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NATIONAL INTERESTS VERSUS NATIONAL IDEALS – THE UNRESOLVED CHALLENGE IN CANADIAN IMMIGRATION AND REFUGEE POLICY AND BORDER CONTROL

Canada's immigration and refugee policies and processes and border controls have been criticized as being too lax. This essay illustrates that as Canada tightens its immigration and refugee policies and its borders, in the short term it must place greater emphasis on its national interests versus its national ideals in order to ensure the national security and economic security of its citizens, while continuing to pursue its humanitarian ideals in the long term to meet its international commitments. The essay is divided into five chapters. Chapter 1 discusses the fact that Canada's immigration and refugee policies offer a means of supporting the human security agenda of foreign policy. It also introduces the dilemma between attaining humanitarian ideals versus national interests. Given its dependence on the US for economic prosperity, Canada cannot unilaterally take initiatives in its foreign policies without considering the impact on its relations with the US. Chapter 2 provides a historical perspective of immigration emphasizing the fact that immigration has always been used as a tool to attain foreign policy objectives such as humanitarian ideals as well as national interests. Since the late sixties, there has been a shift in emphasis away from national interests towards national ideals. By the eighties, the emphasis on humanitarianism over national security resulted in a loss of control and ultimately posed a threat to Canada's national security. Given that the international call for humanitarian assistance is continually on the rise and homeland security is increasingly threatened, the Government's challenge to balance the attainment of its humanitarian ideals and national interests is marked. Chapter 3 discusses the potential threats to national security posed by the increase in international migration. Social, economic and political threats are discussed to illustrate that population movements can result in interstate and intrastate tension and conflict. Chapter 4 confirms that there are weaknesses in our immigration and refugee policies and processes resulting in their inability to ensure the safety and security of Canadian citizens while simultaneously addressing the humanitarian concerns of those seeking asylum. The challenges are not new, but they are increasingly cause for concern given the exponential increase in the number of legal and illegal migrants. The main challenges are related to processing delays of refugee claimants, exit controls for those who are not legally in Canada, people claiming refugee status under false pretences without valid identification, and the lack of teeth in the Canadian detention system. These vulnerabilities are more challenging due to the Government's dual commitment to humanitarian ideals and national interests. Chapter 5 illustrates the challenge in reconciling the need to secure the Canada-US border, while at the same time ensuring trade remains unaffected. Indeed in the short term, the pendulum must shift in order to meet security requirements to provide a more balanced approach to the attainment of Canada's immigration and refugee policy objectives. However, a draconian response is not called for, as this would potentially drive the problem underground. Increased cooperation between Canada and the US is necessary and the focus must be on high-risk versus low-risk areas. Ultimately, the root causes of the international migration must be addressed. In this vein, in the long term, Canada should continue to pursue its international humanitarian commitments.

In the wake of the 11 September, 2001 terrorist attacks on the World Trade Centre and the Pentagon, Canadians and Americans alike are trying to come to grips with their new sense of vulnerability and insecurity. Although a silver bullet does not exist which will guarantee that future terrorist attacks will never occur, no stone is left unturned in their quest to find the weak links in domestic security that could have led to this disaster. Although Canada and Canadians are not primary targets of terrorist groups, “proximity to the United States, a common border, large expatriate communities and a healthy economy draws representatives of virtually every terrorist group in the world to this country”.¹ Being an open, multicultural and democratic society that respects individual rights and freedoms, Canada is an attractive place to live and work for thousands of legitimate immigrants who choose to come here each year. However, to the potential terrorist, these same factors make it a soft target for aggression. While most immigrants and refugees want nothing more than to be productive members of society, there are those few who slip through whose goal is to use Canada as a ‘safe haven’ from which to support terrorist activities. In recent years, terrorists from at least five different international terrorist organisations have come to Canada posing as refugees.² A ‘convention refugee’ as presented in the Geneva Convention, is “any person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, and is outside his country of nationality and unable or unwilling because of such fear, to avail himself/herself of the protection of that country”.³ There are presently more than 50 terrorist groups in Canada mainly involved in supporting conflicts abroad. The Canadian Security Intelligence Service (CSIS) affirms

that support networks in Canada have provided terrorists with 'safe-haven' and the capability to travel unhindered to and from other countries, including the United States.⁴

Given its emphasis on human security and international peace, and its reputation as a compassionate society, Canada supports the granting of asylum to legitimate refugees through its immigration and refugee policies. Furthermore, given its characteristic as a multicultural society, and its history as a country of immigration, Canada continues to look upon immigration as a positive factor in the social and economic development of the country.⁵ In spite of the fact that the terrorists involved in

and freedoms of Canadians and potential refugees. On the other hand, given the international problems with mass migration, it would be naïve to assume that the strict implementation of control measures would guarantee that Canada would eventually be free of all terrorists. This essay will illustrate that as Canada tightens its immigration and refugee policies and its borders, in the short term it must place a greater emphasis on its national interests versus its national ideals in order to ensure the national security and economic security of its citizens, while continuing to pursue its humanitarian ideals in the long term, in order to meet its international commitments.

