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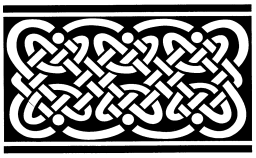

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Refugees in Limbo and Canada's International Obligations

by

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The refugee and immigrant series was launched by the Caledon Institute of Social Policy in partnership with The Maytree Foundation's Refugee and Immigrant Program. The purpose of the series is to highlight the problems and policy issues that affect refugees and immigrants to Canada and to propose practical solutions to these problems.

This paper is an adaptation of a legal opinion written by Professor Goodwin-Gill, commissioned by the United Nations High Commissioner for Refugees (UNHCR) Office in Canada, entitled "The 1951 Convention relating to the Status of Refugees and the Obligations of States under Articles 25, 27 and 28, with particular reference to refugees without identity or travel documents."

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Executive summary

For many years, the situation of several thousand 'refugees in limbo' in Canada has drawn the attention of refugee advocacy groups, policy analysts and government officials. This group consists of persons recognized as refugees by Canada's Immigration and Refugee Board but who have not been able to acquire permanent resident status, because they lack the 'satisfactory' identity documents required by Canada's *Immigration Act.* [1]

Previous studies have examined the history and rationale behind this policy, and its effect on refugees. [2] This paper approaches the problem from the perspective of *international* law, and specifically, in the context of Canada's obligations as a State Party to the 1951 *Convention relating to the Status of Refugees* (the 1951 Convention). [3]

The first part of this paper discusses the interpretation of treaties and their implementation in national law, and highlights problems which the 1951 Convention sought to address, including issues of documentation for refugees. It then looks at the system set up by the 1951 Convention (Articles 25, 27 and 28) to address these problems. These Articles oblige State Parties to provide refugees with administrative assistance which they cannot be expected to obtain from their countries of origin, as well as with identity papers and travel documents.

The report reviews how a number of signatory States other than Canada have handled the problem of identity and travel documents for refugees, and contrasts this with the law and practice in Canada, including an assessment of the experience with the Undocumented Convention Refugee in Canada Class. It finds that the Canadian practice of requiring recognized refugees to obtain identity documents from their countries of origin, and of issuing Convention Travel Documents to recognized refugees only after they have become permanent residents, is not in line with the spirit or the letter of the 1951 Convention.

In a final section, recommendations to remedy the current situation are made. All of the suggested options would require the Minister of Citizenship and Immigration to accept the determination of identity made by the Immigration and Refugee Board in the course of the status determination procedure. As there is no indication that significant numbers of refugees with false identities have been recognized in Canada, there is no obvious reason why this point of departure should not be accepted. Moreover, recognition may subsequently be revoked if it is found to have been based on false pretences.

The paper therefore recommends that all recognized refugees be treated equally and be accorded all of the rights set out in the 1951 Convention upon recognition. This would include the issuance of Convention (Refugee) Travel Documents, which also could serve as the documents currently required by the *Immigration Act* for landing.

The introduction of Bill C-31, the proposed new *Immigration and Refugee Protection Act* tabled in Parliament in April 2000, affords an opportunity to make the necessary changes in Canadian law to resolve these long-standing problems and to enhance the quality of refugee protection in Canada.

Introduction

Just over half a century ago, in the aftermath of World War Two, the UN General Assembly convened a Conference of Plenipotentiaries to draft a Convention regulating the legal status of refugees. The result was what has become known as the Magna Carta of international refugee law, the 1951 *Convention relating to the Status of Refugees*.

The authors of the 1951 Convention had one basic human right squarely in focus, namely, the right to recognition as a person before the law, set out in Article 6 of the 1948 *Universal Declaration of Human Rights*. [4] Though it was not explicitly mentioned in the Preamble to the 1951 Convention, the drafters understood that the lack of a clear legal status prejudiced the ability of refugees to "lead a normal and self-respecting life." [5]

In Canada there are thousands of convention refugees, from many different countries, who do not have clear legal status. These are persons whose refugee status has been recognized by Canada's Immigration and Refugee Board, but who cannot become permanent residents because they are unable to provide Citizenship and Immigration Canada with "satisfactory identity documents." Because Canadian law does not provide for a distinct legal status for recognized refugees until and unless they are 'landed' (i.e., become permanent residents), these persons live in a legal limbo, unable to obtain travel documents, be reunited with their family members or receive government loans for postsecondary education.

The drafters of the 1951 Convention realized that refugees may arrive in countries of prospective asylum without identity documents for many valid reasons. Their recognition of the refugee's need for an identity, as inherent to his or her dignity and integrity, was reflected in the Convention, and in particular in its Articles 25, 27 and 28. Article 25 concerns administrative assistance (to refugees), Article 27 concerns identity papers and Article 28, travel documents.[6] Although nothing in the Convention specifically requires States to translate its provisions into national legislation, the failure to do so can – and does – lead to problems in countries like Canada, where treaties do not automatically have the force of law.

Implementation of treaties in national law

When a State signs and ratifies a treaty, it is obliged to make sure that its national legislation conforms with its new international obligations, although it is not necessarily obliged to adopt new legislation for this purpose. Article 36 of the 1951 Convention requires States to provide information on such laws and regulations as 'may' be adopted to ensure application of the Convention.

A decision to ratify a particular treaty and not formally to incorporate it into domestic law is normally based on an assessment of national legislation at the time of ratification, in view of the prevailing circumstances. But changing circumstances can bring to light deficiencies in a system, which were not evident earlier. This is what has happened in Canada, in the case of recognized refugees who are not considered to qualify for landing.

Canada ratified the 1951 Convention and the 1967 *Protocol relating to the Status of Refugees* on June 4, 1969; both instruments entered into force for Canada on September 2, 1969. Canada then became obliged (*inter alia*) to provide administrative assistance to refugees and to

issue them with identity and travel documents according to the terms of Articles 25, 27 and 28 of the Convention.

