanka. In 1983 Canada announced a special programme for Sri Lankans. The programme that initially covered only the Sri Lankans from Colombo was later extended to those from Jaffna, following a report on the civil war in the north and the harassment of Tamils by the Sri Lankan Army.

The 'special humanitarian measures' included providing basic assistance to the Sri Lankan refugees in Canada, preferential treatment in granting work permits, delayed repatriation of individuals denied asylum: so that they could work till the situation in Sri Lanka improved and they could return. Sri Lankans, with family members in Canada, were allowed to enter Canada as family reunification cases.⁵⁷ In 1983, however, visa requirement on travelers from Sri Lanka was also imposed.⁵⁸

Under its resettlement program Canada resettled 1,010 Sri Lankans between 1980 and 1987. During this period out of a total of 9,226 Sri Lankan immigrants in Canada, seventy two percent were independent skilled workers, seventeen percent were family reunification cases and eleven percent were refugees. Of the 1,010 Sri Lankans in the refugee class, ninety five percent were Conventional refugees, five percent were privately sponsored, and 0.2 percent were designated class immigrants. In this period the Sri Lankan refugee population was predominantly male (gender ratio being 237.8), young (80.6% in the age group 15-44 years) and with an education level less than higher secondary (59.4%).⁵⁹

The Sri Lankans were also granted asylum in Canada. However, the number of Sri Lankans being granted asylum in Canada was not large when compared to that in other European countries or the US. In 1986 the number of Sri Lankans reaching Canada increased considerably.

⁵⁷ Jones, op. cit., pp. 14-15.

⁵⁸ Howard Adelman, "Canadian Refugee Policy in the Postwar Period: An Analysis" in Howard Adelman, ed., *Refugee Policy: Canada and the United States* (Toronto: York Lanes Press Ltd., 1991), p. 214.

⁵⁹ Tanya Basok and Alan Simmons, "A Review of the Politics of Canadian Refugee Selection", in Robinson, Vaughan, ed., *International Refugee Crisis: British and Canadian Response*, (Houndmills, Basingstoke, Hampshire and London: The Macmillan Press Ltd., 1993), p. 144, 147, 151 (Table 9.3, 9.4 and 9.5).

On 11 August 1986, 152 Tamils, rescued from a lifeboat off the coast of Newfoundland sought asylum, claiming to have come from India while they actually were from Germany—where pending processing of their asylum application they had been granted temporary residence. This incident, and the July 12, 1987 incident involving 174 Sikhs who arrived in Nova Scotia by ship from Europe, provoked ‘powerful and wide based negative reaction’ among the Canadians. The result was Bill-55 that reorganized the processing of refugee claims and deterred prima-facie arrival of refugees into Canada was introduced.⁶⁰ By 1989, in Canada the backlog of asylum applications mounted to 1,21,327. Of these the second largest pending cases were from Sri Lankan (11,045) behind Trinidad and Tobago. This backlog led in part to the changes in the immigration proceedings.⁶¹ But all through from 1980 to 1999 the recognition rate for Sri Lankan Tamils was high.

In the 1980s while racism in Canada was considerably less than in other Western countries, negative prejudices towards South Asians was predominant. Such prejudice, however, did not impede South Asian men. They countered the prejudice through their class resources, kin support and informal community networks. The Canadian viewed the Sri Lankan Tamil refugees as a South Asian ethnic community. The Sri Lankans Tamils, like the Sikhs, had been thought of as maintaining too much cultural and social isolation, being too concerned with events in Sri Lanka and not making an effort at 'being Canadian', bringing ‘foreign troubles’ into Canada, being too factionalised and violent in their own communities, and having no respect for Canadian laws.⁶²

In spite of the prejudices, stereotypes and public opinion large percentage of Sri Lankan Tamils were granted asylum in Canada. In 1990s through the selection process, as a designated class, however, hardly any Sri Lankan had been granted refugee in Canada.

In Canada, the Sri Lankan Tamils are largely concentrated in Mississauga, Scarborough in Toronto, Ontario Province. Others are scattered in Vancouver, Montreal, Calgary, Winnipeg and Newfoundland. In Canada they are given the same treatment as other asylum seekers. The government provides assistance during the processing of their cases and later in their settlement if their cases are accepted.⁶³ The CIC is involved with resettlement procedures and the IRB is involved in the refugee determination procedure

⁶⁰ Buchignani, Norman, "Refugees and Ethnic Relations in Canada", in *Ibid.*, pp. 47-48.

⁶¹ Adelman, *op. cit.*, p. 184 (Table 3), pp. 205-206.

⁶² Norman Buchignani, "Refugees and Ethnic Relations in Canada", in *Ibid.*, pp. 36-40.

⁶³ N. Ketharan.

for the refugees. Many Canadian NGOs also provide assistance including legal assistance to the Sri Lankan Tamil refugees (and refugees of other nationalities). Tamil organisations such as the government funded Tamil Eelam Sangam that help Sri Lankan Tamil with all their problems, and the Ulagha Tamil Iyyakkam (World Tamil Federation) also provide assistance to the Tamils.

Canadian agencies also provide assistance to Sri Lankan Tamil IDPs and returnees in Sri Lanka. The Canadian government has offered to mediate for peace in Sri Lanka if both the warring parties are willing. CIDA is involved in development projects in Sri Lanka. The World University Services of Canada is involved in Sri Lanka, as an implementation partner of the UNHCR.⁶⁴ Canada as a donor (and contributor of personnel) to UNHCR, UNDP, FAO, WFP, UNICEF and ICCR is also a part of the UNETF program in Sri Lanka.

