

Discourse and the Securitization of Asylum Seekers to Canada

Abstract

The discourse surrounding asylum policy contributes greatly to the transformation of the asylum regime. As such, securitized discourse used by political elites and security professionals has led to concrete changes in Canadian asylum policy. Previous research has separately examined securitized discourse and the negative effects that securitization has on asylum seekers. This paper combines securitization as a theoretical framework with detailed empirical case studies to analyze the effects of discourse on the Canadian asylum regime. The discourse that portrays asylum seekers as security threats or illegitimate refugees results in the implementation of securitized immigration policies, which have the effects of criminalizing asylum seekers, violating human rights, and increasing irregular migration. Focusing on the case of the *MV Sun Sea*, consequent legislative changes, and the negative effects on asylum seekers, provides a comprehensive understanding of the harmful effects of securitized discourse on Canadian asylum policy.

Introduction

Immigration continues to be socially constructed as an essential part of what defines Canada.¹ 2016 Census results show that 1,212,075 new immigrants had permanently settled in Canada from 2011 to 2016,² and 11.6 percent of these new immigrants were admitted as

¹ Philippe Bourbeau, "The Securitization of Migration a Study of Movement and Order," Abingdon [England]: Routledge, 2011, 12.

² Canada, Statistics Canada, *Immigration and ethnocultural diversity: Key results from the 2016 Census*, October 25, 2017, <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025b-eng.htm?indid=14428-1&indgeo=0>.

refugees.³ Notably, Canada remains a top destination for international migration,⁴ and became the largest refugee resettlement country in 2018, with over 28,000 resettled refugees.⁵

Asylum seekers to Canada will be the focus of this paper, because although the northern nation is a key contributor in refugee resettlement, securitization is a major feature of asylum policies in Canada.⁶ The role of securitization is essential to understanding Canadian immigration policies and the treatment of asylum seekers. This topic is particularly important due to the somewhat limited amount of research on this issue in Canada.⁷

When referring to asylum-seekers, it is someone “who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments.”⁸ With reference to asylum, Atak and Crepeau provide a meaningful definition for securitization:

Securitization is defined as a process of social construction that pushes an area of regular politics, such as asylum, into an area of security. The issue is therefore described as an existential threat to fundamental values of society and the State, a construction that helps in convincing a relevant section of society that exceptional measures are needed in response to this existential threat. In the name of urgency and survival, these measures often reach above and beyond the law and the ordinary political process.⁹

This research paper aims to examine how Canada’s asylum system is securitized and the consequent effects of this securitization. First, it examines the discourse surrounding asylum seekers in Canada, focusing on the idea that asylum seekers are security threats or ‘bogus’

³ Canada, Statistics Canada, *Immigration and ethnocultural diversity*.

⁴ International Organization for Migration, *World Migration Report 2020*, 2019, 26, <https://www.iom.int/wmr/>.

⁵ *Ibid.*, 4.

⁶ I. Atak, and F. Crepeau, (2013), “The Securitization of Asylum and Human Rights in Canada and the European Union”, In S. Juss & C. Harvey (Eds.), *Contemporary Issues in Refugee Law*, Cheltenham, UK: Edward Elgar Publishing, 228.

⁷ Idil Atak, Graham Hudson, and Delphine Nakache, “The Securitisation of Canada’s Refugee System: Reviewing the Unintended Consequences of the 2012 Reform,” *Refugee survey quarterly* 37, no. 1 (2018): 3.

⁸ Cetron Douglas, “Definitions Matter: Migrants, Immigrants, Asylum Seekers and Refugees,” *Journal of travel medicine* 26, no. 2, (February 1, 2019) 2.

⁹ Atak and Crepeau, “The Securitization of Asylum,” 227-228.

refugees. Next, the paper will link this discourse to immigration laws, arguing that discourse plays a key role in the implementation of securitized immigration policies. Additionally, this research paper will address the effects that securitization of asylum seekers has in Canada. These effects including ‘criminalizing’ asylum seekers and providing unintended policy consequences. Overall, this paper argues that asylum seekers to Canada are securitized through the discourse that regards them as security threats or bogus refugees. This discourse results in the implementation of securitized immigration policies, which have the effects of criminalizing asylum seekers, violating human rights, and increasing irregular migration.

Discourse and Case Studies

Discourse plays an important role in the securitization of asylum seekers in Canada.¹⁰ There are various ways that discourse is used to securitize. The security actor can highlight certain aspects of migration and not speak to others, provide specifically chosen facts about migration, and use certain kinds of rhetorical devices and particular language. This serves to give the audience a sense of how that information should be understood.¹¹ To succeed, the securitizing actor identifies the needs and sentiments of their audience, speaking in a way that resonates in the given environment.¹²

While the dominant discourse surrounding asylum seekers in Canada indicates both humanitarian and security concerns, challenges to this discourse occur with the occurrence of particular refugee movements.¹³ These challenges stem from those who believe that some asylum seekers and unauthorized migrants pose a threat to national security, and those who

¹⁰ Atak and Crepeau, “The Securitization of Asylum,” 231.