The analysis will begin with chapter 1 which entails a brief discussion on national security as it relates to foreign policy. This relationship is important as our national security agenda is derived from our foreign policy objectives. In order to understand how we have ended up with the approach we have to immigration, chapter 2 will provide a historical analysis. Canada is a country of immigration. As such, it has depended on immigration for population growth and economic growth. In fact, immigration has often been used to further its foreign policy objectives. Today, the trend continues with the tension between humanitarian ideals and national interests growing as factors pull these apparent opposing poles further and further apart. Chapter 3 will follow with a discussion regarding the domestic threat to Canada posed by its immigration and refugee policies. Transnational migration is on the agenda of nation-states across the globe, as migrants, including legal and illegal immigrants and refugees cross borders seeking a better life. The domestic threat to national interests will be analysed in terms of its economic, social, cultural and political effects. This will be followed by chapter 4, wherein an analysis of the factors that contribute to this threat will

be presented, focusing primarily on weaknesses in Canada's immigration and refugee policies and processes. The weak links in our policies are not new, the Auditor General of Canada has published them repeatedly over the past decade. However, the traumatic events of 11 September have given new meaning to the weaknesses and have emphasized the challenges the Government faces in satisfying both its national interests and its humanitarian goals. The limited degree to which Bill C-11, *Immigration and Refugee Protection Act* will resolve these weaknesses will be analysed. Chapter 5 will identify potential short and long term solutions to these weaknesses. Most countries react by attempting to close their doors as much as possible in order to keep out the 'bad apples'. However, this local short-term solution will not necessarily resolve the long-term problem. Transnational migration is not a short-term problem as its causes are complex and deep-rooted; hence the solutions are difficult and controversial.

CHAPTER 1

NATIONAL SECURITY AND FOREIGN POLICY

Given our vulnerability and the fact that there are terrorist organisations operating within Canada, many Canadians have concerns regarding the state of Canadian national security. National Security can be defined as:

the preservation of a way of life acceptable to the Canadian people and compatible with the needs and legitimate aspirations of others. It includes freedom from military attack or coercion, freedom from internal subversion, and freedom from the erosion of political, economic and social values which are essential to the quality of life in Canada.⁷

Hence, national security is more than freedom from military attack. Threats to our core values threaten our national security. Core values are those things that the Government has identified as important issues to all Canadians including economic growth, social justice, quality of life, environment, peace and security, as well as sovereignty and independence.⁸

In order to understand and comment on Canada's security agenda, it is important to understand the objectives of our foreign policy from which our security agenda is derived. A key objective of Canada's foreign policy is "the promotion of global peace as the key to protecting our security".⁹ This emphasizes Canada's conviction that its security is dependent on the security and stability of other state actors in the world. The threat to the security and stability of the international community has changed since the end of the Cold War. "A whole range of security issues transcend borders – including mass migration, crime, disease, environment, overpopulation, and underdevelopment – [and] have peace and security implications at the local, regional, and in many cases, the global level."¹⁰ Hence, although the potential for direct attacks such as military or terrorist attacks on Canada may exist, transnational threats, which are largely indirect, now dominate the security agenda.¹¹

A state's foreign policy is also a function of its capabilities, in terms of which, Canada is often referred to as a 'middle power'.¹² Although there are many definitions of 'middle power', the following delineates its major characteristics: "the tendency to pursue multilateral solutions to international problems, [the] tendency to embrace compromise positions in international disputes, [the] tendency to embrace notions of

‘good international citizenship’ to guide diplomacy”.¹³ Hence, Canada achieves its goals through attraction and coalition building not coercion.

Given the change in threat, Canada’s stated key objective of global peace and security and its influence as a middle power, it is understandable that Canada’s security definition has expanded to include ‘human security’. This represents a shift in focus in the past decade from a predominant emphasis on the security of the state to the security of the people.¹⁴ For Canada, human security means “freedom from pervasive threats to peoples’ rights, safety or lives.”¹⁵ In this vein, it has identified five foreign policy priorities for advancing human security, including the protection of civilians, peace support operations, conflict prevention, governance and accountability and public safety. Given the fact that all of these priorities are focused on achieving international peace and security, Canadian policy-makers have tended to pay more attention to notions of international rather than national security, differentiating themselves from other states, such as the United States, that are tied to national security in the military sense.¹⁶ By attaining its foreign policy goals, such as humanitarianism, it is felt that Canada’s well being will be assured. This ideal however, is a long-term objective and cannot be attained unilaterally.

Canada does not develop its foreign policy in isolation. There are many factors that influence foreign policy including, but not limited to economic and social influences. An overriding factor, which has impacted significantly on Canada’s foreign policy, has been the increase in economic and military integration between Canada and the United States in the past decade. Eighty percent of Canada’s trade in both directions is with the United States. This relationship dominates Canada’s external relations to the effect that

Canada will not unilaterally take any initiative in Canadian foreign policy without considering the impact on its relations with the United States.¹⁷ It would not be in Canada's interest to do so as it would jeopardize uninterrupted trade relations with our largest trading partner. As stated by Elinor Caplan, recent Minister of Citizenship and Immigration Canada, "The events of September 11, 2001 have cast a new importance on our relationship with the United States, particularly with respect to border security and the legitimate flow of people across our shared border".¹⁸ The mutual importance of uninterrupted trade relations is exemplified by the US Attorney General, John Ashcroft, "We hope to build on our past successes as we move forward on developing responses and strategies to ensure the continued prosperity of our interdependent economies".¹⁹ The importance of our economic ties and interests cannot be underestimated as Canada attempts to balance its achievement of humanitarian ideals and security interests.

The social determinants of foreign policy refer to the values and characteristics of the people of Canada. Core Canadian values are often said to include "compassion, tolerance, civility, fairness, respect for diversity and the rule of law and support for democracy."²⁰ Our foreign policies and capabilities as a middle power support these values, which can be translated into such activities as development of aid and human rights advocacy, refugee settlement, disaster relief and emergency assistance...etc. Canada is characterized as a bilingual, multicultural society. According to DFAIT, "Canada's cultural heritage gives it privileged access to the anglophone and francophone worlds as well as to the homelands of Canadians drawn from every part of the globe who make up its multicultural personality".²¹ Ethnicity can have both positive and negative impacts on foreign policy as large, cohesive ethnic groups can influence the policy-

makers and their relations (positively or negatively) with the country of birth of our immigrants.