The UNHCR, along with its implementation partners, provides protection, relief assistance, and promotes durable solutions (integration) to the IDPs, to the returned IDPs, to the returnees from India and overseas, and to those affected by population displacement in northern Sri Lanka. The Canadian contribution to UNHCR however has gone down from a highpoint of C\$ 38.6 million in 1992 to C\$ 12.4 million in 1998: though this figure increased in 1999 to \$ 18.9 (largely as result of its contribution to the Kosovo emergency).⁶⁵

In dealing with Sri Lankan Tamil refugees thus Canada has mainly followed its general refugee policy. While it has not actively promoted repatriation to Sri Lanka as a solution, its conscious efforts have been to stem the Sri Lankan refugee movement through its involvement in the assistance programmes and development projects in Sri Lanka. Its reluctance to promote resettlement is reflected in the fact that it has ceased directly taking in Sri Lankans for resettlement. However, Canada has not dissuaded the Sri Lankan Tamils from applying for asylum in Canada. Neither has it practiced a negative policy towards the Sri Lankan Tamils who have been able to apply for asylum in Canada. On the contrary it provides a very high percentage of the Sri Lankan asylum applicants with permanent residence in Canada.

⁶⁴ Sarveswaran, a Sri Lankan Tamil pursuing Ph.D. student in India, Interview, 28 February 2001, New Delhi.

⁶⁵ <http://www.unhcr.ch>

The Sri Lankans Tamils, the group with a high recognition rate in Canada, face only minimal decline in acceptance rates. Because of the proper documentation of the human rights abuse in Sri Lanka, and because a majority of the Sri Lankan Tamil refugees arrive in Canada as family reunification cases, the increasingly restrictive asylum procedures in Canada have not adversely affected them.

CONCLUSION

The global refugee problem is being addressed by the international refugee regime comprising mainly the UNHCR, other intergovernmental organisations, governments, and local, national and international NGOs. This international refugee regime arose out of egoistic self interest of states to protect their sovereignty, political power of the West- especially the US-, general and diffuse norms and principles, usages and customs, and knowledge. It has its own principles, norms, rules and decision-making procedures. The regime has had some success in addressing the refugee problem.

But the regime was largely a creation of the cold war. It developed and became successful in the Cold War era when the host nations, the Western host nations in particular, were acting in accordance with the principles, norms, rules and decision-making procedures of the regime.

The hypothesis “In the post Cold War period there has been a change in the international refugee regime” has been tested and verified. The change in the post Cold War period has been in terms of a change in the decision-making procedures and rules. The definition of refugees has been increasingly perceived in a narrower sense to include only those facing individual persecution. The refugee problem is trying to be curtailed within the boundaries of the countries of origin. The refugees are also increasingly being viewed as (economic) migrants.

The hypothesis “The change in the international refugee regime has led to the weakening of the regime” has been tested and verified. The international refugee regime still provides assistance to the refugees, the IDPs, the returnees and asylum seekers, but it has not been able to ensure protection to the refugees. The shift in the focus of the regime from the refugees outside their countries of origin to the IDPs has not been able to address the root causes that lead to social and ethnic tensions and violence in the society that in turn lead to mass movements of refugees. The regime thus has weakened in the post-Cold War period.

The hypothesis “Refugee policy changes in host countries are largely responsible for the change in international refugee regime” has been tested and verified. The host nations, especially the West (the US in particular), provide much of the financial, material and physical support to the regime. In the face of growing numbers of refugees, and given the fact in the post Cold War era there are no real tangible goals to be served, especially for the

Western host states in hosting refugees such support has decreased. There has been a dilution of the host nations obligations and practice towards refugees. The self-interests of the West have led to a change in the policies of the international refugee regime.

The hypothesis "Canada's refugee policies have changed and become more stringent and restrictive" was tested and verified. In the post Cold War Canada's refugee policy, under the influence of its foreign policy and its domestic pressures, has become more restrictive, especially towards asylum seekers. Canada however remains a more liberal state in comparison to other Western states.

The hypothesis "Change in Canada's refugee policies have had some negative impact on Sri Lankan Tamil refugees but this impact has not been tremendous or adverse" has been tested and verified. Canada's treatment of the Sri Lankan Tamil asylum seekers has been sympathetic and in keeping with its perceptions of human rights violations in Sri Lanka. Because of the restrictive policies, however there has been some decrease in the total number of asylum applications submitted by the Sri Lankan Tamils in Canada, and in their recognition rates. But this change has not been significant. Sri Lanka remains the source of the highest number of asylum applicants in Canada and have one of the highest recognition rates in Canada.

Thus it is seen that the change in the post Cold War period is mainly a result of the policy changes in the host (Western) countries. This has led to a weakening of the international refugee regime. If such a trend continues there could even be a change of the regime in terms of changes in its principles and norms itself. However, some host nations (many of them the poorer countries in the Third World) such as Canada, while becoming more restrictive in its refugee policy and practice, have remained by and large liberal. With the recognition that refugees policies in the West or host nations could jeopardise the international refugee regime and lead to negative repercussions for the refugees and the host countries (as well as countries of origin), international cooperation to alleviate the refugee problem has to continue. Such cooperation, however, has to be based on considerations that go beyond narrow short-term self-interests of the nations, and should address the human rights problems that refugees have to cope with. Such a view in the long run will be beneficial for the states as well.