¹¹ *Ibid.*, 232.

¹² *Ibid.*, 231-232.

¹³ Scott D. Watson, “Manufacturing Threats: Asylum Seekers as Threats or Refugees,” *Journal of International Law and International Relations* 3 (2007): 96.

contend that all, or most, are bogus refugees, criminals, or terrorists.¹⁴ These challenges to the humanitarian representation of asylum seekers contribute to securitizing discourse,¹⁵ and successful securitization results in a break in the normal rules of immigration and border control.¹⁶ In other words, by successfully securitizing asylum seekers, the state is able to contravene current legislation that governs the treatment of migrants, and make these violations commonplace by passing new legislation that authorizes extraordinary measures.¹⁷

There are various cases that can be examined to aid in the understanding of securitization of asylum seekers. This paper will explore some historical context, then focus on the case of the *MV Sun Sea*. It will also examine how the discourse surrounding the asylum seekers from the *MV Sun Sea* had a key role in shaping asylum policy.

In 1981, 1,500 Sikhs arrived on Canadian shores claiming political asylum.¹⁸ They were referred to as bogus refugees,¹⁹ and characterized as a threat to national security.²⁰ There was an increasing discourse that identified refugees as abusing Canadian generosity and breaking the law.²¹ Similarly, in 1987, 174 mainly Sikh asylum seekers arrived off the coast of Nova Scotia.²² They were referred to as ‘queue-jumpers’²³ and portrayed as a potential threat to both Canadian and Indian security,²⁴ arriving two years after the Air India bombing, in which 268 Canadians were killed.²⁵ This provided Canadians with a recent national event from which to draw

¹⁴ Watson, “Manufacturing Threats,” 96.

¹⁵ *Ibid.*, 97.

¹⁶ *Ibid.*, 98.

¹⁷ *Ibid.*

¹⁸ Alejandro Hernandez-Ramirez, “The Political Economy of Immigration Securitization: Nation-Building and Racialization in Canada,” *Studies in political economy* 100, no. 2 (2019): 120.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 122.

²¹ *Ibid.*, 123.

²² Corey Robinson, “Tracing and Explaining Securitization: Social Mechanisms, Process Tracing and the Securitization of Irregular Migration,” *Security Dialogue* 48, no. 6 (December 2017): 519.

²³ *Ibid.*, 511.

²⁴ Watson, “Manufacturing Threats,” 109.

²⁵ Robinson, “Tracing and Explaining Securitization,” 519.

reconstructions of the asylum seekers' identities.²⁶ Hence, various articles and letters cast the arrivals as Sikh 'terrorist' and 'militant' groups, terminology that was previously used in reference to the perpetrators of the Air India bombing.²⁷ The term 'illegal aliens' was used by government officials to describe the Sikh arrivals, a term rarely used in Canada, and more commonly employed in the United States (US) to describe illegal economic migrants.²⁸ Also, the Royal Canadian Mounted Police (RCMP) played a prominent role in securitization, through falsely declaring that seven of the asylum seekers said they would kill if directed to do so by a Sikh terrorist group.²⁹ This 1987 arrival of Sikh asylum seekers later resulted in the creation of new immigration bills in Parliament.³⁰ The identification of asylum seekers as bogus, illegal, and threats in the late 1980s, marked the introduction of the discourse, and the Progressive Conservative Party's arrival to power.³¹

In the late summer/early fall of 1999, Canadian authorities intercepted four boats carrying 599 Chinese asylum seekers.³² This was considered the so-called 'Chinese summer', and resulted in the detention of 465 men and women and 134 children.³³ Rather than discursively defending the detention of migrants, authorities put in place security practices to deal with the exogenous shock.³⁴ However, this does not mean that discourse was not present during the arrival of these Chinese asylum seekers. Racial discourses can be uncovered that represented these migrants as

²⁶ Watson, "Manufacturing Threats," 109.

²⁷ Ibid.

²⁸ Ibid., 111.

²⁹ Ibid., 110.

³⁰ Ibid., 109.

³¹ Hernandez-Ramirez, "The Political Economy of Immigration Securitization," 122.

³² Philippe Bourbeau, "Detention and Immigration: Practices, Crimmigration, and Norms," *Migration Studies* 7, no. 1 (March 1, 2019): 90.

³³ Ibid.