Canada tends to develop policies that support the human security agenda of foreign policy. Immigration and refugee policies offer an excellent means of doing this as they can have an impact on the international scene. Furthermore, as a middle power, Canada has historically used such policies to further its interests and ideals.

CHAPTER 2

HISTORICAL PERSPECTIVE

Immigration has always been an important tool to the Government of Canada. Since WWII, Canada has accepted over 7.8 million immigrants and has resettled over 700,000 refugees.²² Historically, Canada's immigration policy has been very closely linked to the requirements of the economy, particularly the needs of the labour force. However, the focus changed from primarily an economic one to a humanitarian one with the passing of the *Immigration Act* 10 April, 1978. As the Government became more concerned with meeting its international agreement obligations related to human rights, it also had to deal with situations that could potentially threaten the security of its citizens. In a speech delivered 26 November, 1998 the Director General Refugees Branch, Dr Van Kessel described this challenge:

The greatest challenge we face is striking a balance between a system which is fair and one which is efficient; between a system which offers protection to those who need it but whose processes do not attract those who have no need of protection. Careful processing to ensure that the case for protection can be properly made and considered takes time and it is that time which makes refugee claims attractive to non-genuine claimants. When the volume of claims exceeds

the capacity, the system becomes more attractive to those who claim only to prolong their stay.²³

Up until World War I, the goal of immigration in Canada was to secure farmers, farm workers and female domestics and the search was concentrated in Britain, the USA and Northwestern Europe.²⁴ With the revision of the *Immigration Act* in 1919, the concept of ‘absorptive capacity’ was introduced in that the number of immigrants accepted by the Government was dependent upon the ability of the economy to provide them with employment.²⁵ Hence, in periods of rising unemployment, the absorptive capacity for new immigrants declined and the Government would take steps to limit the number of arrivals. During the Great Depression, in reaction to high unemployment, Immigration was closed off, the sole exception being for American and British farmers with capital. After WWII, the economy shifted from being resource-based to manufacturing-based where more skilled workers were required than unskilled workers. Therefore, although immigration was encouraged to meet long-term population growth goals, the economy was no longer able to absorb as many unskilled immigrants.²⁶ During the 1960s, although immigration remained a selective process, the focus of selection shifted away from the applicant’s country of origin to his skills. The 1966 White Paper emphasized the attraction of as many well-educated and well-trained immigrants as possible.²⁷ A point system was developed based on applicants’ age, education, language abilities and occupation. The points assigned to occupations were based on the perceived requirement in Canada at the time. The concept of absorptive capacity was discarded and the total number of immigrants was based on the budget allocated to process applications.

The point system indicated that immigration policy had become an economic policy tool in Canada.

By the late sixties, Canada effected a number of policy changes that were to impact on the future direction of immigration policy and its outcomes shifting away from economic goals toward humanitarian goals. In 1969, Canada signed the *1951 United Nations Convention Relating to the Status of Refugees* and the *1967 Protocol*.²⁸ In so doing, it undertook to protect refugees who found themselves outside their country and were unable to return to it for fear of persecution because of race, religion, nationality, and membership in a particular social group or political opinion. Under the convention, Canada assumed the principle of ‘non-refoulement’, meaning refugees would not be expelled or turned back at the border if doing so would threaten their lives or freedom. Furthermore, until the late 1960s potential immigrants to Canada were required to apply

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With the passing of a new *Immigration Act* in 1978, family members and refugees were given top processing priority in Canada – again emphasizing humanitarianism. Some would argue that the 1978 legislation and subsequent amendments “seriously diminished the quality of Canada’s immigrants in the post-1978 period”.³² When Flora MacDonald began her term as the Employment and Immigration Minister in 1984, immigration levels had been set at 85,000-90,000 of which 45,000 would be ‘Family Class’ without reference to skills and literacy and only 13,000 would be ‘Independent Class’ having the ability to contribute and support themselves.³³ Post-1980 immigrants earned, on average, approximately 58 percent as much as their pre-1981 cohorts and 60 percent as much as Canadian-born citizens.³⁴ This is reflective of the quality of the workforce, in that by 1991, immigrants were heavily ‘family class’ for which the selection factors were limited to health and criminality. Hence, the share of assessed or ‘independent’ immigrants was reduced and in ensuing years, refugees and ‘family class’ immigrants were to make up 15-20 and 40-50 percent respectively of the annual inflow. Apparently, by emphasizing humanitarianism over economic interests in our immigration policies, the outcome was to impact negatively on the Canadian economy.

During the 1980s, the immigration system continually came under pressure from migrants claiming refugee status as a way to gain entry and bypass the points system. Once landed on Canadian soil, they would make full use of the appeal process, which became clogged. Over this period, it had become apparent that the system for dealing with claims to refugee status made within Canada was inadequate for the job.³⁵ Although, in 1989 the Immigration and Refugee Board (IRB) was created to solve the immigration and refugee problems, by 1990 the Auditor General described the IRB