Annexure 1

Table 1. Refugee population, 2000*

Region	Population begin year		Prima facie arrivals during the year	Departures during year			Population end-year	
	Total	Of which: UNHCR-assisted		Repatriation		UNHCR-assisted resettlement	Total	Of which: UNHCR-assisted
				Total	Of which: UNHCR-assisted			
Africa	3,516,100	2,404,700	445,100	278,800	163,200	18,300	3,611,200	2,513,700
Asia	4,782,100	3,916,100	368,800	348,200	310,100	15,800	5,378,300	3,824,900
Europe	2,601,900	564,300	11,800	158,500	95,000	5,300	2,423,500	527,700
Latin Am./Car	61,300	36,600	740	720	630	40	37,900	27,300
North America	644,600	-	-	-	1,400	1,300	-	628,700
Oceania	70,700	-	-	1,700	1,700	-	68,400	-
Total	11,676,700	6,921,700	826,440	789,320	571,930	39,440	12,148,000	6,893,600

Notes

* The 2000 statistics are provisional and subject to change.

A dash (-) indicates that the value is zero, not available or not applicable.

- 1 In case of discrepancies between the country of asylum and of return, the higher number, generally reported by the country of return, was retained.
- 2 The population end-year does not necessarily equal the population begin year plus arrivals minus departures during the year.

Source: <http://www.unhcr/statist/0002>

Annexure 2

Table 2. Indicative number of refugees and others of concern to UNHCR by country/territory of asylum/residence, end 1999

Region and country/territory of asylum/residence	Refugees	Asylum-seekers	Returned refugees	Others of concern			Total population of concern
				Internally displaced	Returned IDPs	Various	
Canada**	123'300	24'730	-	-	-	-	148'030
Sri Lanka	20	-	210	612'500	-	-	612'730
Africa Total	3'523'250	61'110	933'890	640'600	1'054'700	36'990	6'250'540
Asia Total	4'781'750	24'750	617'620	1'724'800	10'590	149'350	7'308'860
Europe Total	2'608'380	473'060	952'060	1'603'300	370'000	1'279'000	7'285'800
South America Total	280	-	-	-	-	-	280
Caribbean Total	1'740	20	-	-	-	-	1'760
Northern America Total	636'300	605'630	-	-	-	-	1'241'930
Oceania Total	64'500	15'540	-	-	-	-	80'040
Grand Total	11'675'660	1'181'600	2'509'940	3'968'700	1'435'290	1'486'540	22'257'730

Source: <http://www.unhcr/statist/0002>

Annexure 3

Table 2. Indicative refugee population and major changes by country/territory of asylum, 1999

Region and country/ territory of asylum/resi- dence	Population begin year		Increases			Decreases				Population end-year	
	Total	Of which: UNHCR assisted	Spontaneous arrivals		Resettlement arrivals	Repatriation	Resettlement			Total	Of which: UNHCR- assisted
			Prima facie	Indiv. Recogn		Total	Of which: UNHCR- assisted	Total	Of which: UNHCR- assisted		
Canada	119'600	-	-	13'000	9'800	1'800	1'800	-	-	123'300	-
Sri Lanka	30	20	-	10	-	-	-	10	10	20	20
Africa Total	3'341'230	2'207'980	411'030	23'190	50	289'910	180'360	16'250	15'870	3'523'250	2'357'340
Asia Total	4'748'660	3'996'180	408'740	11'060	50	465'980	260'240	720'8700	4'781'750	3'927'080	
Europe Total	2'570'820	570'900	868'120	105'470	13'190	824'240	98'690	19'840	4'170	2'608'380	561'850
Caribbean Total	1'830	1'650	-	70	-	-	-	20	10	1'740	1'640
Central America Total	57'330	30'670	-	700	-	2'190	2'190	-	-	52'830	
South America Total	6'520	3'360	-	490	30	60	50	30	20	6'910	4'180
Northern America Total	643'700	-	-	32'800	94'800	4'700	4'700	-	-	636'300	-
Oceania Total	74'100	3'700	-	2'280	9'400	3'520	3'420	-	-	64'500	-
Various/un known	-	-	-	-	-	10'900	100	-	-	-	-
Total	11'444'190	6'814'440	1'687'890	176'060	117'520	1'601'500	549'750	44'860	28'770	11'675'660	6'875'660

Source: <http://www.unhcr/statist/0002>

Annexure 4

Table 4. Refugees resettled in selected countries, 1980-1989*

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Total
Australia ¹	19'950	21'850	21'920	17'050	14'770	14'850	11'840	11'100	11'080	10'890	155'300
Canada ¹	40'710	15'060	17'860	16'910	19'330	18'990	20'540	22'980	28'160	37'930	238'470
Denmark	440	370	370	490	280	280	380	310	540	800	4'260
Finland	20	-	10	140	60	10	120	290	400	400	1'450
Netherlands ²	1'440	1'140	610	410	480	440	370	560	700	490	6'640
New Zealand	910	1'380	700	680	560	720	680	530	650	1'060	7'870
Norway	-	-	-	880	670	770	840	800	770	1'080	5'810
Sweden	-	-	-	1'370	1'060	670	1'390	1'460	1'480	1'560	8'990
United Kingdom ³	6'850	2'750	810	1'220	800	530	830	440	720	720	15'670
United States ⁴	207'120	159'250	97'360	61'680	71'110	68'050	62'440	64'830	76'490	107'240	975'570
Total	277'440	201'800	139'640	100'830	109'120	105'310	99'430	103'590	121'180	162'360	1'420'700
Regions											
-Northern Europe	7'310	3'120	1'190	4'100	2'870	2'260	3'560	3'300	3'910	4'560	36'180
-Western Europe	1'440	1'140	610	410	480	440	370	560	700	490	6'640
Europe	8'750	4'260	1'800	4'510	3'350	2'700	3'930	3'860	4'610	5'050	42'820
Northern America	247'830	174'310	115'220	78'590	90'440	87'040	82'980	87'810	104'650	145'170	1'214'040
Notes											
* These figures may include persons who do not meet the international refugee definition. Data generally exclude family reunification.											
¹ Including refugees resettled on humanitarian grounds											
² Figures for 1981-1987 include family reunification.											
³ Refers to cases.											
⁴ Figures include family reunification.											