³⁴ Ibid.

illegal and carrying with them the ‘threat of infectious diseases’.³⁵ The discourse implies that the state must keep these asylum seekers outside the nation.³⁶ Hence, these migrants were socially constructed as a threat to Canadian security.³⁷ Discourse was simply not necessary to defend and justify the detention of these individuals, as the foundations of migration as a security issue were already established from the early 1990s.³⁸ The practice of detention became the common course of action for Canada when dealing with the arrival of large amounts of asylum seekers by boat.³⁹

A key case that helps to illustrate discourse used regarding asylum seekers is the *MV Sun Sea*. In 2010, Canadian authorities seized the *Sun Sea* near Victoria, British Columbia. It was a Thai cargo vessel carrying 492 Sri Lankan asylum seekers.⁴⁰ Following nearly three months at sea, in which one person died, all individuals made claims for asylum, on grounds of persecution in Sri Lanka following the aftermath of a civil war.⁴¹ Quickly after their discovery, most of the adults were transferred into detention, while most minors were placed in foster-care facilities.⁴²

Before the identities of the asylum seekers were verified, political elites and security professionals utilized securitized discourse, identifying the *Sun Sea* as a threat to international security, national security, and the integrity of the refugee system.⁴³ The arrivals were cast as queue-jumpers, human smugglers, and/or members of a terrorist organization called the Liberation Tigers of Tamil Eelam (LTTE), otherwise known as the Tamil Tigers.⁴⁴ Notably, the

³⁵ David Moffette and Shaira Vadasaria, “Uninhibited Violence: Race and the Securitization of Immigration,” *Critical studies on security* 4, no. 3 (2016): 294.

³⁶ Watson, “Manufacturing Threats,” 101.

³⁷ Ibid.

³⁸ Bourbeau, “Detention and Immigration,” 90.

³⁹ Ibid., 91.

⁴⁰ Lobat Sadrehashemi, “The MV Sun Sea: A Case Study on the Need for Greater Accountability Mechanisms at Canada Border Services Agency,” *Dalhousie law journal* 42, no. 1 (March 22, 2019): 241.

⁴¹ Robinson, “Tracing and Explaining Securitization,” 511.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

Canadian Government wrongly claimed that at least one-third of the passengers were terrorists and suspected human smugglers working to rebuild the LTTE's base of operations overseas.⁴⁵

Even prior to the arrival of the *Sun Sea*, a Canada Border Services Agency (CBSA) memo stated that the agency would gather as much material and evidence as possible to build cases revealing that 'marine people smuggling' is serious and a significant threat to the safety and well-being of Canadians.⁴⁶ In fact, the CBSA's proposed strategy was a "more aggressive approach to create a deterrent for future arrivals".⁴⁷ This approach included lengthy detentions, long interrogations, assertive interventions by the Minister at refugee hearings, and persistent attempts to build evidence arguing the claimants were inadmissible.⁴⁸

Just before the boat's arrival, Public Safety Minister Vic Toews alleged that the passengers were suspected human smugglers and terrorists, and that this second arrival in a year exposed a gap in Canada's ability to deter terrorists and human smugglers.⁴⁹ In 2009, the year prior to the *Sun Sea*, the *MV Ocean Lady* arrived along the BC coastline with seventy-six Tamils seeking asylum.⁵⁰ In 2013, of the total refugee claimants from both ships, only four people were deemed inadmissible to enter Canada, and none for terrorism-related concerns.⁵¹ As of February of 2019, some claimants from the *MV Sun Sea* had been found inadmissible based on an understanding of 'people smuggling' that has been overturned by the Supreme Court of Canada.⁵² However, 335 of the claimants had been recognized as refugees, and thirteen claims were remaining to be determined.⁵³ In other words, by casting the arrivals as human smugglers

⁴⁵ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 6.

⁴⁶ Moffette and Vadasaria, "Uninhibited Violence," 298.

⁴⁷ Sadrehashemi, "The MV Sun Sea," 222.

⁴⁸ Ibid.

⁴⁹ Moffette and Vadasaria, "Uninhibited Violence," 298.

⁵⁰ Davina Bhandar, "Arrivals: Marking Time," *BC studies*, no. 200 (December 1, 2019): 107.

⁵¹ Atak and Crepeau, "The Securitization of Asylum," 234.

⁵² Sadrehashemi, "The MV Sun Sea," 241.

⁵³ Ibid.

and prospective terrorists before the Immigration Refugee Board (IRB) could verify the claims, security actors utilized discourse to securitize the asylum seekers.⁵⁴

With this portrayal of asylum seekers as a threat, a pattern emerges whereby every asylum seeker is suspected of being illegitimate.⁵⁵ Through referring to asylum seekers as queue-jumpers, they are regarded as illegitimate refugees, who are ‘jumping ahead’ of ‘legitimate’ claimants and not fleeing any real persecution.⁵⁶ Likewise, by accusing groups of asylum seekers of terrorism and criminality, it allows for the dehumanization of individual claims.⁵⁷ This social construction of asylum seekers as a threat becomes institutionalized through policies that build on the fear of bogus refugees. In this case, despite the fact that boat arrivals represented just two percent of all asylum claims made in 2010, and despite the lack of evidence linking the asylum seekers with terrorists,⁵⁸ the Federal Conservative Government, under Stephen Harper, introduced harsh measures into Canada’s asylum system following these two arrivals.⁵⁹

These cases help to provide background information and context as to how the discourse surrounding asylum seekers portrays them as security threats and bogus refugees. Why is the discourse surrounding asylum seekers as threats and bogus refugees important? This political discourse has a crucial role in transforming the Canadian asylum regime, by institutionalizing security practices within asylum policy. With reference to the cases previously discussed, this next section examines how this discourse led to securitized asylum policies.