operations as “close to collapse”.³⁶ The system was cumbersome, time-consuming, and permitted people to abuse it in order to gain additional time in Canada. Control of the number of claimants was and remains essential given the great number of potential claimants worldwide. Thus, deterring the arrival of new refugee claimants in Canada and the expeditious treatment of those who do come, remain important goals of the Government. Yet control cannot be achieved at the expense of human rights of the individuals once they are in Canada. In 1985, the Supreme Court made a landmark ruling that was to impact immigration policy from that point on. The Court ruled that once in Canada, refugees were entitled to protection under the *Charter of Rights and Freedoms*.³⁷ All non-Citizens were fully entitled to all the same legal protections as citizens from the very moment they set foot in the country. For example, anyone arriving at the Canadian border claiming refugee status had “the right not to be detained without just cause; the right, upon arrest or detention, to be informed promptly of the reasons; the right to retain and instruct counsel without delay...”³⁸ One of the main challenges was the fact that refugee claimants received approval based primarily on the information provided on their application form. They often did not have any identification and if they did, it was likely fake.³⁹ For example, in the summer of 1999, five boats of Chinese migrants arrived off the shores of British Columbia, of which some 660 Chinese had arrived with no documents with most of them claiming refugee status.⁴⁰ It has been suggested that “universal access to Canada was the main cause of the problem and that the key legislation was the *Charter of Rights and Freedoms*”.⁴¹ Our emphasis on humanitarianism over national security resulted in a loss of control and ultimately posed a threat to national security.

The challenges described since the 1980s were addressed in a new policy framework that was introduced in 1995. The document, *Into the 21st Century: A Strategy for Immigration and Citizenship*, established the government's broad directions that would provide the necessary guidance to amend the immigration and refugee policies. The key elements of this guidance were that immigration would be maintained at 1 percent of the population⁴² (regardless of high unemployment), refugee management would move to a separate system with separate resources and emphasis would be placed on the economic component of immigration. The guidance was considered in the proposed *Immigration and Refugee Protection Act* as identified in Bill C-11, which was passed by the House of Commons in June 2001. In Bill C-11, which is to take effect 28 June, 2002 the intent is to put in place a new point system that puts more emphasis on "education, language skills, work experience and ties to Canada, such as having a family or job offer."⁴³ This would apply to the 'independent' immigrants that represent 60 percent of all immigrants.⁴⁴ There have been many critics stating that the bar has been set so high that the new point system will exclude most blue-collar workers and even eliminate many university-educated and experienced applicants from skilled trades. Regardless of the outcome of this debate, this change is a reflection of the fact that only recently, there is an increased emphasis in immigration (excluding refugees) on the economy.

In 1996, the Minister of Citizenship and Immigration appointed the Legislative Review Advisory Group (LRAG) to conduct a comprehensive review of Canada's immigration legislation and policies. The LRAG delivered its report entitled *Not Just*

Numbers: A Canadian Framework for Future Immigration. It drew particular attention to the area of enforcement noting:

Some people coming into Canada have found that it may be in their interests not to comply because the system as presently designed will allow them to meet their own ultimate goals. Citizenship and Immigration Canada cannot control the large number of people coming into the country who are inadmissible or who become subject to removal during their stay here. The department lacks the resources, the means and perhaps the will to deal effectively with them. The entire enforcement system has become overwhelmed. Without an incentive to comply with removal orders or reporting conditions, people will continue to stay on and become lost in the system.⁴⁵

The Standing Committee on Citizenship and Immigration studied the 172 recommendations put forth in the report; however, many of the recommendations proved controversial and were rejected. This was the fate of the recommendation to increase the use of detention.⁴⁶ The perceived lack of control over our borders due to our inability to enforce immigration policies is a recurring theme and remains a challenge today.

Although Canada's focus shifted toward humanitarianism in the seventies, historically, immigration was concurrently used as a tool of foreign policy. Depending on the situation, the influx of refugees and migrants from a particular country can make a powerful symbolic statement about Canadian foreign-policy goals and ultimately can impact on interstate relations. For example, in 1956, 1968 and 1981, Canada relaxed its immigration policies in order to facilitate the movement of thousands of refugees from Hungary (38,000), Czechoslovakia (1200), and Poland, respectively.⁴⁷ By welcoming Soviet nationals seeking a better life under a different political system, Canada sought to embarrass the Soviet Union. The foreign policy impact of these refugee admission programmes was to align Canada with its NATO partners in condemning Soviet actions

in Eastern Europe.⁴⁸ As well, in the late 1960s, American draft dodgers and deserters unwilling to fight in Vietnam immigrated to Canada. Although American political leaders criticized Canada for accepting them, the Canadian Government sent a foreign policy signal. Similarly in 1972, when the Ugandan president announced his intention of expelling Ugandan Asians, Canada responded swiftly to an appeal from the United Kingdom to provide refuge for some of them. By the end of 1973, more than 7,000 Ugandan Asians arrived.⁴⁹ Hence, the use of immigration and refugee policies to achieve foreign policy objectives has always existed in Canada. Therefore, it is not unusual for this practice to continue today with Canada's emphasis on the 'human security' agenda in foreign policy.

As a member of the executive committee of the United Nations High Commissioner for Refugees (UNHCR) and as a signatory to international humanitarian conventions, Canada has a moral obligation wherever possible to prevent persons in danger from being returned to their states of origin.⁵⁰ UNHCR has a mandate to work to protect and find solutions on the territory of sovereign states, a substantial number of which have become party to a Convention.⁵¹ In 2000, Canada contributed \$17.9 million US to finance activities of the UNHCR amounting to .58 cents per Canadian.⁵² Canada is a place of asylum, with the second most important refugee programme in the world, after the United States. In 2000, Canada received a record number of asylum seekers – 36,534.⁵³ Although this number may appear minimal given that there are more than 30 million persons under the UNHCR's mandate, annually there are no more than 100,000 resettlements places available worldwide.⁵⁴ Canada accepts its obligation to take in its fair share of the world's genuinely persecuted who are in need of resettlement. However,

with only one half of one per cent of the world's population, Canada cannot solve the population problems of all developing nations. Understandably, the UNHCR is concerned about receiving less support from countries such as Canada, the USA and Australia as stated by UNHCR spokesperson, Ron Redmond, "Obviously in the immediate aftermath of the tragic events in the US, we are concerned about continuing support for humanitarian help to asylum seekers and refugees worldwide... We've seen signs of a xenophobic backlash in the USA against Muslim and Arab groups. At the same time, there have been many comments made about tightening immigration and asylum policies..."⁵⁵