Canada's accession was made subject to the following reservation with respect to Articles 23 and 24: [7] "Canada interprets the phrase 'lawfully staying' as referring only to refugees admitted for permanent residence; refugees admitted for temporary residence will be accorded the same treatment with respect to matters dealt with in Articles 23 and 24 as is accorded visitors generally." However, this reservation was not made in regard to any of the other Articles of the 1951 Convention which use the term "lawfully staying" (Articles 15, 17, 18, 19, 21, 26, 28 and 32). [8]

States undertake to implement in good faith the treaties which they have ratified, but the choice of means to do so is mainly up to them. They may incorporate the provisions into national law, use administrative regulation to make sure their treaty obligations are met, adopt *ad hoc* procedures or employ any combination thereof. From an international law perspective, what is important is that the treaty obligations are effectively implemented. [9] Unfortunately, this is not always the case. Many States have undertaken obligations to refugees or generally in regard to human rights, but have not ensured that the rights subscribed to can, in fact, be claimed. For instance, procedures in many countries focus on the determination of refugee status, but leave aside the potential for claims under Article 3 of the 1984 *Convention against Torture*, [10] or Article 7 of the 1966 *International Covenant on Civil and Political Rights*. [11] In other fields, States have undertaken to extradite those accused of "international crimes," but have yet to provide for local prosecution, in the event that other international obligations stand as obstacles to removal. [12]

The test of whether a treaty is being effectively implemented at the national level does not depend on form alone, but on an overall assessment of what actually happens in practice. The 1951 Convention is no exception to this general rule of treaty implementation. To understand what Canada's obligations as a signatory of the 1951 Convention entail, it is necessary to understand the problems which the Convention sought to address, and to look at general rules governing the interpretation and application of treaties.

These rules are contained in the 1969 *Vienna Convention on the Law of Treaties* [13] (VCLT) which, although it is not retroactive, is considered to reflect general international law. [14] One of the best-settled rules of international law is that "every treaty in force is binding upon the parties to it and must be performed by them in good faith" – the principle of *pacta sunt servanda*. [15] Moreover, general international law considers that "a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken." [16] A State "may not invoke the provisions of its internal law as justification for its failure to perform a treaty... ." [17] In short, when a State signs and ratifies a treaty, it accepts a legal obligation to make sure that it has a mechanism to implement it.

General rules of treaty interpretation

The Vienna Convention instructs that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in the context and in the light of its object and purpose." [18] In the case of the 1951 Convention, this means interpretation

by reference to the object and purpose of extending the protection of the international community to refugees, and assuring to "refugees the widest possible exercise of ... fundamental rights and freedoms." [19]

Because it is not always easy to establish clearly the intended meaning of words used in treaties, the rules of treaty interpretation permit recourse to what are called "supplementary means of interpretation," including the *travaux préparatoires*, or the record of work leading up to conclusion of a treaty. This is generally accepted only where the meaning of the treaty language is "ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable." If the meaning of the treaty is clear from its text, when viewed in the light of its context, object and purpose, supplementary means are unnecessary. [20]

The *travaux préparatoires* are not always unambiguous, and it must be kept in mind that all that States have agreed upon is the actual text of the treaty. Nonetheless, the *travaux préparatoires* can be used in a limited fashion to confirm the ordinary meaning of the words in the Articles under consideration, and can help to provide context and life to the intentions of the drafters.

Problems addressed by the 1951 Convention

The 1951 Convention consolidated previous international instruments relating to refugees, and remains to this day the most comprehensive codification of the rights of refugees ever attempted on the international level. The Convention applies to refugees without discrimination as to race, religion or country of origin (Article 3). Among the most important provisions in the 1951 Convention are those governing the definition of the term 'refugee' (Article 1A), the non-discrimination provision (Article 3) and the principle of *non-refoulement* (Article 33). These Articles are considered so vital that no reservation may be made to them (Article 42).

The principal objective of the Convention was the regulation of refugees' legal status and treatment. While the Convention sets out basic minimum standards for the treatment of refugees, States remain free to offer refugees more favourable treatment. However, unless special measures are taken to make sure that the provisions of the Convention are translated into action at the national level, the rights and benefits set out in the Convention may well be denied to refugees.

Three Articles contained in Chapter V of the 1951 Convention (Administrative Measures) are particularly relevant to the problem of 'refugees in limbo' in Canada. Article 25 requires asylum countries to provide refugees with administrative assistance which they no longer can receive from their countries of origin. Article 27 requires State Parties to issue identity documents to refugees who are not in possession of them, and Article 28 entitles refugees to a travel document, commonly known as a Convention Travel Document (CTD).

Article 25: Administrative assistance

The origin of Article 25 can be found in the earliest efforts of the League of Nations to address the problems of refugees. The League's 1926 *Arrangement regarding Russian and Armenian Refugees*, for example, was specifically organized around the objective of certifying the identity and 'position' of refugees. [21]

Article 25 of the 1951 Convention continues this practice and obliges Contracting States to provide the assistance normally afforded by national authorities, including the issuance of "documents or certifications" which are to "stand in the stead" of official instruments and to "be given credence in the absence of proof to the contrary." The obligation is incumbent on the State in whose territory the refugee is residing.

When the *Ad hoc* Committee which drafted the 1951 Convention discussed the proposed article on administrative assistance, Mr. Paul Weis, representing the International Refugee Organization, pointed out that this should not pose a particular problem in common law countries. Because of the practice in these countries of accepting affidavit evidence, he said: "No new legislation or administrative procedures were required to protect refugees." [22] Indeed, some common law countries, where affidavits and statutory declarations may take the place of official documents, have made reservations to this Article; Canada has not done so. [23]

The Committee was concerned that without specific assistance, refugees might not be able to enjoy the rights accorded them in the Convention. As the representative for Belgium said at the 1951 Conference which adopted the Convention, this provision:

> …was designed to meet one of the most constant and essential needs of refugees... [H]e could not agree that the administrative assistance [to be afforded by Contracting States] should be made optional... . [I]f governments were permitted to grant or refuse them the necessary documents at their discretion, the rights which the Convention was intended to confer on refugees would be jeopardized. [24]

The *Ad hoc* Committee recognized that documentation issued to refugees must be credible and authoritative, and suggested that Contracting States should "give documents issued... *the same validity* as if the documents had been issued by the competent authority of the country of nationality... ." [25] This provision was amended by the 1951 Conference to "credence in the absence of proof to the contrary," an understandably lesser standard of validity than that of 'original' documents. Such 'lesser validity' is inherent in the circumstances. Documents issued under Article 25 are clearly not originals, but the standard also reflects the experience with affidavit evidence familiar to common law countries, and the legal principle that evidence given under oath should be presumed to be true. [26] The standard of 'credence' also serves to protect the interests of Contracting States, which remain free to annul or modify any document, or benefit granted on the strength of any document, on the basis of later contrary evidence.

Article 25 needs to be read together with Articles 27 and 28, which deal with identity documents and travel documents. These three Articles form a single system of protection of the refugee's entitlement to identity and documentation.