⁵⁴ Robinson, “Tracing and Explaining Securitization,” 516.

⁵⁵ El-Bialy Olsen, “‘Other’ Troubles: Deconstructing Perceptions and Changing Responses to Refugees in Canada,” *Journal of immigrant and minority health* 18, no. 1 (February 4, 2014): 63.

⁵⁶ Sailaja Krishnamurti, “Queue-Jumpers, Terrorists, Breeders: Representations of Tamil Migrants in Canadian Popular Media,” *South Asian Diaspora* 5, no. 1 (2013): 140.

⁵⁷ Ibid.

⁵⁸ Atak and Crepeau, “The Securitization of Asylum,” 233.

⁵⁹ Atak, Hudson, and Nakache, “The Securitisation of Canada’s Refugee System,” 2.

Securitization and Legislative Changes

Since the 1980s, securitization has had a major role in Canadian asylum policy.⁶⁰ Shortly after the arrival of Sikh and Central American refugees off the coast of Nova Scotia in the late 1980s, the IRB was created under Bill C-55.⁶¹ Notably, Bill C-55 and Bill C-84 had the effect of revising the refugee determination system, permitting authorities to exclude a refugee claimant from the process if they had travelled through a ‘safe third country’.⁶² A treaty with a similar purpose would eventually come into force in 2004, called the *Canada-US Safe Third Country Agreement* (STCA), a legal instrument which prohibits third country nationals in the US from making an asylum claim at a Canadian land port of entry, subject to certain exceptions.⁶³ Additionally, Bill C-55 responded to the problem of queue-jumpers by limiting access to the refugee determination system,⁶⁴ and Bill C-84 provided additional powers to detain undocumented persons and deport those deemed security threats.⁶⁵ Notably, the securitized discourse rendered particular policies acceptable, policies which had never previously been seriously considered.⁶⁶

The discursive links between bogus refugees, criminals, and terrorism were institutionalized by these legislative changes.⁶⁷ They occurred in the context of the 1985 Air India bombing, creating the links between Sikh terrorism and the boat arrivals.⁶⁸ This association

⁶⁰ Atak and Crepeau, “The Securitization of Asylum,” 228.

⁶¹ Olsen, “‘Other’ Troubles,” 63.

⁶² Bourbeau, “Detention and Immigration,” 87.

⁶³ Efrat Arbel, “Shifting Borders and the Boundaries of Rights: Examining the Safe Third Country Agreement Between Canada and the United States,” *International journal of refugee law* 25, no. 1 (March 1, 2013): 66.

⁶⁴ Robinson, “Tracing and Explaining Securitization,” 519.

⁶⁵ Ibid.

⁶⁶ Watson, “Manufacturing Threats,” 109.

⁶⁷ Robinson, “Tracing and Explaining Securitization,” 519.

⁶⁸ Ibid.

was popularized in the 1980s and became dominant in the 1990s⁶⁹. In 1992, Bill C-86 introduced additional revisions, mostly restrictive, to the refugee determination system.⁷⁰ Furthermore, in 1995, Bill C-44 allowed the Minister of Citizenship and Immigration to deem someone a ‘danger to the public’, in which they lose the right to appeal a removal order.⁷¹

After the arrival of the *MV Sun Sea*, Canada introduced further immigration reform. The *Sun Sea* incident was used by Conservative government officials, led by Immigration and Citizenship Minister Jason Kenney, to promote restrictive legislative changes that were already desired.⁷² Minister Kenney warned of bogus refugees who come to take advantage of Canada’s generous nature, constructing asylum seekers as threats, rather than individuals who are vulnerable and helpless.⁷³ This resulted in legislative changes under Bill C-31 (*Protecting Canada’s Immigration System Act*), in which the Minister of Public Safety was given the power to deem groups of asylum seekers (of two people or more) ‘irregular arrivals’, prior to them reaching Canada, by categorizing them a Designated Foreign National (DFN).⁷⁴ Additionally, a two-tiered refugee system was implemented, with lower process requirements and expedited deportation for asylum seekers from safe third countries, and all asylum seekers were provided with a shorter timeframe to make their claim.⁷⁵

Furthermore, there was the introduction of the *Protecting Canada's Immigration System Act* (PCISA) and the *Balanced Refugee Reform Act* (BRRRA), both of which amended the *Immigration Refugee Protection Act* (IRPA).⁷⁶ This will be referred to as the 2012 refugee

⁶⁹ Robinson, “Tracing and Explaining Securitization,” 519.