Historical events illustrate the relationship between Canada's refugee and foreign policy goals. Given the main tenet of human security in its foreign policy, the Canadian Government, more than ever before, combines a concern for human rights throughout the world with its refugee programmes. However, it is also clear that historically, Canada has attempted to use immigration policy to achieve certain economic goals. It is apparent that there were occasions when our pursuit of humanitarian ideals clashed with our pursuit of economic interests, often impacting negatively on the Canadian economy. Similarly, the simultaneous pursuit of national security goals and humanitarian goals often impacted negatively on the Canadian national security interests. Governments walk a tightrope trying to balance economic, national security and humanitarian interests. This act gets more and more challenging as the crises calling for humanitarian assistance are continually on the rise, homeland security is increasingly threatened, and the Canadian economy remains a vital interest.

CHAPTER 3

DEFINING THE THREATS TO NATIONAL INTERESTS

While immigration is a key consideration in Canada's history, it has always been a highly contentious issue. Over the past decade there has been growing East-West migration and increasing South-North immigration pressures from regions on the southern hemispheres of Europe and the U.S.⁵⁶ There are an estimated 12 million refugees and 20 million Internally Displaced persons (IDPs)⁵⁷ in the world, often the result of ethnic conflicts. On top of the increase in the number of asylum-seekers arriving in the industrialized nations, there has been a steep rise in the number of illegal immigrants to the West from the Third World, as people from deprived countries seek to flee from poverty, war and oppression.⁵⁸ It has been estimated that there are as many as 150 million people on the move worldwide, 30 million more than a decade ago.⁵⁹ For Canada, this translates into an increase in immigrant and non-immigrant applications. Over the period 1997-2000, there has been a 46 percent increase in the number of immigrant applications and a 27 percent increase in the number of visitor visas.⁶⁰ Since 1998, refugee claims increased from under 25,000 to more than 35,000 in 2000.⁶¹ The unprecedented number of refugee claimants in the year ending in March 2001 numbered 50,000.⁶² It is estimated that there are over 20,000 illegal migrants in Canada. This migration flow consisting of legal and illegal immigrants and refugees present non-traditional challenges to national security. Nationalism and ethnicity not only cause regional civil wars that quickly have global impacts in terms of immigration and refugee numbers, but they are also "the most powerful motivational forces behind terrorism".⁶³

Although host countries have a humanitarian concern for the millions of people forced into exile, this concern is dampened by the potential threat to their social, economic and political stability. As previously stated, national security includes freedom from the erosion of political, economic and social values, which are essential to the quality of life in Canada. Therefore, anything that threatens these factors, impacts on our national security. As such, Canada struggles to strike a balance between its need to maintain control over its borders, a sign of sovereignty, and the need to protect refugees who seek asylum within those borders.⁶⁴

The literature identifies four broad categories of situations in which refugees or migrants may be perceived as a threat to the receiving or host country. These will be analysed with the understanding that in many instances, what matters is not only whether or not the threat is real, but also the host nation's reaction to the perceived threat. In many developed and developing nations, the Government's reaction is to restrict movement as they try to balance the tension between satisfying their national ideals (humanitarianism) and interests (economics and sovereignty).

The first perceived threat is when refugees are seen as a thorn between sending and receiving countries.⁶⁵ This occurs when refugees and migrants are opposed to the regime in the home or sending country. There are a number of refugee communities that are associated with armed struggle and they are referred to as "refugee warriors".⁶⁶ They normally would have spent long periods of time in asylum in a neighboring country, wherein the refugee camps acted as recruiting and training camps for fighting against state governments. These illegal refugees flee "for the sole purpose of fomenting subversion outside."⁶⁷ The threat to security is heightened when receiving countries

actively support refugees' attempts to change the political situation in their home countries,⁶⁸ or when the receiving state accuses the sending state of persecution, or if the sending state dumps criminals into the receiving state.⁶⁹ For example, in 1994, in response to the domestic outrage over the flood of illegal migrants and refugees in the US, President Clinton announced that the US would invade Haiti unless its military regime relinquished power.⁷⁰ On another note, many Chinese who had lost their sympathy for China's government in 1989 when the regime became oppressive at Tiananmen Square, pressed their host government to withdraw support for China.⁷¹ Furthermore, governments are often concerned that refugees to whom they give protection will turn against them if they are unwilling to assist them in their opposition to the government in their country of origin.

The second perceived threat is when migrants or refugees are viewed as a political threat or security risk to the regime of the host country. Host countries must anticipate the political reactions among its migrants to changes in their foreign policy, and take the risk that expatriate communities may dictate or at least significantly influence the host government's policies toward the sending state.⁷² Although Canada is a multicultural society often characterized as a 'mosaic', this does not mean that every piece of imported culture can be set in the mosaic. For example, Canadians could not be expected to lower the status of women in Canada to accommodate what may be a fact of life in the societies of some new citizens. Similarly, although the use of languages from countries of origin is encouraged, there are only two official languages in Canada. Immigrants who do not learn one of these languages risk being marginalized. Forty percent of recent immigrants to Canada speak neither English nor French. In fact, the third most widely spoken

language in Canada is Chinese.⁷³ At issue is the fact that the concept of multi-culturalism must be handled very carefully to ensure that Canadian values and quality of life are not disrupted as this would be perceived as a threat to our national security.