Article 27: Identity papers

Article 27 lays down an unequivocal obligation on Contracting States to "issue identity papers to any refugee in their territory who does not possess a valid travel document." The duty is subject to no exceptions, and the *travaux préparatoires* make it clear that every refugee was intended to benefit from this provision. [27] Moreover, while Article 27 is within the category of provisions to which States may make reser-

vations, [28] neither Canada nor any other State Party has done so.

The question of identity papers for refugees was considered at both sessions of the *Ad hoc* Committee drafting the 1951 Convention, in February and August 1950. The Secretariat invoked the precedent of Article 2 of the 1933 *Convention relating to the International Status of Refugees*: "Each of the Contracting States undertakes to issue Nansen certificates, valid for not less than one year, to refugees residing regularly in its territory," [29] and noted that: "It is a general principle to issue identity papers, under various designations, which serve both as identity cards and as residence permits." [30]

In debate on the proposal, the Belgian representative, Mr. Herment, proposed qualifying the phrase 'in their territory' with the word 'lawfully': "He failed to see how any contracting party could agree to issue identity papers to refugees who were unlawfully in its territory, or who were there on an essentially temporary basis." However, the US representative, Louis Henkin, stated that at the invitation of the International Refugee Organization (IRO), "the Committee had agreed to extend the provisions of [the] Article... to all refugees." The IRO's representative, Paul Weis (later to become the first United Nations High Commissioner for Refugees' Legal Adviser) confirmed the Committee's intention that every refugee should be provided with some sort of document certifying his identity." [31]

At the 42nd meeting of the *Ad hoc* Committee, there was a long debate on the interpretation of the words *résidant régulièrement*. The French representative, Mr. Juvigny, remarked that the Articles generally implied "that the presence of the refugees was more or less permanent ... a settling down and, consequently, a certain length of residence." This was to be distinguished from the meaning inherent in the phrase *se trouver*, which "in the terminology and general structure of the Convention ... had a very special significance, and was used only in the Article concerning identity papers – i.e., it referred to a procedure which could not be refused to anyone, whatever his status or the legality of his presence in a given territory." [32]

Article 28: Travel documents

The operative part of Article 28 is succinct: "The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require... ." Canada did not make a reservation to Article 28 with respect to its interpretation of "lawfully staying" or any other matter.

Article 28 of the 1951 Convention thus continued the practice of issuing travel documents to refugees, initiated under the League of Nations, [33] and paragraph 2 provides for documents issued under earlier arrangements to continue to be recognized. Article 28 permits few exceptions to the obligation to issue travel documents to refugees. The reference to "compelling" reasons of national security and public order as justifying an exception clearly indicates that restrictive interpretation of this exception is called for; it thus was emphasized at the 1951 Conference that the refugee is not required to justify his or her proposed travel. [34]

State practice

In 1984, the United Nations High Commissioner for Refugees (UNHCR) submitted a

paper on identity documents to its governing body, the Executive Committee. The paper traces the history of identity documents for refugees and observes that the obligation under Article 27 can be satisfied simply by the issuance of a Convention Travel Document under Article 28. The paper also emphasizes the value of identity documentation for officials who, being readily able to ascertain that someone is a refugee, can facilitate implementation of the Convention and avoid administrative error. The UNHCR also observed that: "It is the general practice of States with established procedures for determining refugee status to provide recognized refugees with some form of documentation attesting *to their identity and to their status as refugees.*" [35]

In its Conclusion adopted after debate on the matter, the UNHCR Executive Committee (of which Canada was then and remains now a member), reaffirmed the importance and necessity of identity documents for refugees. The Committee pointed out that Article 27 requires Contracting States to issue such documents, and "noted with approval the general practice of States to provide refugees with documents, in the form prescribed by their national legislation, enabling them to establish their identity and their refugee status, and recommended that States which have not yet done so should ensure that refugees are provided with such documentation." [36]

In many countries, particularly civil law States, treaties become part of the local law and can be relied on where claims of right are at issue. At the same time, and given the practical desirability of translating general principles into working rules for the administration, many such States also have formally incorporated relevant portions of the 1951 Convention by legislation,[37] including those relating to identity and travel documents.

For example, in Belgium, Article 57/6 of the December 15, 1980 *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* provides that the *Commissaire général aux réfugiés et aux apatrides* has authority to issue the documents provided for by Article 25 of the 1951 Convention. Article 76 of the 1981 *Arrêté Royal* on the same subject provides further that *"l'étranger reconnu comme réfugié est, sur le vu du certificat de réfugié remis par l'autorité compétente, mis en possession du certificat d'inscription au registre des étrangers... ."*

In France, Article 14(10) of the *Ordonnance 1945-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour en France des étrangers et portant création de l'Office national l'immigration*, as amended in 1998, provides that a recognized refugee shall be issued with a resident's permit "*de plein droit*," valid for ten years and also renewable "*de plein droit*."

In Germany, Article 39 of the *Auslaendergesetz* (Aliens Law) provides that "substitute identity documents" are to be issued to an alien who does not possess a passport and cannot reasonably obtain one. The Federal Minister of the Interior also is competent to determine that aliens who do not possess a passport or passport substitute, and cannot reasonably obtain one, may be issued with a travel document as a substitute for a passport.

In Switzerland, the 1999 *Ordonnance sur la remise de documents de voyage à des étrangers* fixes the authority of the Federal Refugee Office to issue refugees with identity and travel documents. Article 2 of the *Ordonnance* provides clearly: *"L'étranger qui a obtenu l'asile en Suisse ou y a été admis provisoirement comme réfugié a droit à un titre de voyage pour réfugiés conformément à la Convention du 28 juillet 1951*

relative au statut des réfugiés... ." Article 4 declares that the Federal Refugee Office may issue an identity certificate to persons entitled to protection as well as to asylum seekers without papers, while Article 6 lays down that an alien is to be considered as being "without papers," *"lorsqu'il ne possède pas de documents de voyage nationaux valables et qu'il ne peut être raisonnablement exigé de lui qu'il demande aux autorités compétentes de son Etat d'origine ou de provenance de lui en délivrer un ou d'en prolonger la validité."*

Many other similar examples can be found. State practice generally confirms the importance which States party to the 1951 Convention attach to the entitlement of the refugee to documentation attesting to identity and status, acknowledges the obligation to provide such documents and recognizes the necessity for such documentation to be *effective* in enabling the refugee to benefit from the provisions of the Convention.