⁷⁰ Bourbeau, “Detention and Immigration,” 87.

⁷¹ Ibid.

⁷² Moffette and Vadasaria, “Uninhibited Violence,” 298.

⁷³ Olsen, “‘Other’ Troubles,” 65.

⁷⁴ Moffette and Vadasaria, “Uninhibited Violence,” 299.

⁷⁵ Ibid.

⁷⁶ Atak, Hudson, and Nakache, “The Securitisation of Canada’s Refugee System,” 2.

reform.⁷⁷ The language of security and the timing of the arrivals in 2009-2010 granted a political opportunity to limit access to justice to persons, by portraying them as deceitful and underserving of refugee status.⁷⁸ The Public Safety Minister's statement painting the asylum seekers as human smugglers and terrorists was meant to lay the framework for legislative changes.⁷⁹ In fact, in the 2011 federal election campaign, the incumbent Conservative party labeled itself as the sole party that was 'tough on human smuggling'.⁸⁰ By blurring the lines between irregular arrivals, asylum seekers, and human smugglers, security actors were able to create causal connections between them.⁸¹ Hence, the arrival of the *MV Ocean Lady* and the *MV Sun Sea* were used as a pretext for legislative change.⁸² In the 2012 refugee reform, the Immigration Minister at the time argued that Canada's asylum system was broken, costly, inefficient, and subject to abuse.⁸³ Again, in 2013, the Auditor General of Canada stated that Canadian national security was threatened by migrant smuggling.⁸⁴

The 2012 refugee reform included reduced procedural guarantees and reviews, expedited refugee claim hearings, increased the use of socioeconomic deterrents, and increased immigration detention.⁸⁵ The designated foreign national (DFN) class, as mentioned previously, illustrates a harsh policy response justified by political discourse. Individuals, in a group of two or more, who arrived in Canada with the help of a smuggler could be designated by the Minister of Public Safety and mandated detention if aged sixteen or over.⁸⁶ Those DFN's whose claims

⁷⁷ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 2.

⁷⁸ *Ibid.*, 2-3.

⁷⁹ Moffette and Vadasaria, "Uninhibited Violence," 298.

⁸⁰ Krishnamurti, "Queue-Jumpers, Terrorists, Breeder," 139.

⁸¹ Robinson, "Tracing and Explaining Securitization," 516.

⁸² Sadrehashemi, "The MV Sun Sea," 216.

⁸³ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 7.

⁸⁴ *Ibid.*, 21.

⁸⁵ *Ibid.*, 2.

⁸⁶ *Ibid.*, 8.

are rejected by the Refugee Protection Division (RPD) are denied the right to appeal to the Refugee Appeal Division (RAD) of the IRB, and are faced with immediate deportation.⁸⁷ Likewise, DFNs are not granted an automatic stay of removal upon applying for leave and judicial review, and can thus be deported during their application.⁸⁸ DFNs also face restrictions when applying for work permits and are required to wait five years before applying for permanent residence when they obtain refugee status.⁸⁹ Interestingly, the DFN class serves as a threat for possible asylum seekers, rather than to actually prevent or prosecute, as it has only been used once.⁹⁰

Under BARRA, failed refugee claimants are also prohibited from applying for Pre-Removal Risk Assessment (PRRA) for one year following their IRB decision, and claimants from the DFN class have no access to PRRA for 36 months after a negative decision.⁹¹ Additionally, refused refugee claimants can apply for permanent residence on humanitarian and compassionate grounds (H&C) only one year following their final IRB decision. In contrast, before the 2012 reform, an application on H&C grounds could be made at any time in Canada.⁹² These reforms serve to securitize the asylum process, and the DFN class could be viewed as a deterrence or serving an interdiction function.⁹³

The reform also included the introduction of the Designated Country of Origin (DCO). Asylum seekers from DCO countries were given shorter periods of time for IRB hearings,⁹⁴ based on the assumption that those countries considered safe are unlikely to produce legitimate

⁸⁷ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 8.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, 9-10.

⁹¹ *Ibid.*, 14.

⁹² *Ibid.*

⁹³ *Ibid.*, 8.