Similarly, the Canadian government cannot endorse every foreign quarrel imported along with its immigrants. There

of a weak immigration and refugee policy and its enforcement. Hence, Canada's immigration and refugee policies and their enforcement must be robust to ensure that our openness as a society is not abused to the point that we become more open to terrorist organisations.

The third perceived threat is when immigrants are seen as a cultural or social threat. Most societies react with alarm when there is unregulated large-scale illegal migration of people who do not share the same culture and national identity.⁷⁸ In the US, the concept of the "melting pot" made the notion of legal and illegal migrants more acceptable to the population as it was believed that migrants would eventually accept and assimilate into society. However, the "melting pot" has been replaced with "tribalism" and "ethnic enclaves" that appear more threatening to the existing society.⁷⁹ There is a tendency for members of larger diasporas in Western states to be less inclined to pursue full assimilation in their host country communities.⁸⁰ Most diasporas are communally organized as they have an elaborate network of voluntary organisations that complement host-state organisations and cater to the various needs of the members of the diaspora.⁸¹ Often diaspora efforts entail deliberate efforts to establish elaborate trans-state networks and "...on certain occasions money is transferred out of homelands to diasporas to finance their defence, maintenance and promotional activities."⁸² Such networks have been used for communicating and shipping resources needed for international networks of terrorists.⁸³ In effect, these diasporas which have international networks are a key element in terrorist financing. Their capability cannot be underestimated. As stated by Judge J.A. Robertson of the Federal Court of Appeal in January 2000, "those who freely choose to raise funds to sustain terrorist organizations bear the same guilt and

responsibility as those who actually carry out the terrorist acts.”⁸⁴ Understandably, “the growing numbers as well as the more elaborate and efficient organisations of both migrants and diasporas, tend to increase the potential and the actual incidence of tension and conflict in host countries and in international politics.”⁸⁵ For example, according to Statistics Canada, the population of Tamil residents in Toronto (almost all from Sri Lanka) grew from 31,000 to 67,000 in 1991-96. This is of concern as the Tamils residing in Canada are reported to contribute to the Tigers (Liberation Tigers of Tamil Eelam – LTTE) through front organisations and the Tamil Tigers have a well-documented history of people smuggling.⁸⁶ Sophisticated forgery operations exist in Canada and are used to forge travel documents and identification papers to bring Tamils into the country.⁸⁷ The LTTE control who can leave Sri Lanka and once allowed to leave, refugees are expected to continue to support the cause abroad, especially as “qualifications for LTTE exit visas may include having relatives within their controlled areas.”⁸⁸ Hence, another traditional source of income for the Tigers is the extortion of civilians, particularly those of their own community. In 1991, in an effort to build their “war fund”, they demanded that Tamil businessmen turn over 20 percent of their profits.⁸⁹ Given that over 50% of new immigrants to Canada take up residence in the Toronto area, this extreme concentration allows for more of a ‘critical mass’ for potential security risks to form in the area.⁹⁰ At issue is the fact that because Canada is an immigrant- and refugee-receiving country, the threat to public safety will increase to the extent that homeland conflicts spill over into our ethnic communities. In order to carry out their efforts, terrorists and their supporters abuse Canada’s immigration, passport and charity regulations.

The fourth perceived threat is when immigrants are seen as an economic problem for the host society. In general, the most vocal argument against immigration has always been that “immigrants take jobs held by Canadians”.⁹¹ Others argue that immigrants overburden taxpayers by drawing disproportionately on social programmes. There is a widespread perception that refugees are unduly dependent on welfare ‘handouts’.⁹² Furthermore, in Canada, the increased emphasis on family reunification applicants in the 1980s has led some to argue that immigration to Canada is providing increasingly fewer and fewer economic returns. Although economic objections against immigration remain to be proven, many Canadians are stating that the new immigration policy should focus more on immigrants’ potential to contribute to Canada.⁹³ On the other hand, some sending countries see refugees as a national resource. For example, refugees constitute one of Vietnam’s most valued exports as remittances from overseas make up over half of the country’s hard currency earnings.⁹⁴ Remittances are also extremely important to the economy of El Salvador. In 1986, the El Salvador President made a plea to the US administration not to deport the nearly one million Salvadorean illegal aliens living in the US for fear of losing their valued remittances and destabilizing the Salvadorean economy.⁹⁵ This example stresses the fact that immigration potentially has an economic impact on both the host and the sending countries. Hence, immigration policies must consider both domestic and foreign government sensitivities.

Whether these threats are real or not, the potential outcome is often that refugees and migrants are targets for discrimination.⁹⁶ Many governments are concerned that migration may lead to xenophobic sentiments and to the rise of anti-migrant political parties that could threaten the regime.⁹⁷ In many instances, the ways and means of how

this discrimination is expressed can pose a security threat in itself as witnessed post September 2001. For example, recently Immigration officials were accused of ‘racial profiling’; as it was perceived that they were “questioning and detaining people for no other reason except they were Arab”.⁹⁸ Although the Arabs might have viewed it as racism, police and security forces viewed this as risk management. Nevertheless, Arab Americans remain vulnerable to vicious attacks from fellow citizens motivated by anti-Arab prejudice. Although this was particularly evidenced post-September 11, according to the American Arab Anti Discrimination Committee, hate crimes and discrimination against the Arab-American community was always prevalent.⁹⁹ According to a poll conducted in October 2001, some 45 percent of Canadians believe Canada should accept fewer immigrants, representing a 16-point increase since the same question was asked a year earlier.¹⁰⁰ Immigrants may also be used as scapegoats for any real or imagined domestic problems including “disease, crime, overpopulation, or land degradation” and the Government is often criticized for the inadequate protection of native rights and lifestyle.¹⁰¹ This tendency is not limited to Canada as the UNHCR noted recently that “there is more than enough anecdotal evidence to show that violations of human rights of migrants, refugees and other non-nationals are so generalized, widespread and commonplace that they are a defining feature of international migration today.”¹⁰²

