

**Presentation by Joanne van Selm (Senior Policy Analyst, MPI) at the Roundtable “The Protection of Refugees in the Light of the New Security Agenda”
University of Montreal, March 20, 2002**

Good evening, ladies and gentlemen.

May I begin by thanking the organizers of this evening’s event, especially Francois Crepeau, for inviting me to talk to you on the important occasion of the launch of this special issue of the *Revue Québécois de Droit International* devoted to the subject of the 50th anniversary of the 1951 Convention related to the Status of Refugees. It is a great pleasure to be in Montreal, even in the snow, and a privilege to join Judith Kumin, Peter Showler and Michael Barutciski on this panel.

I have been asked to address some global, and particularly European, political issues in relation to the 1951 Convention. It seems most appropriate to focus therefore on the impact of 9/11 on asylum and protection in the industrialized countries.

Three key issues come to mind, inspired in large part by recollections of the days following September 11 in Washington DC. Colleagues met in numbness – concerned not only that all existing issues on the policy agenda would be at least postponed, but also that the immigration status of the terrorists would dictate any new policy thinking. Everyone recalled that in 1993, the fact that the World Trade Center bombers had claimed to seek asylum had had enormous impact on the US asylum system. It seems, however, that these hijackers had not sought asylum in any state: nonetheless, refugees have suffered already in the US system, as the resettlement program ground to a virtual halt, and is only slowly picking up again.

Many questions were asked about Europe, as people knew that the EU member states had been working on both terrorism and asylum and immigration issues together for some 15 years. The presumption was that the EU’s systems speak to each other better than the US systems had been – they don’t. However, in discussing the global approach to refugee protection in the expected new climate of fear of admitting terrorists in disguise, discussion turned to the matters of EXCLUSION, THE MEANS OF ARRIVAL, AND IDENTITY AND SECURITY ISSUES DOMESTICALLY. These will be my themes this evening.

Exclusion

The 1951 Convention contains clauses excluding from refugee status those who have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime or acts contrary to the principles of the UN. Few states have rigorously applied these clauses. The Economist newspaper ran a story in January this year, which noted that there was a time, not very long ago at all, when North African diplomats called Britain “Europe’s terrorist heaven” and its capital “Londonistan”. Hundreds of veterans of *jihad* struggles in Afghanistan and North Africa settled in Britain, the article continued: where else, they ask, could terrorists receive housing, unemployment benefit and legal protection just by applying for asylum?” The European Commission has called for stricter application of the exclusion clauses, and suggested that each state set up an Exclusion Unit. It has noted that there will be difficult cases – including cases in

which it becomes apparent that people excluded from status cannot be returned as their own life would be in danger in their country of origin. The Commission notes that the European Court of Human Rights may need to decide on such cases, questioning whether there can really be no derogation from non-refoulement. Those cases are a thing of the future – I mischievously start thinking of a counter feature to the ‘refugees in orbit’ about whom Europe has often been concerned, ‘terrorists in orbit’. It would be a far more serious problem if people excluded from refugee status on the grounds that they may commit a terrorist act genuinely cannot be returned to their country of origin – but also cannot find status elsewhere. The European Commission has suggested that the requirements of proof will be lower in excluding someone from status than in trying them in a criminal court – they perhaps cannot even be tried for lack of evidence against them. UNHCR has challenged the Commission’s view on the level of evidentiary proof necessary. However it has pointed out that the tool to exclude people from refugee status exists. There are three conclusions to be drawn at this stage: The Convention provides the means to exclude where appropriate; this is, therefore, not an issue which undermines the Convention, but one which shows its relevance; and in the light of the existence of sufficient tools, the clauses excluding people from status need to be applied as rigorously and fairly as those including people in the realm of refugee status.