Source: <http://www.unhcr/statist/0002>

Annexure 5

Table 4. Refugees resettled in selected countries, 1990-1999*

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
Australia ¹	11'950	7'750	7'160	10'940	11'350	13'630	11'250	7'960	11'060	8'330	101'380
Canada**	35'250	27'300	15'650	15'480	12'390	12'650	12'210	10'370	9'650	9'780	160'730
Denmark ²	750	860	550	3'210	3'790	2'020	600	500	450	520	13'250
Finland	640	460	670	590	650	640	840	630	300	540	5'960
Netherlands	600	520	570	460	500	490	480	190	540	20	4'370
New Zealand	810	680	620	410	740	820	780	530	680	1'140	7'210
Norway ³	970	1'140	2'040	1'470	690	1'590	790	1'340	1'120	3'940	15'090
Sweden	1'460	1'730	3'400	940	7'430	1'960	1'630	1'180	1'130	550	21'410
United Kingdom	4650	490	620	510	260	70	20	-	-	-	2'620
United States ⁵	122'280	112'810	132'030	119'480	112'680	99'490	75'680	70'090	76'550	85'010	1'006'100
Total	175'680	154'110	163'720	153'790	150'650	133'450	104'280	92'790	101'490	109'830	1'339'790
Regions											
-Northern Europe	4'470	4'680	7'280	6'720	12'820	6'280	3'880	3'650	3'000	5'550	58'330
-Western Europe	600	520	570	460	500	490	480	190	540	20	4'370
Europe	5'070	5'200	7'850	7'180	13'320	6'770	4'360	3'840	3'540	5'570	62'700
Northern America	157'530	140'110	147'680	134'960	125'070	112'140	87'890	80'460	86'200	94'790	1'166'830
Notes											
* These figures may include persons who do not meet the international refugee definition. Data generally exclude family reunification.											
** 1997-1999: excluding humanitarian status.											
¹ Including refugees resettled on humanitarian grounds.											
² Including resettled Bosnians (source: UNHCR).											
³ Including temporary protection for Bosnians.											
⁴ Refers to cases.											
⁵ Figures include family reunification.											

Source: <http://www.unhcr/statist/0002>

Annexure 6

Table 6. Asylum applications submitted in selected countries, 1980-1989

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Total
Australia	-	-	-	-	-	-	-	-	-	1'260	1'260
Austria	9'260	34'560	6'310	5'900	7'210	6'720	8'640	11'410	15'790	21'880	127'680
Belgium	2'730	2'290	2'910	2'910	3'650	5'300	7'640	5'980	5'080	8'110	46'600
Canada ¹	1'000	3'000	5'000	9'400	11'000	13'000	26'000	38'000	48'000	19'930	174'330
Denmark (Inland) ²	70	120	300	800	4'310	8'700	9'300	2'730	4'670	4'590	35'590
Denmark (abroad) ³	-	-	-	-	-	-	-	4'860	6'640	690	12'190
Finland	-	20	10	20	30	20	20	50	60	180	410
France	19'910	19'860	22'510	22'350	21'710	28'930	26'290	27'670	34'350	61'420	285'000
Germany ⁴	107'820	49'390	37'420	19'740	35'280	73'830	99'650	57'380	103'080	121'320	704'910
Greece	1'790	2'240	1'190	450	760	1'400	4'230	6'930	8'420	3'000	30'410
Italy ⁵	2'130	3'640	3'140	3'040	4'560	5'420	6'480	11'030	1'240	2'120	42'800
Japan	-	-	530	40	60	30	50	50	50	50	860
Netherlands ⁷	1'350	1'590	1'210	2'020	2'600	5'640	5'870	13'460	7'490	13'900	55'130
New Zealand	-	-	-	-	-	-	-	-	-	-	-
Norway	100	100	100	150	300	830	2'720	8'610	6'600	4'430	23'940
Portugal ⁸	1'640	600	1'120	610	380	70	280	440	330	160	5'630
Spain	-	330	2'460	1'420	1'180	2'360	2'280	2'480	4'520	4'080	21'110
Sweden	-	12'650	10'230	7'050	12'000	14'500	14'600	18'110	19'600	30'340	139'080
Switzerland	3'020	4'230	7'140	7'890	7'440	9'700	8'550	10'910	16'730	24'430	100'040
United Kingdom ⁹	2'350	2'430	4'220	4'300	2'910	4'390	4'270	4'260	4'000	11'640	44'770
United States ^{4,10}	26'510	61'570	33'300	26'090	24'300	16'620	18'890	26'110	60'740	101'680	395'810
Total	179'680	98'620	139'100	114'180	139'680	197'460	245'760	250'470	347'390	435'260	2'247'600
Regions											
-Northern Europe	2'520	15'320	14'860	12'320	19'550	28'440	30'910	38'620	41'570	51'880	255'990
-Southern Europe	5'560	6'810	7'910	5'520	6'880	9'250	13'270	20'880	14'510	9'360	99'950
-Western Europe	144'090	111'920	77'500	60'810	77'890	130'120	156'640	126'810	182'520	251'060	1'319'360
Europe	152'170	134'050	100'270	78'650	104'320	167'810	200'820	186'310	238'600	312'340	1'675'340
Northern America	27'510	64'570	38'300	35'490	35'300	29'620	44'890	64'110	108'740	121'610	570'140
Notes											
¹ 1980-1982: estimates.											
² Applications lodged by asylum-seekers arriving spontaneously in Denmark.											
³ Applications lodged by asylum-seekers at embassies abroad.											
⁴ Excluding applications which have been "re-opened".											
⁵ Including applications submitted under the UNHCR mandate. Excluding spontaneously arriving Romanian citizens (27,000 during 1989).											
⁶ Including applications submitted under the UNHCR mandate. Applications submitted to the Government during 1988 and 1989 are not available.											
⁷ 1980-1982: number of applications (cases).											
⁸ 1980-1981; 1983: number of applications (cases).											
⁹ Figures refer to the number of applications. 1980-1983: number of applicants (persons).											
On average, there are some 1.3 persons per asylum application in the UK.											
¹⁰ Source: Immigration and Naturalization Service. Figures refer to the number of applications. There are some 1.45 persons per application in the US.											