These refugee and migration-related security threats highlight a number of weaknesses in today’s nation-states. The primary weakness, as it pertains to this essay, is the fact that the significance of borders is deteriorating given the Government’s inability to control border flow of people and preserve its citizens’ quality of life. Furthermore, if migration is perceived as a threat to the national security of either the sending or

receiving state, the population movement will result in interstate tension and conflict. Society's reaction to the threat to their security strains the integrity of Canada's multicultural social fabric and instills doubt in Canada's vision of being a liberal, tolerant and progressive country. As we move to an analysis of immigration and border control issues, the tightrope-balancing act between economic, national security interest and humanitarian ideals is further exemplified.

CHAPTER 4

IMMIGRATION AND REFUGEE PROCESS VULNERABILITIES

How valid are the accusations that Canada is slow to deport terrorists, lax in keeping track of bad actors here and reluctant to detain suspects? Given the fact that the flow of refugee claimants to Canada has increased exponentially from 500 in 1977 to 24,000 in 1997¹⁰³ and 50,000 in 2001¹⁰⁴, it is not surprising that there have been growing pains. However, the growing pains are not subsiding and they are cause for growing concern. The 1997 Report of the Auditor General reported that, "The current system is open to abuse and, in general, does not provide swift protection to those who really need it... There is an urgent need to adopt a comprehensive strategy and make improvements in the co-ordination and control mechanisms."¹⁰⁵ At the time, the worry was that there were more than 35,000 persons awaiting a decision at some stage in the process.¹⁰⁶ Further challenging the Department was a cut to its operating budget of \$54 million, almost 20 percent, between 1996-1998.¹⁰⁷ Serious deficiencies were also reported in 2000 when the Auditor General reported that, "Some people are thus admitted to Canada without

reasonable assurance that they have not committed crimes abroad, engaged in espionage, subversion or terrorism, or been associated with organized crime”.¹⁰⁸ For example, Ahmed Ressam arrived in Canada via France in 1993. He made a claim for refugee status but failed. He was not deported because at that time Canada was not deporting people to Algeria during its civil war. Therefore, he remained at large and became involved in an automobile theft ring organized by Algerian expatriates, many of whom were known to be sympathizers of the Fundamentalist uprising against the Algerian Junta. In the end, in 1999 Ressam was caught driving across the border into the state of Washington from BC with explosives and a sophisticated timing device for a bomb.¹⁰⁹ Ironically, two of the objectives of the current *Immigration Act* are “to maintain and protect the health, safety and good order of Canadian society and to promote international order and justice by denying the use of Canadian territory to people who are likely to engage in criminal activity”.¹¹⁰ However, the achievement of these objectives is becoming increasingly challenging. The following section will analyze the major weaknesses with immigration and refugee policy and processes, resulting in their inability to ensure the safety and security of Canadian citizens while simultaneously addressing the humanitarian concerns of those seeking asylum. The proposed *Immigration and Refugee Protection Act*, will be included as applicable along with comments on the relative potential effectiveness in resolving outstanding issues. Bill C-11 carries a dual mandate, namely, “closing the back door to criminals and others who would abuse Canada’s openness and generosity while opening the front door to genuine refugees and to the immigrants the country needs”. However, given the opposing objectives between ideals and interests, the dual mandate cannot be fully achieved.

Application Process

The 2000 Auditor General Report that focused on the economic component of immigrant applications, noted the requirement to protect against fraudulent applications: “The Department should establish and implement a strategy to reduce to an acceptable and manageable level the risk that applicants will submit false statements or fraudulent documents.”¹¹¹ Furthermore, McAdam, former Hong-Kong based Canadian diplomat, has warned that “Canada’s increasing reliance on non-Canadian immigration staff has led to growing abuses and corruption in the issuing of visas.”¹¹² For example, although visa form control is an essential measure to guard against abuse, in 1998 it was estimated that 500 visas were missing or stolen. Citizens from over 100 countries require visas to visit Canada, even if they are only transiting through Canada. The visitor visa is intended to function as the country’s chief defence against illegal immigrants and workers.¹¹³ Obviously, if visas are not treated as controlled documents, then they will not act as an initial defence against such perpetrators.

The audit also stated that the Immigrant Visa and Record of Landing document (immigration form IMM1000), which attests that the applicant has received permanent resident status and allows the individual to enter Canada, was outdated, and was easy to falsify.¹¹⁴ Such an unsecured document significantly weakens the effectiveness of control over illegal immigrants. This is a weakness that is relatively easy to resolve and the Government is developing a fraud-resistant document using state-of-the-art security features, including tamper proof photo image.¹¹⁵ Bill C-11 provides, for the first time, a comprehensive prohibition against the possession and use of fraudulent immigration-related documents.¹¹⁶ It has also introduced harsher penalties, such as life in prison, for

people smugglers. However, the Bill exempts potential legitimate refugee claimants from prosecution for these offences while their claims are being processed, as it is known that legitimate refugees sometimes have to resort to extreme measures when fleeing persecution. This is a clear example of a policy that does not guarantee the security of Canadian citizens (national interest) while simultaneously achieving humanitarian ideals.