⁹⁴ *Ibid.*, 11.

refugees.⁹⁵ In other words, DCO applicants were treated throughout the process as ‘bogus refugees’.⁹⁶ Again, the construction of the refugee as a threat can be viewed in Minister Kenney’s claims around bogus refugees.⁹⁷ Other issues include the fact that the designation of a ‘safe state’ was not based on specific objective criteria, but rather on political considerations,⁹⁸ and that high acceptance rates existed for two main DCO countries, thus indicating that several asylum seekers had well founded reasons to claim protection.⁹⁹ Notably, the DCO practice was ended in May of 2019.¹⁰⁰ The Government of Canada announced that all countries were removed from the list, because the DCO policy was not fulfilling its objective and certain provisions of the policy were found not to comply with the Canadian Charter of Rights and Freedoms.¹⁰¹

As can be seen, by focusing on the discourse surrounding possible security threats, rather than the humanitarian concerns of asylum seekers, securitizing actors are able to frame their measures as a necessary and proportionate response to a perceived threat.¹⁰² Political discourse has influence on social opinions within Canada, contributing to the ease in which Parliament can pass unjust measures.¹⁰³ These measures include, but are not limited to, the legislative changes established in the context of Sikh asylum seekers and the 1985 Air India Bombing, the establishment of the STCA, and the legislative changes that occurred under the 2012 refugee reform, which includes both the DFN class and the now-defunct DCO practice. To emphasize,

⁹⁵ Olsen, “‘Other’ Troubles,” 63.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, 65.

⁹⁸ Atak and Crepeau, “The Securitization of Asylum,” 244.

⁹⁹ Atak, Hudson, and Nakache, “The Securitisation of Canada’s Refugee System,” 11.

¹⁰⁰ Canada, Immigration, Refugees and Citizenship Canada, *Canada ends the Designated Country of Origin practice*, May 17, 2019, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/05/canada-ends-the-designated-country-of-origin-practice.html>.

¹⁰¹ *Ibid.*

¹⁰² Atak, Hudson, and Nakache, “The Securitisation of Canada’s Refugee System,” 6.

¹⁰³ *Ibid.*, 8.

the securitizing move enacted through the 2012 refugee reform, taken in response to the *Sun Sea*, was able to transform the asylum system's existing regime of practices.¹⁰⁴

Effects of Securitized Asylum Policies

The securitization of asylum seekers has negative effects, one of which is “criminalizing” asylum seekers. With the enforcement of the STCA, third country nationals in the US are barred (with slight exceptions) from making an asylum claim at a Canadian port of entry.¹⁰⁵ However, this only applies at Canadian land borders,¹⁰⁶ thus making it possible to make a claim once in Canada, by entering Canada between ports of entry.¹⁰⁷ This has had the effect of enhancing irregular migration by forcing many possible asylum seekers in the US to enter Canada at unofficial border crossings.¹⁰⁸ While irregular entry is not necessarily a crime, Canada has criminalized irregular entry for its own interests, thus resulting in the increased regulation of irregular migration and the consequence of unnecessary detention.¹⁰⁹

In 2017, the CBSA witnessed a rise of irregular asylum seekers at unofficial border crossings, such as Roxham Road on the Quebec-New York border.¹¹⁰ The RCMP, responsible for policing Canada's border in between ports of entry, immediately arrested those who crossed the border ‘illegally’.¹¹¹ While Prime Minister Trudeau sent a personal tweet welcoming “those fleeing persecution, terror, and war,” there was public criticism from Opposition leader Andrew

¹⁰⁴ Robinson, “Tracing and Explaining Securitization,” 511.

¹⁰⁵ Atak, Hudson, and Nakache, “The Securitisation of Canada's Refugee System,” 21.

¹⁰⁶ Ibid.

¹⁰⁷ Megan Gaucher, “Keeping Your Friends Close and Your Enemies Closer: Affective Constructions of ‘Good’ and ‘Bad’ Immigrants in Canadian Conservative Discourse,” *Canadian ethnic studies* 52, no. 2 (June 22, 2020): 90.

¹⁰⁸ Atak, Hudson, and Nakache, “The Securitisation of Canada's Refugee System,” 21.

¹⁰⁹ Atak and Crepeau, “The Securitization of Asylum,” 255.

¹¹⁰ Gaucher, “Keeping Your Friends,” 90.

¹¹¹ Canada. Royal Canadian Mounted Police. *In search of a better life: Striking a balance between security and compassion*, by Deidre Seiden. January 2, 2018. <https://www.rcmp-grc.gc.ca/en/gazette/search-a-better-life>.

Sheer and the Conservative Party of Canada.¹¹² The asylum seekers were referred to as illegal rather than irregular and a narrative continued with other Conservative Members of Parliament, in which irregular asylum seekers were grouped with terrorists.¹¹³ Notably, a United Nations High Commission for Refugees (UNHCR) publication regarding irregular arrivals stated that “under Canadian and international law, it is not a punishable offence to cross a border without authorization IF this is to seek asylum.”¹¹⁴ Under the 1951 Refugee Convention, which Canada has been a party to since 1969,¹¹⁵ it states that refugees are not to be punished for entering the state unlawfully or without proper documentation.¹¹⁶ In other words, the enforcement of the STCA, which is unconstitutional and prohibited under international law at the worst, and highly controversial at best, leads to the criminalization of asylum seekers.