Source: <http://www.unhcr/statist/0002>

Annexure 7

Table 7. Asylum applications submitted in selected countries, 1990-1999

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
Australia	12'130	16'740	6'050	7'200	6'260	7'630	9'760	9'310	8'160	9'450	92'690
Austria	22'790	27'310	16'240	4'750	5'080	5'920	6'990	6'720	13'810	20'100	129'710
Belgium	12'960	15'170	17'650	26'880	14'350	11'420	12'430	11'790	21'970	35'780	180'400
Canada	36'740	32'350	37'750	20'290	22'010	26'070	26'120	22'580	23'840	29'390	277'140
Denmark (inland) ¹	5'290	4'610	13'880	14'350	6'650	5'100	5'890	5'090	5'700	6'470	73'030
Denmark (abroad) ²	13'700	8'300	6'190	2'130	1'340	4'950	1'500	480	380	480	39'450
Finland	2'740	2'130	3'630	2'020	840	850	710	970	1'270	3'110	18'270
France	54'810	47'380	28'870	27'560	25'960	20'170	17'410	21'400	22'380	30'910	296'850
Germany ³	193'060	256'110	438'190	322'610	127'210	127'940	116'370	104'350	98'640	95'110	1'879'590
Italy ⁵	4'830	26'470	6'040	1'650	1'790	1'730	680	1'860	11'120	33'360	89'530
Japan	30	40	70	50	70	50	150	240	130	220	1'050
Netherlands	21'210	21'620	20'350	35'400	52'570	29'260	22'170	34'440	45'220	39'300	321'540
New Zealand	-	1'160	320	380	450	710	1'320	1'560	2'870	2'100	10'870
Norway	3'960	4'570	5'240	12'880	3'380	1'460	1'780	2'270	8'370	10'160	54'070
Portugal	80	260	690	2'090	770	450	270	300	370	310	5'590
Spain	8'650	8'140	11'710	12'620	11'990	5'680	4'730	4'980	6'650	8'410	83'850
Sweden	29'420	27'350	84'020	37'580	18'640	9'050	5'750	9'660	12'840	11'230	245'540
Switzerland	35'840	41'630	17'960	24'740	16'130	17'020	18'000	23'980	41'300	46'070	282'670
United Kingdom ⁷	26'210	44'840	24'610	22'370	32'830	43'970	29'640	32'500	46'020	71'150	374'140
United States ^{3,8}	73'640	56'310	103'960	143'120	144'580	149'070	107'130	52'200	35'900	31'740	897'650
Total	570'030	651'480	848'630	725'410	496'930	474'350	415'260	380'380	449'440	537'650	5'549'560
Regions											
-Northern Europe	81'330	91'840	137'620	91'420	64'040	65'810	46'450	54'860	79'230	110'340	822'940
-Southern Europe	19'730	37'540	20'290	17'170	15'850	9'170	7'360	11'590	21'590	44'480	204'770
-Western Europe	340'670	409'220	539'260	441'940	241'300	212'120	193'630	203'110	245'260	270'700	3'097'210
Europe	447'490	544'880	700'480	554'370	323'560	290'820	254'790	278'810	363'480	451'580	4'210'260
Northern America	110'380	88'660	141'710	163'410	166'590	175'140	133'250	74'780	59'740	61'130	1'174'790
Notes											
¹ Applications lodged by asylum-seekers arriving spontaneously in Denmark. ² Applications lodged by asylum-seekers at embassies abroad. ³ Excluding applications which have been "re-opened" (since 1997). ⁴ Including applications submitted under the UNHCR mandate (up to 1998). Excluding spontaneously arriving Romanian citizens (17,400 during 1990 and 3,750 during 1991). ⁵ The 1999 figure, provided by the Government, includes applications not yet officially recorded by the Eligibility Commission. During 1999, the Eligibility Commission received 12,146 asylum applicants. ⁶ Source: Government, UNHCR. ⁷ Figures refer to the number of applications. On average, there are some 1.3 persons per asylum application in the UK. ⁸ Figures refer to the number of applications. On average, there are some 1.45 persons per application in the US. Data source: Immigration and Naturalization Service. The Executive Office of Immigration Review (EOIR) received some 68,570 applications in 1997, 59,980 applications in 1998 and 49,910 applications in 1999.											

