

REPORT ON PANEL D-2:
IMMIGRATION LAW

Subject: States' Responses to Human Migratory Pressures

1. SPEAKERS

- Moderator – Robert Décary, Federal Court of Appeal Canada
- Speakers
 - Mendel Green, Green Speigel (Toronto)
 - Michael Lynk, University of Western Ontario
 - Suzanne Gilbert, Immigration and Refugee Board
 - Jean-Francois Bertrand, Bertrand, Deslauriers (Montreal)

2. OVERVIEW

The speakers reviewed the positive contribution of immigration to Canada and focused on current challenges, particularly those facing refugee claimants seeking entry to Canada. The right of refugees to restitution under international law in the context of the Middle East was also discussed.

3. DISCUSSION

Introduction to the Refugee Process

Mme Suzanne Gilbert provided an excellent introduction to the issues surrounding the immigration and refugee process in Canada. With a look at the evolution of the instruments and processes, the trends in the numbers of accepted immigrants and refugees were highlighted. Now the system is overloaded and Canada faces serious challenges and delays with the system. Setting out a claimant's right from the moment their claim is filed with the federal government, Mme Gilbert provided a thorough introduction to a complex process.

Mme Gilbert discussed the structure and the multiple layers of claims and appeals of the largest administrative body in Canada - the Immigration and Refugee Board (IRB). Citizenship and Immigration Canada must first decide whether a refugee is admissible and only then may the refugee's claim go to the IRB for a determination on eligibility. To be found eligible a claimant must fear persecution upon return to their country of origin based on one of five grounds set out in the United Nations Human Commission on Refugees (UNHCR) Handbook. The five grounds include membership in a 'particular social group' with immutable characteristics. It does not however include persons fleeing from criminal prosecution. Canadian tribunals have defined 'persecution' as violation of physical integrity, life, torture, repeated and persistent threats to the individual, or the family or group. The fear of the claimant's must be subjective, as well as objectively reasonable.