The law and practice in Canada

Although the 1951 Convention defines a status to which it attaches specific consequences (namely, the status of refugee), it is left to each State Party to determine how it will identify those who are to benefit. In Canada, since 1989, the determination of refugee status has been governed by statute providing for an oral hearing and a quasi-judicial procedure, within the jurisdiction of an independent decision-making body, the Immigration and Refugee Board.

In proceedings in Canada for the determination of refugee status, applicants are already on notice of the importance of providing accurate information about their identity. In recent years, however, there has been growing concern in Canada about asylum seekers who arrive without proper documentation, and the question of identity has taken on particular importance both at the stage of determination of refugee status by the Immigration and Refugee Board, and later, when recognized refugees apply for landing (permanent residence).

The Immigration and Refugee Board has established methods for the determination of identity, which are recognized as essential to the verification of claims and the assessment of credibility. [38] Numerous decisions of the Immigration and Refugee Board confirm the seriousness with which the question of identity is taken. [39] Where the Board's Convention Refugee Determination Division (CRDD) is not satisfied as to the claimant's identity, the application for refugee status is likely to fail.

For example, in a case which was decided in 1993, the applicant claimed to be a Somali citizen. She submitted a copy of her Somali driver's licence and a copy of her Somali passport, together with other documentation, along with her Personal Information Form. But the CRDD had serious doubts about her general credibility and about her identity in particular, raised by the fact that the claimant did not tell the truth when asked if her passport was "genuine and correct," that she had destroyed another (Kenyan) passport claimed to be false, and because of inconsistencies and implausibilities in the account given of her travel to Canada. [40]

In another case, concerning an Iraqi claimant whose documents were thought to be counterfeit, the CRDD asked: "How important is it for the panel to be persuaded as to the specific identity of a claimant before it? It is our view that this is of prime importance... . Convention refugee status is given to a named person who has been able to persuade the panel hear-

ing his/her case that s/he is a person holding a particular name... ." [41]

The CRDD also will reverse, or 'vacate,' a determination found to have been based on misrepresentations as to identity. In *Re Q.Z.D.*, for example, the CRDD revoked an earlier finding that a claimant was a refugee, on the ground that his application was not supported by the evidence that he was a citizen of Liberia. After tests showed that his passport and identity card were both false and/or had been altered, the claimant admitted this. Looking at the evidence as a whole, including information provided on his application and explanations given subsequently, the CRDD concluded that he knowingly had concealed material facts relating to his identity. [42]

While the lack of a 'satisfactory identity document' is not, and should not be, an impediment to recognition of an individual as a refugee, as long as that person can explain credibly why he or she is not in possession of such a document, it does constitute an obstacle to becoming a permanent resident of Canada. A Convention refugee who is not yet a permanent resident has no formal legal status in Canada. Citizenship and Immigration Canada itself has acknowledged the problems faced by recognized refugees who are not yet landed:

> Convention refugees who do not become permanent residents in Canada remain without legal status; they are not visitors and cannot be issued Minister's permits except in limited circumstances. They enjoy only limited protection: they have a right not to be returned to the country where they fear persecution, but they do not have the right to return to Canada once they leave... . Refugees who are not permanent residents may legally take employment only if they are in possession of an employment authorization... . It is ... important that they initiate the landing process as early as possible ... in order to entitle them to privileges and services that are acquired with full legal status. [43]

Canada appears to be the only State party to the 1951 Convention which requires further proof of identity *after* recognition as a refugee by the national status determination authority. This has been the case in Canada only since 1993. Before that year, Convention refugees applying for permanent residence after recognition by the Immigration and Refugee Board were effectively exempt from furnishing identity documents in any particular form. At that time, Canada appears to have complied with Articles 25 and 27 of the 1951 Convention largely by default, in the sense that there was no demand for additional documents for the purpose of landing. Once landed, the refugee was entitled to a record of landing, and to a Convention Travel Document, both of which also could serve as identity papers. However, an amendment to the *Immigration Act* was adopted in 1993 which states:

> An immigration officer shall not grant landing either to an applicant under subsection (1) [i.e., any person who is determined, by the Refugee Division, to be a Convention refugee] or to any dependant of the applicant until the applicant is in possession of a valid and subsisting passport or travel document or a satisfactory identity document. [44]

Since adoption of this amendment, large numbers of Convention refugees recognized in Canada have been unable to enjoy the benefits of 'landing' and, by comparison with other Convention refugees, have therefore suffered from 'administrative discrimination.' [45] The effects

of denying or suspending access to permanent resident status include: denial or delay of family reunion; [46] limited access to postsecondary education; [47] denial of Convention Travel Documents and guaranteed re-entry to Canada, contrary to Article 28 and the Schedule to the 1951 Convention; and restrictions on freedom to take employment, contrary to Articles 3 and 17. These problems are precisely among those which the 1951 Convention sought to avoid.

Refugee travel documents

In Canada, as explained above, refugees are not entitled to obtain travel documents under Article 28 of the 1951 Convention until they are 'landed.' Passports and travel documents are issued under the prerogative of the Crown. [48] Authority for the issuance of passports and travel documents is vested in the Passport Office, itself a unit within the Department of Foreign Affairs and International Trade, and Section 4(2) of the *Canadian Passport Order*, which governs the issue of passports, provides that: "No passport shall be issued to a person who is not a Canadian Citizen... ." [49]

The Order makes no provision for refugees and stateless persons, but information provided by the Passport Office refers to other documents, including a [presumably Convention] Refugee Travel Document issued to permanent residents (occasionally those on a Minister's permit) who have refugee status in Canada as determined by the Department of Citizenship and Immigration (*sic*). Applicants must supply, among other documents, their "original Record of Landing (IMM 1000)" or Minister's Permit. [50]

In the absence of any other published order, it is presumed that Convention Travel Documents also are issued in exercise of the prerogative, without benefit of regulations. There is no evidence that the requirements of Article 28 of the 1951 Convention are incorporated in the procedure; on the contrary, in practice it seems that neither the formal requirements of Article 28 nor those of the Schedule to the 1951 Convention are taken into account. [51]

What is a "satisfactory identity document?"

As long as recognized refugees in Canada are expected to produce a "satisfactory identity document" to be considered for landing, it will be important to know what will satisfy this requirement. Yet the term "satisfactory identity document" is not defined in the Act, which also provides no list of acceptable documents.