Source: <http://www.unhcr/statist/0002>

Annexe 8

Table 8. Convention recognition in selected countries, 1980-1989 (percentages)*

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Total
Australia	-	-	-	-	-	-	-	-	-	19.5	19.5
Austria	71.6	46.0	84.5	64.6	45.6	45.2	35.8	31.5	26.6	19.2	51.6
Belgium	88.2	90.4	76.9	53.2	52.7	37.6	47.2	47.9	45.5	41.6	57.4
Canada	26.0	19.7	20.4	37.5	31.9	27.6	31.4	16.3	42.3	81.0	36.0
Denmark	2.2	11.4	16.7	45.5	23.7	17.7	27.4	29.0	74.4	34.1	32.2
Finland	-	-	-	-	-	-	-	25.0	25.0	5.9	10.0
France	85.5	77.5	73.9	70.0	65.3	43.3	39.0	32.7	34.6	28.1	52.0
Germany	15.2	12.6	15.9	18.4	36.5	39.7	21.7	11.7	10.8	6.2	15.0
Italy	86.5	62.1	28.6	45.1	39.5	23.4	17.2	15.4	11.3	57.7	34.2
Netherlands	6.8	2.7	4.8	6.9	5.2	3.3	4.2	2.0	4.9	8.7	5.0
New Zealand	-	-	-	-	-	-	-	-	-	-	-
Norway	-	10.0	25.0	27.3	23.5	20.6	23.4	7.4	2.1	3.5	5.3
Portugal	-	22.2	30.0	14.8	3.4	100.0	-	100.0	33.3	50.0	16.3
Spain	-	-	57.5	45.8	68.4	70.0	66.7	46.8	34.1	11.2	38.1
Sweden	67.4	62.4	85.4	78.1	66.0	64.7	70.6	15.4	25.3	13.2	43.8
Switzerland	66.1	94.2	75.0	48.3	24.4	13.9	10.5	7.8	6.9	5.7	14.3
United Kingdom	63.9	62.3	58.8	40.2	31.5	21.7	11.7	11.1	23.2	31.8	34.3
United States	55.0	26.0	35.0	30.0	20.4	24.5	29.9	54.1	39.2	18.0	26.8
Total	37.2	34.2	50.9	40.2	37.7	35.2	31.1	19.9	20.2	15.6	29.1
Region											
-Northern Europe	63.1	59.2	74.7	62.7	55.8	40.6	49.2	16.0	26.2	15.6	35.8
-Southern urope	87.1	65.9	40.4	42.4	40.7	35.3	27.4	37.1	25.4	34.2	38.6
-Wester Europe	33.0	31.1	51.6	41.2	48.3	37.0	26.7	16.9	15.6	11.8	27.2
Europe	37.0	34.9	53.7	43.7	48.7	37.6	31.2	18.5	18.3	13.5	29.2
Northern America	45.3	24.1	32.0	30.8	21.3	25.0	30.3	36.3	39.8	26.3	28.4
Notes											
* Refugees granted Convention status divided by the number of substantive decisions* 100%.											

Source: <http://www.unhcr/statist/0002>

Annexure 9

Table 9. Convention recognition in selected countries, 1990-1999 (percentages)*

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
Australia	31.0	11.4	5.8	9.8	13.3	9.1	18.1	6.7	23.8	22.7	13.1
Austria	6.8	12.5	9.7	7.8	7.5	13.0	8.2	8.1	11.5	41.7	11.8
Belgium	33.1	23.5	20.7	23.3	25.0	25.5	23.6	20.4	26.0	32.4	24.5
Canada	73.6	68.7	61.2	55.2	70.3	70.1	57.5	52.4	55.5	58.0	61.8
Denmark	30.4	31.3	23.3	22.2	28.3	21.3	11.6	9.5	13.1	15.2	17.6
Finland	4.1	0.8	1.4	0.6	3.3	1.5	1.7	1.7	1.6	1.6	1.4
France	15.4	19.7	28.0	27.9	23.7	15.6	19.5	17.0	17.5	19.3	20.0
Germany	5.3	8.3	5.3	4.5	9.7	16.2	15.8	14.8	7.9	11.3	9.1
Italy	59.4	4.9	4.9	9.1	17.8	16.9	24.6	21.1	30.1	35.2	13.4
Japan	-	-	-	25.0	-	-	-	-	6.5	14.3	6.6
Netherlands	6.5	4.5	15.3	33.6	12.9	28.3	15.3	21.5	9.0	2.5	14.6
New Zealand	-	50.0	14.9	4.7	15.2	26.7	13.4	16.7	15.1	25.7	17.6
Norway	2.3	2.1	1.9	0.3	0.2	0.6	0.3	2.3	2.0	1.5	1.1
Portugal	20.0	14.3	4.3	5.9	2.2	3.6	4.2	-	-	7.1	4.9
Spain	14.1	9.3	2.4	7.4	4.9	6.8	5.0	3.2	3.9	4.5	5.8
Sweden	7.9	3.8	2.2	1.3	1.5	1.6	2.1	9.7	8.1	6.4	3.4
Switzerland	7.2	3.8	3.8	11.0	8.3	9.4	9.2	12.0	9.8	3.6	7.2
United Kingdom	22.8	10.1	5.9	9.1	4.8	5.6	6.3	13.3	20.0	25.2	12.1
United States	14.7	33.6	37.6	21.8	22.0	46.9	84.4	80.5	75.7	88.3	43.9
Total	13.7	14.7	12.6	10.0	12.9	19.7	19.2	19.5	16.1	17.6	15.0
<i>Region</i>											
-Northern Europe	9.9	5.7	4.5	2.8	2.7	10.5	6.6	11.2	13.9	15.0	7.6
-Southern Europe	22.8	5.7	3.8	7.4	6.5	9.4	7.6	6.9	10.3	11.1	8.2
- Western Europe	9.3	11.1	9.4	8.8	11.2	16.9	15.3	15.7	9.8	9.6	11.4
Europe	10.6	10.3	8.5	7.7	9.8	15.4	13.8	14.5	10.6	10.5	10.8
Northern America	34.7	62.3	54.9	39.4	39.8	54.8	70.7	63.5	62.8	70.1	53.4
Notes											
* Refugees granted Convention status divided by the number of substantive decisions* 100%.											
Discrepancies between the 1999 percentages in this Table and Table IV.1 are due to rounding.											