Another method in which asylum seekers are criminalized is through the act of detention. Under the 2012 refugee reform, increased detention was introduced.¹¹⁷ Detention is used as a widespread administrative practice of deterrence,¹¹⁸ and is a key procedure in that it contributes to the understanding of migration as a security issue.¹¹⁹ The tradition of detaining asylum seekers perpetuates the dominant lens in which asylum and migration is understood.¹²⁰ In other words, by utilizing detention, the act of seeking asylum becomes thoroughly established as a security issue, hence problematizing asylum seekers.¹²¹ With criminal practices, such as detention,

¹¹² Gaucher, “Keeping Your Friends,” 90.

¹¹³ Ibid.

¹¹⁴ United Nations High Commissioner for Refugees, *Irregular Arrivals At The Border: Background Information Jan - May 2019*, June 2019, <https://www.unhcr.ca/wp-content/uploads/2019/07/IRREGULAR-ARRIVALS-AT-THE-BORDER-Background-information-Jan-May-2019-1.pdf>.

¹¹⁵ United Nations High Commissioner for Refugees, *States Parties to the 1951 Convention and its 1967 Protocol* April 2015, 2, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

¹¹⁶ Watson, “Manufacturing Threats,” 99.

¹¹⁷ Atak, Hudson, and Nakache, “The Securitisation of Canada’s Refugee System,” 2.

¹¹⁸ Atak and Crepeau, “The Securitization of Asylum,” 247.

¹¹⁹ Bourbeau, “Detention and Immigration,” 83.

¹²⁰ Ibid.

¹²¹ Ibid.

internalized into immigration law, this legitimizes the process of thinking about migration through the lens of security.¹²²

Moreover, the immigration reforms mentioned earlier have unintended policy consequences. These consequences are the violation of human rights and the increase of irregular migration. The violation of human rights involves violating both the Canadian Charter of Rights and Freedoms, and international law under the United Nations.

As previously mentioned, the legality of the STCA is challenged by the UNHCR.¹²³ Despite the penal immunity clause of Article 31 of the *1951 Refugee Convention*, countries increasingly detain asylum seekers upon arrival.¹²⁴ Also, this systematic detention “violates the international obligation to resort to detention only after a careful examination of the necessity of deprivation of liberty in each individual case.”¹²⁵ As a matter of fact, a federal court found that the STCA violates section 7 of the *Canadian Charter of Rights and Freedoms*, which provides that “everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice.”¹²⁶ The reason behind the court’s decision is that STCA ineligible claimants who are returned to the US by Canadian officials are “detained as a penalty.”¹²⁷ This infringement was not seen to be justified under section 1 of the *Charter*.¹²⁸ Controversially, the Government of Canada is currently

¹²² Bourbeau, “Detention and Immigration,” 88.

¹²³ United Nations High Commissioner for Refugees, *Irregular Arrivals At The Border: Background Information Jan - May 2019*.

¹²⁴ Atak and Crepeau, “The Securitization of Asylum,” 248.

¹²⁵ *Ibid.*

¹²⁶ Canada. Federal Court Decisions. *Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship)*, June 22, 2020, [https://decisions.fct-cf.gc.ca/fc cf/decisions/en/item/482757/index.do#_Toc46131681](https://decisions.fct-cf.gc.ca/fc%20cf/decisions/en/item/482757/index.do#_Toc46131681).

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

appealing the court's decision.¹²⁹ In other words, provisions under the STCA contain violations under the *Charter* and international law.

Likewise, human rights are violated through the detention of asylum seekers. Under the DFN class, mandatory detention of sixteen and seventeen year old children without an immediate review of the detention's lawfulness, as well as the exclusion of a DFN's right to appeal to the RAD are against the *Charter* and international obligations under the *Convention Relating to the Status of Refugees*.¹³⁰ Notably, the mandatory detention of DFNs can be seen to diminish personal liberty and lacks the norms and procedures found in most liberal democracies.¹³¹ As such, courts have found that some measures contravene the *Charter* and are not justified by the purposes and principles of IRPA.¹³² The detention of children is especially worrying. In 2010, among the Tamil asylum seekers who arrived off Canadian shores, forty-nine were children, and all of them were detained upon arrival for lengthy periods, some for up to seven months.¹³³

The length and procedures surrounding detention and removal is an important issue of human rights. Days after writing to immigration officials, "[I would rather] die in Nigeria for a reason than waste away in [detention in Canada] when I had done nothing wrong.", thirty-year-old Nigeran, Michael Akhimien, died while in a detention centre.¹³⁴ Akhimien had made a claim for asylum in Canada on October 28, 1995 and died in a Canadian detention centre on December 18, 1995, despite having made two applications to withdraw his refugee claim.¹³⁵ Other cases of controversial detention practices include the long-term detention of Kashif Ali, who was locked

¹²⁹ Canada, Immigration Refugees and Citizenship Canada, *Canada-U.S. Safe Third Country Agreement*, June 23, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>.