In 1997, Citizenship and Immigration Canada provided guidance on the evaluation of a statutory declaration, to determine if it can be accepted as a "satisfactory identity document." [52] It recalls an earlier memorandum which defines a "satisfactory identity document" as a document which "is genuine; belongs to the Convention refugee; provides evidence of the person's identity; *normally* predates the claim to refugee status." [53] It advises that "statutory declarations and other documents presented for the purpose of complying with Section 46.04(8) should be reviewed with [these] criteria in mind."

In practice, however, the general approach to documentation suggests that it is usually only a valid passport or travel document which is accepted by Citizenship and Immigration Canada as satisfactory, and that documents which would otherwise be acceptable under Canadian law (and recognized as sufficient by common law countries which participated in drafting the 1951 Convention), such as affidavits and statutory declarations, are in fact fre-

quently rejected by the authorities without apparent reason.

Citizenship and Immigration Canada's 1997 Operations Memorandum does not refer to the issue of the presumption of credibility attaching to sworn evidence, absent evidence to the contrary; "or to the relevance and weight to be given evidence which predates the application for refugee status or for permanent residence"; or to the validity in practice accorded by other Canadian authorities to documents confirming recognition of refugee status issued by the Immigration and Refugee Board.

Indeed, the refugee's notice of recognition issued by the Immigration and Refugee Board is accepted by Canadian governmental and nongovernmental entities as sufficient identification for a variety of purposes other than landing – e.g., for the issuance of drivers' licences or the opening of bank accounts. The Operations Memorandum also fails to mention the requirement to provide reasons for finding any particular document to be unsatisfactory, a point highlighted by the Federal Court in *Popal v. Canada*.[54]

In the judgement in that case, which arose out of an application for judicial review of the failure to grant permanent residence status to an Afghan citizen recognized as a Convention refugee on November 15, 1994, Justice Gibson set out in detail the considerable delays and demands which accompanied the application. Notwithstanding official recognition of Afghanistan as a country "experiencing sustained and extreme political turmoil," and the fact that "the lack of effective central government prevents many nationals ... from obtaining identity documents," the applicant nonetheless was requested to obtain documents such as an original marriage certificate or a birth certificate. When he did so, they were rejected as unsatisfactory, despite the fact that, as Justice Gibson remarked, "in Islamabad, much closer to the reality of the situation in Afghanistan and Pakistan, the principal applicant's documentation was found [by the Canadian visa officer] to be much above the average for persons fleeing Afghanistan."[55]

Contacts with the country of origin

The requirements set out by the Canadian legislation pertaining to refugee applicants for permanent residence appear to be premised on the assumption that refugees are able to, and should, seek relevant documentation from the authorities of their country of origin.[56]

However, to require recognized refugees to contact the officials of their country of origin is incompatible with the object and purpose of the 1951 Convention – namely, the protection of refugees. It may put the individual at risk, or endanger family members or others remaining in the country of origin. Ironically, it also potentially jeopardizes the refugee status of the applicant who, because of such contact, may be considered to have reavailed himself or herself of the (national) protection of the country of origin, and thus to have forfeited his or her refugee status.[57]

Even though the presumption that the individual has ceased to be a refugee is rebuttable, particularly where the contact has been required by authorities in the country of asylum, it is not reasonable to impose such a burden on a recognized refugee. The requirement may be difficult or impossible to satisfy, and is also likely in most cases to be objectionable.

Undocumented Convention Refugee in Canada Class

In an attempt to remedy the situation of several thousand 'undocumented' Convention refugees in 'legal limbo,' in January 1997 the Government introduced the Undocumented Convention Refugees in Canada Class (UCRC). The Class was defined as consisting of undocumented Afghan and Somali refugees, and the intention was to enable them to be landed after a five-year waiting period; the waiting period was shortened to three years in December 1999. [58]

In 1997, when the Undocumented Convention Refugee in Canada Class was introduced, it was estimated that there were "approximately 7,500 persons in Canada who have been determined to be Convention refugees, whose country of origin is Somalia or Afghanistan. Of these, it is estimated that just under half have not applied for permanent residence; the remainder who have applied for permanent residence have not been landed, for the most part, because they are unable to obtain a passport, travel document or other satisfactory identity document." [59] In addition, there are many other 'undocumented' refugees recognized in Canada who come from countries other than Afghanistan and Somalia and who are unable to be landed because they do not possess 'satisfactory' identity documents.

Under the rules pertaining to the UCRC Class, applicants for permanent residence without identity documentation are not considered for permanent residence for a period of three years, "until and unless additional documentation is provided;" eligibility thereafter depends, *inter alia,* on the applicant making "a written solemn declaration with respect to the accuracy and completeness of identity information" submitted; Afghanistan and Somalia are described as "countries experiencing sustained and extreme political turmoil, and the lack of effective central government prevents many nationals and former habitual residents from obtaining identity documents." No provision is made to include dependants overseas within the class, and 'family class sponsorship' may be submitted only "once permanent residence status" has been granted. [60]

Operations Memoranda issued in implementation of the UCRC Class appear to compound the difficulties facing refugees seeking landing after recognition by the Immigration and Refugee Board. For example, in 1997, Citizenship and Immigration Canada advised that: "The passport issuing practices of [the Afghan Embassy and consulates in the United States] ... give reason to question the presumption that the holder of an Afghani passport is an Afghani national." [61] It is unusual for one State to query the sovereign acts of the representative of a foreign government; in this case, it was apparently due to the fact that the Afghan passports and identity documents demanded by the Canadian authorities were being issued on the basis of documents themselves issued by the Canadian authorities.

The refugee effectively is caught in a vicious circle. Being without identity documents and yet required to obtain them, documents obtained are nevertheless found unsatisfactory. Moreover, the authorities' insistence that the refugees present documentation may have the undesirable effect of encouraging those not yet 'landed' to resort to fraudulent papers in order to respond to this requirement, and in view of the refugees' understandable eagerness to be reunited with family members or to obtain other benefits available to permanent residents.