Source: <http://www.unhcr/statist/0002>

Annexure 10

Table 10. Asylum applications and refugee status determination by origin and country/territory of asylum, 1999*
The origin is listed if the number of applications or decisions was 100 or more during 1999.

Origin	country/ territory of asylum	Procedure		Pending cases begin year	Cases submitted during year	Decisions during year					Pendi g cases end of year	Percentage recognized		% change pending cases
		T	L			ecognized		ejected	therwis closed	otal		Ref. Status	otal	
						efugee tatus	ther							
Afghanistan	Canada	G	FI	250	510	410	-	10	30	450	310	97.9	97.9	22.4
Albania	Canada	G	FI	310	480	240	-	80	40	370	420	74.2	74.2	36.4
Algeria	Canada	G	FI	540	570	490	-	190	60	740	370	72.1	72.1	-31.0
Angola	Canada	G	FI	60	370	50	-	20	10	80	350	68.0	68.0	505.3
Argentina	Canada	G	FI	140	440	30	-	60	50	140	440	33.7	33.7	226.7
Bangladesh	Canada	G	FI	790	320	200	-	460	80	740	370	30.9	30.9	-53.6
Bulgaria	Canada	G	FI	200	240	150	-	40	30	220	220	77.8	77.8	9.9
Cameroon	Canada	G	FI	80	110	40	-	40	10	90	100	49.4	49.4	26.7
Chad	Canada	G	FI	200	100	170	-	50	10	230	70	77.6	77.6	-64.4
China	Canada	G	FI	960	2'440	590	-	420	740	1'760	1'630	58.4	58.4	69.9
Colombia	Canada	G	FI	250	620	150	-	110	50	310	550	59.5	59.5	125.7
Congo	Canada	G	FI	110	120	80	-	30	20	120	100	73.6	73.6	-6.7
Costa Rica	Canada	G	FI	140	430	30	-	80	260	370	200	30.6	30.6	41.0
Cuba	Canada	G	FI	120	210	160	-	20	10	190	130	88.1	88.1	10.2
Czech Rep.	Canada	G	F	1200	90	120	-	50	40	200	90	72.6	72.6	-53.7
Dem. Rep. of the Congo	Canada	G	FI	900	880	660	-	320	80	1'060	720	67.0	67.0	-20.5
Djibouti	Canada	G	FI	290	80	150	-	100	20	270	100	60.2	60.2	-64.6
Egypt	Canada	G	FI	100	80	70	-	30	10	110	60	70.9	70.9	-33.7
El Salvador	Canada	G	FI	380	300	70	-	220	100	390	2	90	24.6	24.6
Ethiopia	Canada	G	FI	120	150	100	-	30	10	140	130	76.2	76.2	9.2
Ghana	Canada	G	FI	150	130	20	-	50	60	130	150	30.0	30.0	4.1
Guatemala	Canada	G	FI	350	170	70	-	190	90	350	170	27.2	27.2	-52.9
Guinea	Canada	G	FI	80	150	80	-	30	10	120	110	72.9	72.9	33.3
Haiti	Canada	G	FI	240	300	40	-	150	90	280	250	21.7	21.7	4.1
Honduras	Canada	G	FI	400	340	50	-	150	280	470	260	24.6	24.6	-36.0
Hungary	Canada	G	FI	900	1'580	70	-	380	500	960	1'530	16.4	16.4	70.5
India	Canada	G	FI	1'140	1'350	300	-	620	260	1'180	1'300	32.5	32.5	13.8
Iraq Canada	G	FI	220	360	220	-	30	280	310	85.7	85.7	39.2		
Islamic Rep. of Iran	Canada	G	FI	900	790	660	-	200	80	940	770	77.0	77.0	-15.3
Israel	Canada	G	FI	380	300	30	-	310	90	420	260	8.7	8.7	-31.3
Jamaica	Canada	G	FI	70	130	10	-	30	50	90	1			
Kazakhstan	Canada	G	FI	200	210	70	-	140	30	240	180	33.5	33.5	-11.6
Lebanon	Canada	G	FI	240	350	110	-	110	50	270	330	49.6	49.6	33.6
Libyan Arab Jamahiriya	Canada	G	FI	50	110	40	-	10	10	60	100	79.6	79.6	98
Mexico	Canada	G	FI	1'240	1'170	290	-	670	390	1'350	1'070	30.4	30.4	-14.0
Nicaragua	Canada	G	FI	100	50	40	-	50	10	100	40	43.3	43.3	-53.7
Nigeria	Canada	G	FI	590	580	120	-	340	140	590	580	26.3	26.3	-1.7
Pakistan	Canada	G	FI	1'620	2'340	960	-	620	330	1'910	2'060	60.7	60.7	27.1
Peru	Canada	G	FI	350	380	140	-	180	60	370	370	44.0	44.0	3.4
Poland	Canada	G	FI	110	220	50	-	50	50	150	180	49.0	49.0	67.9
Rep. of Korea	Canada	G	FI	0	160	20	-	50	0	70	150	27.9	27.9	0
Romania	Canada	G	FI	390	540	130	-	230	100	460	460	37.0	37.0	20.5
Russian Federation	Canada	G	FI	620	860	350	-	280	110	740	740	55.9	55.9	19.4
Rwanda	Canada	G	FI	290	280	350	-	50	10	400	180	88.2	88.2	-39.9
Somalia	Canada	G	FI	550	530	530	-	40	130	690	380	93.0	93.0	-31.2
Sri Lanka	Austria	G	V	-	220	-	-	50	150	200	-	0.0	0.0	-
Sri Lanka	Belgium	G	FI	-	140	10	-	60	-	70	-	14.3	14.3	-
Sri Lanka	Canada	G	FI	2'240	2'920	2'360	-	560	170	3'090	2'060	80.9	80.9	-7.9