On the MEANS OF ENTRY: The European Commission has noted that people wishing to commit terrorist acts are highly unlikely to apply for asylum in Europe as their means of being there: it would be a tortuous route to take, putting them under a lot of scrutiny. They are more likely to simply take irregular routes to entry or at least stay. This makes sense, except when one considers that the vast majority of people in need of protection use unauthorized means to enter the EU states, because authorized means have become so restricted. The very strict application of the inclusion clauses of the Convention, if I may call them that, and increasing barriers to access to asylum procedures, mean that asylum seekers and irregular migrants alike are using the services of smugglers, with all the dangers that entails. The two groups have been bound into one by European Union member states policy making – unsurprisingly therefore they often seem indistinguishable in media reports or public opinion on asylum issues. One way of dealing with this problem – though it can only ever be a partial solution – would be through more appropriate management of the arrival and admittance of refugees. Unlike the US and Canada, EU member states have in recent years had only minimal if any resettlement programs. The Netherlands for example has had a quota for some 500 vulnerable cases – but sometimes only admitted 75 or so individuals referred by UNHCR. The UK has had only a very small scheme called 10 plus – ie for only some 10-20 people. However in a recent White Paper, proposing an overhaul of the immigration system in the UK, the Home Secretary has announced plans for a larger resettlement program. It remains to be seen what this will mean – but it may be a path along which other EU member states would travel, if an experiment by one proved useful. It will certainly not stop smuggling – not in the short-term and not without figures approaching High Commissioner Ruud Lubbers’ suggested 1 per 1,000 inhabitants of the receiving states, which are unlikely. However, it might do something for the public relations of the word ‘refugee’ if they are uncoupled from irregular migrants. This would mean reinstating a tone of respect attached to the word ‘refugee’ in Europe – again a statement demonstrating the continuing relevance of the Convention.

Finally then, I turn to IDENTITY AND SECURITY issues. Here I want to offer you three brief snapshots:

The UK has, since 9/11, developed the new proposals referred to above. The White Paper is entitled *Secure borders, safe havens, integration with diversity in modern Britain*. If titles represent ideals then this seems to be saying something positive and reassuring at each turn: the existing population can be put at ease by the secure borders; refugees will be offered safe havens; and those who are admitted and remain can integrate their identity with a new British identity of diversity. Like the person who wrote that title, I'd like to be optimistic, but it has to be said that there is a lot of work ahead for this ideal to become a reality, not least work in altering public opinion on asylum and immigration issues to accept newcomers, grant them security, and be careful to make sure they add to that security and do not detract from it.

In the Netherlands diversity has also been an issue since 9/11. Shortly after the terror attacks, one poll of Muslims in the Netherlands found that between 5 and 6 percent of them condoned the attacks. A poll of citizens of Dutch origin found that 63% thought that radical Muslims expressing such an opinion should be deported. Sensing a new dissatisfaction with politics generally, but especially a popular discontent with immigration and immigrant integration policies, a radical right-wing figure, Pim Fortuyn, has been the epicenter of an earthquake in the build up to the Dutch national elections in May this year. His own party looks likely come in second in the polls; the party he lead until it sacked him when he questioned the constitutional stipulation of non-discrimination in the Netherlands, will also be among the top five parties. The Dutch system of proportional representation and cabinet formation makes it likely that either these parties will enter government, or that a collection of strange other bedfellows will have to put their differences aside to keep them out. After right-wing victories in Austria, Italy and Denmark, famously liberal and tolerant Holland looks sadly likely to go that way too.

Finally, back to the US, where as I have mentioned, the resettlement program has become one of the biggest victims of new security concerns post 9/11. The Senate has called the INS and State Department to answer for the reductions in the program, and to inform Congress on how they will catch up and ensure protection to those already scrutinized and clearly in need. At the same time, the issues of profiling, border controls and detention are high on the agenda: and the question of an MOU with Canada, calling each a safe third country and returning refugees who have transited the other country is back on the agenda.

In conclusion, I would like to recall a point I have made a few times in the last few minutes: the 50 year old Convention is still relevant if challenged. The day after its signing in July 1951, the Times of London reported the event in a short column, noting that it was important, but not overly important, since as so often before, this Convention would need to be changed in the future, because politics change – and politics and war drive the refugee issue. The Times was wrong – the Convention has not been changed, even if its relevance has been questioned. Since September 11, I'd suggest, we've again been reminded that the Convention is relevant – its application by states, however, might not always be in tune with the times.