Effectiveness of the UCRC Class

It not clear what advantages have been secured through the imposition of the (now)

three-year waiting period prior to processing for permanent residence of recognized refugees from Somalia and Afghanistan considered not to have satisfactory identity documents. There is no evidence to suggest that large numbers of refugees in Canada have, in fact, been recognized on the basis of false documentation as to identity. If this is indeed the case, the imposition of a waiting period would appear to be unnecessary and to bear no relationship of proportionality to the objective – namely, the documentation of identity. In *Popal v. Canada*, Justice Gibson noted in regard to the UCRC Class that:

> …the waiting period was intended to be used to allow identification of non-deserving claimants. There was no evidence before the Court in this matter to demonstrate that the waiting period had been so used by the respondent in the case of the principal applicant. To the contrary, the respondent would appear to have adopted an entirely passive role throughout the waiting period... . Communication with the principal applicant would appear to have been less than full and open. Identity documents thought to be less than adequate were never sent for verification when they should have been and were alleged to have been. [62]

There is no evidence to suggest that "satisfactory identity documents" are more likely to appear during the post-recognition period of three years, although the 1997 Operations Memorandum still requires the processing officer to advise the applicant that "no further consideration can be given until and unless additional documentation is provided." Applicants may infer from this advice that they should seek such documentation from the authorities of their country of origin. However, no caution is given regarding the legal risks in approaching the country of origin which, as indicated above, conceivably could be viewed as a desire to reavail oneself of national protection. Such contact was indeed initiated by the applicant in *Popal v. Canada*, but the document obtained thereby also was rejected as 'unsatisfactory.'

The effectiveness of the class also may be questioned, when one looks at the number of refugees who have been landed after the requisite waiting period. Of the approximately 7,500 recognized Somali and Afghan refugees who were not landed when the UCRC Class came into effect in 1997,[63] only one-quarter (or 1,980 persons) have been landed to date. This includes just 385 persons who were landed during the first half of the year 2000, after reduction of the waiting period from five to three years.[64] A further 4,637 Somali and Afghan refugees have been recognized as Convention refugees in Canada between 1996 and mid-2000,[65] while 3,160 have been landed under normal landing procedures in the same period.[66]

The question of discrimination

The circumstances surrounding the introduction of the UCRC Class suggest that it was created in order to minimize the hardship imposed by the requirement to have a "satisfactory identity document." However, the creation of a special class of refugees appears to raise very serious issues of discrimination by comparison with other refugees recognized in Canada and granted permanent resident status. It poses questions of compliance with Article 3 of the 1951 Convention, which provides that "the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin."

Conclusion

This paper has attempted to show how legislative provisions, taken together with administrative practice, can lead to results which are incompatible with international obligations. It has been argued that Section 46.04(8) of Canada's *Immigration Act* is not compatible with certain provisions of the 1951 *Convention relating to the Status of Refugee*s, specifically, with: (1) the obligation under Article 25 to provide administrative assistance to refugees who have been recognized under domestic law and procedure, but who are without the documentation required to exercise rights available to other refugees similarly situated; (2) the obligation under Article 27 to "issue identity papers to any refugee in their territory who does not possess a valid travel document," to which no exceptions are permitted and to which no reservations have been made; and (3) the obligation under Article 28 to "issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory."

As a result, many recognized refugees in Canada are ineligible for benefits otherwise due to lawfully resident refugees, flowing from the 1951 Convention. Moreover, refugees without a "satisfactory identity document" who are required to wait for landing also may suffer a further delay in eligibility for naturalization. If so, this situation appears incompatible with the undertaking in Article 34 of the 1951 Convention:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

This issue may require fuller investigation of the respective position of such refugees and others accorded landing within normal time periods in order to determine whether they are treated equally with other refugees/permanent residents. In practice, it also may be the case that, though subject to 'suspension of processing,' the UCRC class of refugees are, in fact, better off than similarly situated refugees from countries other than Afghanistan or Somalia who may have no prospect at all of being admitted to permanent residence and thus to naturalization.

In addition, the above practices also result in the creation of a situation in which certain classes of recognized refugees feel compelled to approach the authorities of their country of origin, thereby putting at risk not only their own status as refugees, but also such family members as may have remained behind.

Bill C-31, the proposed new *Immigration and Refugee Protection Act*, affords Canada an opportunity to rectify the problems described in this paper, and to provide Convention refugees in Canada the full range of rights to which the 1951 Convention entitles them.

Recommendations

There are a number of ways in which Canadian practice could be brought into conformity with its obligations under the 1951 Convention.

Proposal 1

All recognized refugees without identity documents should be treated equally and accorded all Convention rights upon recognition. This treatment would include the issuance of

Convention Travel Documents *upon recognition* by the Immigration and Refugee Board, which simultaneously would satisfy the need for a satisfactory identity document. Bill C-31 could provide for the issuance of Convention Travel Documents to all Convention refugees in Canada, regardless of whether they have been landed.

Proposal 2

Identity documents could be issued, either by the Immigration and Refugee Board or by Citizenship and Immigration Canada, to recognized refugees. Where issued, such documents would need to be accepted as satisfactory identity documents for landing, and generally for the purposes of Canadian law. By analogy with Article 25(3) of the 1951 Convention, they should "stand in the stead of the official instruments delivered to aliens by or through their national authorities," and "be given credence in the absence of evidence to the contrary." Under no circumstances should recognized refugees be referred to their country of origin to obtain documents. This could be clearly stated in Bill C-31, which also could provide for the issuance of identity documents to refugees as provided for in Article 27 of the 1951 Convention.

Proposal 3

Refugees could be landed immediately upon recognition by the Immigration and Refugee Board, by analogy with refugees resettled by Canada from overseas and who are 'landed' immediately upon arrival.

Proposal 4

At a minimum, if none of the above options is followed, affidavit evidence or statutory declarations as to identity should be accepted in accordance with the normal principles, and without the limiting reservations currently included in operational instructions. Evidence submitted in Personal Information Forms or in proceedings before the Refugee Division of the Immigration and Refugee Board should be given due weight. Evidence considered sufficient to satisfy the Canadian determination process can also be said to meet the requirements of Articles 25 and 27 of the 1951 Convention.

In all of the above proposals, the interests of the state are sufficiently protected by the general principle of law that "fraud vitiates everything." In the common law, it has long been recognized that fraud vitiates proceedings, whether civil or criminal.[67] Thus, for instance, the Immigration and Refugee Board's findings as to identity may and should be treated as presumptively valid for all purposes, in the absence of cogent evidence to the contrary.

The problems in Canada regarding administrative assistance and identity and travel documents for refugees illustrate wider concerns about the relation of international law to national law. It is to be hoped that one lesson emerging from this review is that there are latent problems in relying on discretion and administrative practice; it is far better to recognize what has been undertaken, acknowledge what practical steps are required to ensure effective implementation and act accordingly.