Origin	country/ territory of asylum	Procedure		Pending cases begin year	Cases submitted during year	Decisions during year					ending cases end of year	Percentage recognized		% change pending cases
		T	L			Recognized		Rejected	Otherwise closed	Total		Ref. Status	Total	
						Refugee status	Other							
Sri Lanka	Czech Rep.	G	FA	150	960	-	-	70	950	1'020	90	0.0	0.0	-40.1
Sri Lanka	Denmark	FA	-	100	-	50	80	-	130	-	2.3	38.6	-	-
Sri Lanka	France	FI	-	2'000	660	-	86	-	-	1'520	-	43.2	43.2	-
Sri Lanka	Germany	G	FI	790	1'250	180	10	1'900	990	3'080	640	8.4	9.0	-18.3
Sri Lanka	Hungary	G	FI	10	170	-	-	40	60	100	90	0.0	0.0	1'316.7
Sri Lanka	Netherlands	G	V	-	860	40	80	1'270	-	1'380	-	2.5	8.2	-
Sri Lanka	New Zealand	G	FA	-	120	80	-	-	-	80	-	100.0	100.0	-
Sri Lanka	Norway	G	FA	-	110	-	80	430	0	500	-	0.0	15.3	-
Sri Lanka	Poland	G	FA	-	90	-	0	10	230	240	-	7.7	7.7	-
Sri Lanka	Slovakia	G	FI	20	80	-	0	0	100	100	-	0.0	0.0	-95.5
Sri Lanka	Switzerland	G	FI	8'130	1'490	50	400	1'090	700	1'840	7'930	3.0	28.8	-2.4
Sri Lanka	United Kingdom	G	FI	-	5'130	-	-	-	-	-	-	-	-	-
Sri Lanka	United States	G	A	250	370	160	-	90	160	410	210	65.2	65.2	-15.5
Sudan	Canada	G	FI	140	340	190	-	20	30	240	240	92.1	92.1	72.5
Syrian Arab Rep.	Canada	G	FI	100	120	70	-	30	-	100	120	70.4	70.4	15.4
Turkey	Canada	G	FI	270	420	220	-	70	30	320	370	76.2	76.2	35.8
Ukraine	Canada	G	FI	320	390	120	-	130	80	320	380	46.6	46.6	20.6
United Rep. of Tanzania	Canada	G	FI	30	100	20	-	10	-	30	100	66.7	66.7	242.9
Venezuela	Canada	G	FI	440	100	60	-	220	110	390	140	21.2	21.2	-68.0
Yugoslavia, FR	Canada	G	FI	210	400	240	-	40	50	320	290	86.9	86.9	38.7

Notes

* All figures are rounded to the nearest ten. Therefore, totals may not add up.

Note, however, that the last three last columns of this table have been calculated on the basis of the unrounded figures.

1 Type of refugee status determination (asylum) procedure: G=Government; U=UNHCR; V=Both/unknown.

2 Level of refugee status determination (asylum) procedure: FI=First instance only; AR=Administrative review; A=Appeal only; FA=First instance and appeal; JR=including judicial review.

3 Number of applications for refugee status (asylum) which has not yet been decided as at 1 January 1999.

4 Number of applications for refugee status (asylum) submitted during 1999.

5 Number of applications granted refugee status during 1999. This includes applications which were submitted before 1999.

6 Number of applications granted humanitarian status/allowed to remain for humanitarian reasons during 1999.

This includes applications which were submitted before 1999.

7 Number of rejected applications for refugee status (asylum), including applications which were submitted before 1999.

Where possible, a distinction has been made between substantive rejections and cases which were rejected (closed) for other reasons.

8 Number of cases which were closed (rejected) for other than substantive reasons. This includes applications which were submitted before 1999.

9 Total number of decisions taken on refugee status (asylum) applications during 1999. This includes applications submitted before 1999.

10 Number of applications for refugee status (asylum) which has not yet been decided as at 31 December 1999. This includes applications submitted before 1999.

11 The percentage of applications decided during 1999, excluding cases closed on non-substantive grounds, which was granted refugee status.

12 The percentage of applications decided during 1999, excluding cases closed on non-substantive grounds, which was granted refugee, humanitarian or comparable status.

13 The percentage change in the number of pending cases from the beginning of the year to the end of the year.

** Humanitarian status estimated by UNHCR.

Source: <http://www.unhcr/statist/0002>

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