I support the whole report, but wish to clarify and expand my position with regard to "partial amnesty".

The section on "The Credible Basis" hearing notes an idea "that all those from refugee-producing countries should be immediately allowed to apply for landing without having the credible basis test applied to them." Later it says (as agreed on December 7), "The majority of the Committee rejected this idea however." I gave notice that I may seek further legal advice upon a possible dissent.

My concerns were:

1. Would such a procedure be permissible without change in legislation as it was amended by Bill C-55?

2. If so, would it likely fail if challenged under Section 15 of the Charter?

3. Even if it were legally acceptable, would it be a fair means of expediting the backlog clearance?

After the Committee adjourned on December 7, I obtained informal legal advice, upon which I concluded as follows:

1. This procedure would be permissible under C-55 and the Immigration Act so revised. Although the law provides for the present credible basis hearing for the backlog it does not prohibit Cabinet discretion in choosing not to use that procedure (Compare with the Cabinet decision that "for the time being" it will not use the "safe-third country" clause with new refugee claimants).

2. If challenged (as would be likely), under Charter Section 15, "equality", the procedure would likely be struck down on the ground that it differentiated between claimants solely on the ground of national origin, and could not be defended under Section 1 of the Charter.

3. Even if we chose to take this risk, a problem arises from the difficulty of finding an objective basis for a just differentiation.

   The old "B-1" list and its "no-deport" predecessors in practices and programs of the Commission were never (to my knowledge) tested under the Charter. Some countries were apparently listed on confidential grounds, on Minister's discretion, and the listings kept fairly quiet. This practice would not fly now, and ought not to fly. If the incidence of success or failure by claimants were chosen as the basis of a list — say "x percent of decisions being favourable" — the question is begged "Why?" Because, for example, Nicaraguans have a current success rate of 90% and Guatemalans 84%, at the IRB. I find this very unjust, inasmuch as independent observers such as Amnesty International find the human rights