Endnotes

1. Section 46.04(8) of the *Immigration Act* of Canada reads: "An immigration officer shall not grant landing ... until the applicant is in possession of a valid and subsisting passport or travel document or a satisfactory identity document."

2. See Andrew Brouwer. (1999). *What's in a Name?: Identity Documents and Convention Refugees*. Ottawa: Caledon Institute of Social Policy, March.

3. The 1951 *Convention relating to the Status of Refugees*, 189 *UNTS* 150.

4. Article 6 reads: "Everyone has the right to recognition everywhere as a person before the law." 1948 *Universal Declaration of Human Rights*: UNGA res. 217 A (III), 10 December.

5. United Nations doc. E/AC.32.2, January 3, 1950.

6. The text of these Articles is annexed to this paper.

7. Articles 23 and 24 deal with 'public relief' and with 'labour legislation and social security,' respectively.

8. While reservations may be made to treaties, a State may not formulate a reservation which is prohibited by the treaty: Art. 19, 1969 *Vienna Convention on the Law of Treaties* (VCLT); a valid reservation to a treaty has the effect of modifying the provisions of that treaty to which the reservation relates to the extent of the reservation: Art. 21, 1969 VCLT.

9. Goodwin-Gill, G.S. (1996). *The Refugee in International Law*. 2d ed. Oxford: Clarendon Press, 234-41; Lauterpacht, H. (1958). *The Development of International Law by the International Court*, 257, 282; Article 31 (1) of the 1969 *Vienna Convention on the Law of Treaties*: 1155 *UNTS* 331; UKTS 58 (1980), Cmnd. 7964. 8 ILM 679.

10. Article 3 reads: "(1) No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

11. Article 7 reads: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

12. CF. Goodwin-Gill, G.S. (1999). "Crime in International Law: Obligations *erga omnes* and the Duty to Prosecute." In Goodwin-Gill, G.S. and Talmon, S. eds. *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford: Clarendon Press, 199.

13. See note 9.

14. Article 4 VCLT; Brownlie, I. (1998). *Principles of Public International Law*. 5th ed. Oxford: Clarendon Press, 607-8.

15. Article 26, 1969 VCLT; Brownlie, I. (1998). *Principles of Public International Law*. 5th ed. Oxford: Clarendon Press, 620.

16. Permanent Court of International Justice. (1925). *Exchange of Greek and Turkish Populations.* PCIJ, Ser. B, No. 10, 20; International Court of Justice, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of June 26, 1947*, [1988] ICJ Reports 12, 31-2, para. 47: In the relation of national law to international law, it is a 'fundamental principle of international law that international law prevails over domestic law.'

17. Article 27, 1969 VCLT.

18. Article 31(1), 1969 VCLT.

19. 1951 Convention, Preamble, paras. 1-3.

20. Article 32, VCLT.

21. *Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees*, 12 May 1926: 84 *LNTS* No. 2006. See also *Arrangement relating to the Legal Status of Russian and Armenian Refugees*, 30 June 1928: 89 *LNTS* No. 2005.

22. *Ad hoc* Committee on Statelessness and Related Problems, UN doc. E/AC.32/SR.19, Feb. 8, 1950, Meeting of Feb. 1, 1950, 4, 6. See also Mr. Hoare (United Kingdom), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, UN doc. A/CONF.2/SR.11, Nov. 22, 1951, 15.

23. See, for example, the reservations of Fiji, Ireland, Jamaica, Uganda and the UK.

24. Mr. Herment (Belgium), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, UN doc. A/CONF.2/SR.11, Nov. 22, 1951, 11-16, at 12, 14.

25. Report of the *Ad hoc* Committee on Statelessness and Related Problems: UN doc. E/1618 and Corr.1, Feb. 17, 1950, Comments to (then) draft Article 20.

26. Thus, when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness: *Villaroel v. Minister for Employment and Immigration* (1979) 61 NR 50; *Maldonado v. Minister for Employment and Immigration* (1980) 2 FC 302, 305, cited with approval in *Sathanandan v. Canada (Minister of Employment and Immigration)* (1991) 15 Imm. L.R. (2d) 310 (Federal Court of Appeal), *Fajardo v. Canada* (1993) 21 Imm L.R. (2d) 113, and *Siad v. Canada* [1997] 1 F.C. 698.

27. *Ad hoc* Committee on Refugees and Stateless Persons, UN doc. E/AC.32/SR.38, Sept. 26, 1950, 23-5.

28. Article 42(1) of the 1951 Convention permits reservations to Articles of the Convention other than Articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

29. Article 2, 1933 *Convention relating to the International Status of Refugees*, 159 *LNTS* No. 3663.

30. *Ad hoc* Committee, Draft Report, UN doc. E/AC.32/L.38, Feb. 15, 1950.

31. *Ad hoc* Committee, Summary Records, UN docs. E/AC.32/SR.15, paras. 57-129 (the first session debate dealt almost exclusively with issues of residence and security); E/AC.32/SR.38, pages 23-5 (a Canadian comment in the debate suggests some confusion between identity documents and travel or re-entry documents: p.23); E/AC.32/SR.41, page 20 (the draft Article was adopted with the substitution in the French text of the heading of the phrase '*Pièce d=identité*' for '*Carte de légitimation*'); E/AC.32/SR.42, pages 11-35 (primarily discussing the meaning of the French phrase, '*résidant régulièrement*'). Mr. Weis also noted that: "A man without papers was a pariah subject to arrest for that reason alone": UN doc. E/AC.32/SR.38, 26 Sept. 1950, 24. It was nevertheless recognized that the issue of identity papers was without prejudice to the right of the government to expel a person illegally present.

32. *Ad hoc* Committee, Summary Records, UN docs. E/AC.32/SR.42, 12, 23.

33. The first 'identity certificates' also served in practice as travel documents, evolving into 'Nansen passports,' so-called after the first League of Nations High Commissioner for Refugees, Fridtjof Nansen.

34. UN docs. E/AC.32/SR.16, 13-15; SR.42, 5-7; A/CONF.2/SR.12, 4-13; SR.17, 4-11.

35. UNHCR, 'Identity Documents for Refugees': UN doc. EC/SCP/33, 20 July. 1984, paras. 3, 4-8, 10, 12 (emphasis supplied).

36. UNHCR Executive Committee Conclusion No. 35 (XXXV) of 1984: Report of the 35th Session: UN doc. A/AC.96/651, para. 87(3).