¹³⁰ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 9-10.

¹³¹ Bourbeau, "Detention and Immigration," 89.

¹³² Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 10.

¹³³ Atak and Crepeau, "The Securitization of Asylum," 252.

¹³⁴ Bourbeau, "The Securitization of Migration," 11.

¹³⁵ *Ibid.*, 11.

in a maximum-security jail for more than seven years despite lack of a criminal charge, and the similar case of Ebrahim Toure, who was detained for more than four and a half years.¹³⁶

While the average length of migrant detention is about three weeks, the practice of detaining migrants, for long or even indefinite periods of time appears embedded in the system.¹³⁷ While studying Ali's case, Superior Court Justice Ian Norgheimer questioned the government's lawyer about the acceptable length of migrant detention. He concluded that it appears it is the government's policy that an immigration detainee could be detained for "literally the rest of their life."¹³⁸

When examining removal, the lack of an autonomous stay of removal for DFNs and those (historically) from DCOs represents a human rights issue. Not only do European courts highlight the human rights violations caused through the lack of a stay of removal,¹³⁹ but prohibiting DCO claimants from accessing the RAD was found to be in contravention of Section 15 of the *Charter*.¹⁴⁰ To emphasize, the practices surrounding migrant detention and removal is seen to have legal and ethical issues.

The other unintended policy consequence is the increase in irregular migration. While irregular migration is difficult to measure and evaluate, certain policies have been seen as having a link to irregular migration, resulting from a mix of immigration, asylum policy, and border controls.¹⁴¹ In fact, there is a correlation between new refugee measures and the increase in irregular migration in Canada.¹⁴² As previously mentioned, the STCA provided the unintended

¹³⁶ Bourbeau, "Detention and Immigration," 92.

¹³⁷ *Ibid.*, 89.

¹³⁸ *Ibid.*

¹³⁹ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 14.

¹⁴⁰ *Ibid.*, 13.

¹⁴¹ *Ibid.*, 20-21.

¹⁴² *Ibid.*, 1.

consequence of enhancing irregular migration,¹⁴³ as well as migrant smuggling.¹⁴⁴ There is also evidence of a connection between the 2012 refugee reform and irregular migration in Canada.¹⁴⁵ Hence, harsh policy measures that securitize asylum seekers are argued to have the unintended effect of increasing irregular migration.

Likewise, the securitization of Canada's refugee status determination system is counterproductive in challenging irregular migration. Reduced legal options presented to failed asylum seekers impact irregular migration.¹⁴⁶ As explained by an immigration service provider representative, with limitations in accessing PRRA, some people go 'underground' for years until the bar on accessing PRRA is over.¹⁴⁷ If they then decide to go to the CBSA to fill out PRRA, there is high risk of detention, thus discouraging those in the asylum process to go through formal legal routes.¹⁴⁸ Interestingly, after the 2012 refugee reforms, the CBSA received a strong increase in its capacity and law enforcement mandate.¹⁴⁹ It is claimed that the CBSA's hostile organizational culture is a factor in enhancing irregular migration in Canada, serving as a deterrent effect on refused asylum seekers when it comes to exhausting legal remedies or complying with removal orders.¹⁵⁰ In sum, securitization of asylum seekers has had the unintended effect of increasing irregular migration.

¹⁴³ Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 10.

¹⁴⁴ *Ibid.*, 21.

¹⁴⁵ *Ibid.*, 24.

¹⁴⁶ *Ibid.*, 22.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, 23.

¹⁵⁰ *Ibid.*

Conclusion

To conclude, asylum seekers to Canada are securitized through the discourse that regards them as security threats or bogus refugees. This discourse results in the implementation of securitized immigration policies, which have the effects of criminalizing asylum seekers, violating domestic and international laws, and increasing irregular migration. Overall, this paper has examined how Canada's asylum system is securitized and the consequent effects of this securitization. There has been, and continues to be, political discourse surrounding asylum seekers that considers them security threats or bogus refugees. This is best examined through the political discourse around the arrival of asylum seekers by boat. Consequently, this discourse plays a key role in the implementation of securitized immigration policies, such as those contained within the 2012 refugee reform. Particularly, the effects that arise from this securitization and the implementation of harsh immigration policies include criminalizing asylum seekers, violating human rights, and increasing irregular migration.

Many of the policies discussed undermine the humanitarian principles of international refugee law that have been historically fundamental to Canada's approach to asylum seekers.¹⁵¹ While Canada has enjoyed global praise for its efforts in refugee resettlement,¹⁵² one can see from the securitization of asylum seekers that there is still much room for improvement. If one agrees that immigration is an essential part of Canada, or at the very least that human rights are crucial, then the importance of asylum seekers' rights cannot be overstated.

¹⁵¹ Watson, "Manufacturing Threats," 95.

¹⁵² Atak, Hudson, and Nakache, "The Securitisation of Canada's Refugee System," 2.

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