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CANADA'S PERIODICAL ON REFUGEES

# REFUGE

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## Burden Sharing or Burden Shifting?

### "Irregular" Asylum Seekers: What's All The Fuss?

by James C. Hathaway

In 1985, the Executive Committee of UNHCR noted its concern about "the growing phenomenon of refugees and asylum-seekers who, having found protection in one country, move in an irregular manner to another country ..." (Conclusion No. 36, para. j). At first glance, one might not view this conclusion as objectionable. With all of the millions of refugees in the world, most of who have *no protection*, why should we be concerned about the lot of a bunch of ingrates who, having already found protection, now want to move on in search of greener pastures? Don't we really have better things to do with our time, more important causes to fight for, than the rights of a load of malcontents who are already being adequately protected elsewhere?

In fact, though, there are some very good reasons for us to be concerned about the way that governments have dealt with this issue.

First, the way that the concern is framed is to my mind designed to confuse. "Irregular" asylum-seekers. What's a "reg-

ular" asylum seeker? Why is an "irregular" asylum seeker something negative, something to be concerned about?

The Sub-Committee on International Protection (EC/SCR/40, 1985) makes it clear that these dangerous, "irregular" refugees are in fact only persons who have failed to comply with "structured international efforts to provide appropriate solutions ..." They are people who, sensing themselves to be in jeopardy, dare to take their fates into their own hands and move on "without the prior consent of ... national authorities." Not exactly your hoards of marauding villains, nor

even your garden variety pests. What we are talking about here are rather people who dare to decide for themselves what their own needs are, whether or not they are being met, and who have the audacity to determine their own destinies. In other contexts, we might call such people responsible, self-reliant, or even courageous, but if they are refugees, they are instead "irregular."

The "offence" of moving without authorization is to my mind fairly trivial, at least if there is a good reason that

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prompts the departure. This is where the whole "irregular movement" argument falls apart. Why is it that some refugees who are already protected feel the urge to leave their states of residence? Are they really a bunch of malcontents or greedy opportunists, or is there something more fundamental that underlies their decision to leave?

The answer is simple: "protected" refugees move on because they are not really *protected*. The self-same UNHCR report (EC/SCP/40, 1985) that dares to suggest that "irregular" refugees should become "regular" by staying put, explicitly acknowledges the reasons that some people have the courage to move on:

Irregular movements of refugees and asylum-seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long term durable solutions by way of voluntary repatriation, local integration and resettlement.

## CANADA'S PERIODICAL ON REFUGEES **REFUGE**

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What opportunists! That they should dare to question the adequacy of the protection received just because they cannot study, work, or otherwise settle into some semblance of a normal life. What ingrates! Why can't they just accept their lot, endure their burdens, and thank their lucky stars for the protection they have received?

The point, of course, is that irregular movement is not *substantively* irregular at all. It is rather movement that is involuntary, in that it stems from the denial by so-called law-abiding states of some of the most basic human rights of refugees. Rights like education and work that are guaranteed not only in the International Bill of Rights, but specifically established in the Refugee Convention itself. Unless states are prepared to live up to their obligations under international law, there is absolutely nothing irregular about these refugee movements. They are rational responses to denials of basic aspects of human dignity. The irregularity, if there is one, is in the behavior of those states that refuse to *truly* protect refugees, so that they are forced to move on, yet again, in search of reasonable respect and a humane existence.

For me, the "irregular" movement debate, currently the subject of discussions between UNHCR and interested states, points out yet again the underlying premise of refugee law. Refugee law has long since lost sight of its humanitarian roots, and has become hopelessly entangled in the pursuit by states of their own self-interests. There is nothing whatsoever illegitimate about refugees moving onward from a state that refuses to recognize their basic human rights, including the rights to education, to work, and to a durable solution. The time is coming very close that we will have to actively re-take refugee law, mold it into a human rights-based regime, and truly make the letter of the law conform to the rhetoric of concern. To allow states to continue to shift the blame for destabilizing the protection system to the shoulders of refugees is not, in my view, a morally acceptable option.

James C. Hathaway, an Associate Professor at Osgoode Hall Law School, York University, is the Director of its Refugee Law Research Unit. This editorial is an edited version of a presentation at the annual conference of the Canadian Council for Refugees delivered in Toronto on November 24, 1988.

## The RDP Becomes the Centre for Refugee Studies

On October 27, 1988 the Refugee Documentation Project was formally transformed by the Senate of York University into a free standing organized research unit to be known as the Centre for Refugee Studies.

The Centre will continue to conduct scholarly research, academic programmes, public colloquia, and co-sponsored conferences. It will house Visiting Scholars and Research Fellows. Scholarly research on refugee issues and academic programmes focus on the social, economic and political aspects of the movement and resettlement of refugees.

The Centre publishes scholarly monographs, books and reports. The Resource Centre contains over 11,000 items in its data base; holdings are available to students researchers, visiting scholars, members of government departments, and to community organizations. The Centre is currently developing a film library and

promoting the International Refugee Participation Network for the exchange of mutually accessible machine-readable data.

The Centre's mandate also includes public advocacy and sensitization of the general public to refugee and other humanitarian issues. The Centre for Refugee Studies is governed by an Executive Board, an Academic Board of Directors and an Advisory Board.

Among the activities organized to celebrate its inauguration was the Refugee Education Week (December 5-8, 1988) which comprised public lectures by Professors Leon Gordenker, from the Institut Universitaire des Hautes Études Internationales in Geneva, C. Michael Lanphier, former Director of the RDP, Howard Adelman, Director of the CRS, and Barry Stein, from Michigan State University. A Chinese Banquet is planned for January 19, 1989 (see p. 23).