37. More detail on these and other examples can be found in UNHCR, *RefWorld*, 8th ed., July 1999Bthe CD-ROM database collection, section on 'National Legislation.'

38. Immigration and Refugee Board, Legal Services, 'Commentary on Undocumented and Improperly Documented Claimants: Assessing the Evidence, Enhancing Procedures,' Ottawa, March 1997, Section IV, 'Evidentiary and Procedural Issues in Processing Claimants Lacking Proper Documentation.'

39. See, for example: *Re M.W.Q., CRDD A95-00602, CRDD, Ottawa, Ontario, 30 August 1996; Re D.G.P., A98-00816, CRDD, Ottawa, Ontario, 26 April 1999; Re B.C.U., CRDD, Vancouver, British Columbia, V-97-00447, 27 May 1999; R: Z.I.J., CRDD, Toronto, Ontario, T98-05272, 13 September 1999; Re W.W.O., CRDD, Toronto, Ontario, T98-01748, 27 October 1999; Re X.K.T., CRDD, Toronto, Ontario, T99-00262, 3 November 1999; Re Q.J.H., CRDD, Toronto, Ontario, T98-00768, 18 November 1999.*

40. *Re H.(C.J.)*, Nos. M-01654-M92-01658, CRDD, Ottawa, Ontario, January 19, 1993.

41. *Re Q.J.H., CRDD, Toronto, Ontario, T98-00768, Nov. 18, 1999.*

42. *Re Q.Z.D.*, CRDD M-98-00395, Montreal, Quebec, March 4, 1999, paras. 18-30. For another example of vacation because of doubts about identity, see: *Re: S.E.Y., CRDD*. A94-00308 and A94-00309 Ottawa, Ontario, September 12, 1996.

43. CIC, Operations Memorandum, IL 95-02, October 16, 1995, 'RefugeesBTime to apply for LandingBRegulation 40.'

44. *Immigration Act* section 46.04(8).

45. *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA.Ser.L/V/II.106 Doc. 40 rev. OAS Inter-American Commission on Human Rights, paras. 74-79: *www.cidh.org*.

46. UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations:' UN doc. E/C.12/Add. 31, Dec. 4, 1998, para. 37.

47. UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations': UN doc. E/C.12/Add. 31, Dec. 4, 1998, para. 39. See also Andrew Brouwer. (2000). *Equal Access to Student Loans for Convention Refugees.* Ottawa: Caledon Institute of Social Policy, February.

48. Peter W. Hogg. (1992). *Constitutional Law of Canada*, 3d ed., 15.

49. SI/81-86.

50. Canadian Passport Office, Refugees and Stateless Persons: *http://www.dfait-maeci.gc.ca/passport/refuge-e.asp*.

51. In *Mobarakizadeh v. Canada*, an unsuccessful application for the extension of a refugee travel document, the Court noted that the Plaintiff had been issued with a refugee travel document valid from July 2, 1991, until January 21, 1992, slightly more than six months, whereas paragraph 5 of the Schedule to the 1951 Convention provides clearly that: "The [Convention travel] document shall have a validity of either one or two years, at the discretion of the issuing authority." *Mobarakizadeh v. Canada*, Action No. T-2230-93, FC-TD, Montreal, Quebec, Nadon J., December 15, 1993, para. 10.

52. CIC, Operations Memorandum IP 97-09, April 4, 1997, "Landing of Undocumented Convention Refugees" and "A46.04(8): Evaluating a Statutory Declaration to Determine if it can be Accepted as a Satisfactory Identity Document;" re-issuance with further guidance of OM IP 95-19, December 7, 1995.

53. CIC, Operations Memorandum IS 93-19, emphasis in original.

54. *Popal v. Canada*, Court File No. IMM-525-99, FC-TD, Toronto, March 17, 2000, para. 33.

55. *Popal v. Canada*, Judgment, paras. 11,17,18. Although it was held in an earlier case that the decision, whether an applicant had provided a "satisfactory identity document," was a 'discretionary decision': *Osman v. Canada*, Court File No. IMM-329-97, FC-TD, Joyal J., January 21, 1998, this does not appear to be correct as a matter of law. What is 'satisfactory' in relation to proof of identity can clearly be determined on the basis of objective criteria, and is not a matter of choice between two equally valid alternatives.

56. CIC, Operations Manual, IP27-02e, Appendix A, Sample Letter No. 1; Section VI(7), List of Countries.

57. *Immigration Act*, section 2(1), (2); 1951 Convention, Article 1C(1); Goodwin-Gill. (1996). *The Refugee in International Law*, 80-3.

58. Operations Manual IP97-02e, January 30, 1997, "Undocumented Convention Refugees in Canada Class;" Citizenship and Immigration Canada, News Release 97-05, January 22, 1997; Citizenship and Immigration Canada, Fact Sheet for UCRC Class, December 30, 1999.

59. CIC, Operations Memorandum, IP 97-02e, January 30, 1997, "Undocumented Convention Refugee in Canada (UCRC) Class." Background. See also Citizenship and Immigration Canada. (1998). *Regulations Amending the Immigration Regulations, 1978 and Making a Related Amendment*, Regulatory Impact Analysis Statement, Canada Gazette Part I. Ottawa, December 12, 3342.

60. CIC Operations Memorandum IP-97-02e, January 30, 1997, "Undocumented Convention Refugee in Canada (UCRC) Class."

61. CIC, Operations Memorandum, IP-97-07, March 27, 1997, "Processing of Convention Refugee Applications for Landing; Particular Problems with Afghani Passports and Identity Documents."

62. *Popal v. Canada*, above note 54, paras. 24, 25.

63. See note 59.

64. Citizenship and Immigration Canada. (2000). "Landings under the Undocumented Convention Refugee in Canada Class." Ottawa.

65. Immigration and Refugee Board. (1997; 1998; 1999; 2000). Country Reports: 1996, 1997, 1998, 1999, January-March 2000, April-June 2000.

66. Citizenship and Immigration Canada. (2000). "Somalia Non-UCRCC Landings CR8s and Afghanistan Non-UCRCC Landings CR8s." Ottawa.

67. See, for example, de Grey, C.J., *Duchess of Kingston=s Case* (1776) 20 St. Tr. 355, 544; Lord Brougham, *Earl of Bandon v. Becher* (1835) 3 Cl. & Fin. 479, 510.

1951 Convention relating to the Status of Refugees
Extracts

Article 25
Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 27
Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28
Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.