The 2000 audit reported that the number of ‘offshore’ immigration applications rose exponentially from 7,600 to 39,000 between 1992 and 1998. An offshore application is “one submitted to an office abroad that does not have responsibility for the applicant’s country of residence”.¹¹⁷ Offshore applications pose a challenge to visa officers who are not familiar with the reference documents that support the application, hence cannot readily spot potential false declarations or fraudulent documents. In fact, visa officers frequently cited “offshore applications as one reason why they must often admit immigrants who they are not convinced meet the objectives of the Program”.¹¹⁸ Given the surge in immigrant applications and the vast number of countries that visa applications can be initiated from, even additional training of immigration officials would not resolve this vulnerability. Hence, the number of applications that are accepted that should not be is increased and/or a backlog results.

Over 89 percent of refugee claims are made at the 10 major immigration offices and border points in Canada.¹¹⁹ Their role is to determine the applicants’ eligibility to make a claim with the IRB. Since 1993, over 99 percent of all applicants have been determined as eligible to make a claim of refugee status.¹²⁰ The 1997 audit noted that immigration officers rendered a decision based primarily on the claimant’s statement well before receiving the results of the RCMP checks for duplicate claims and a criminal

record in Canada.¹²¹ In order to determine eligibility, a minimum of information on the claimant is required. However, the audit revealed that over the period 1994-1997, over 60 percent of claimants presented themselves to Canadian officials without a passport, personal identification or travel documents.¹²² Van Kessel stresses that today's migrants are more sophisticated, more knowledgeable, and more mobile and they know how to use the legal safeguards in legislation to prevent their prompt removal.¹²³ Most claimants are undocumented, not because this is how they had to flee, but because they have been counselled not to be in possession of documents that would identify them and their routing to Canada.¹²⁴ This problem is not new. In 1987, Minister of Employment and Immigration, Benoit Bouchard acknowledged that "500 aliens per month destroyed or concealed their passports or identity documents prior to arrival in Canada".¹²⁵ The US routinely detains claimants who arrive with false papers or no identification documents – Canada does not. Through such naïve acceptance, Canada has become the home of a number of individuals such as alleged Al-Qaeda member Hassen Almrei, who was eventually granted refugee status despite the use of an illegal visa, forged passports and arrest for attempting to enter Canada illegally.¹²⁶ Another example serves to confirm the fact that potential terrorists can easily enter Canada by claiming refugee status under false pretenses. In September 1998, Muralitharan Nadarajah, a top leader of the LTTE, crossed the Canadian border south of Montreal, claiming refugee status under a false name. He lied to the RCMP when questioned about his immigration documents. His refugee claim is still before the IRB.¹²⁷ There is currently no incentive to cooperate in establishing identity, as refugee claimants without documents have the same access to Canada's determination system as claimants with documents.

Given that claimants require travel documents to board an aircraft, the credibility of refugee claims is called into question when over half of them have no travel documents. Canada has taken the lead in trying to prevent the likelihood of having refugee claimants travel using false documents by establishing a network of immigration control officers at key airports overseas who work with airlines. In the past five years, this programme halted 33,000 travellers bound for Canada with false papers.¹²⁸ It has also been proposed that “measures such as increased disembarkation checks as passengers leave an aircraft; enhancing security features of Canadian visa and travel documents; removing current restrictions on prosecuting people who aid and abet illegal migration; and working with other countries to assist in developing a system of data collection on illegal migration” would be implemented. Furthermore, Bill C-11 deals with this pronounced security loophole, not by focusing solely on the possession of documents, but rather on the provision of a reasonable explanation for the lack of documentation or the failure to take reasonable steps to obtain documentation.¹²⁹ Refugee claimants who refuse to cooperate in establishing their identity could be detained because of security concerns.¹³⁰ In reviewing Bill C-11, the UNHCR stressed that “a recognized refugee should not be required to obtain documentation from a country where he or she has a well-founded fear of being prosecuted.”¹³¹ This statement is understandable, but the difficulty is in trying to establish credibility of refugee status without identification. Clearly, the Canadian Government is pulled in trying to satisfy its international obligations and its national security interests.

It has been suggested that the “notwithstanding clause” in the *Charter of Rights and Freedoms* might be enforced, as it is perceived that there is a conflict between

individual rights and the greater interests of the nation.¹³² Section 33(1) allows for sections 2 and 7-15 of the *Charter of Rights and Freedoms* to be overridden. These latter sections contain the fundamental freedoms (i.e. right to life, liberty ...etc), the legal rights (i.e. freedom from unreasonable search and seizure, freedom from arbitrary arrest or detention...etc) and the equality rights.¹³³ Although the notwithstanding clause is used very rarely, it gives Parliament the power to make a particular law exempt from certain sections of the Charter. Such a law would expire after five years. In this particular case, the purpose of invoking the notwithstanding clause would be to provide Canada's border officials with the authority to refuse entry to patently fraudulent applicants, thus recovering control, to a certain extent, of Canada's border. However, given the potential to be perceived as anti-immigrant and discriminatory, it is most unlikely that this option would be exercised.

Although Canada has taken steps to address the issue concerning the lack of identity documentation of refugee claimants, the problem will not be eliminated. Prevention will lower the incidence of its occurrence, however there remains no incentive to provide documentation and as long as refugee claimants cooperate with immigration officials, they will not be detained.

It was noted that since 1994, fewer than 1 percent of applicants had been turned down on the basis of security concerns: "...we are very concerned about the Department's ability to ensure compliance with legislative requirements...serious deficiencies in the way it applies admissibility criteria related to health, criminality and security".¹³⁴ The Auditor General had reported this same shortfall in 1990, yet limited progress had been made to resolve the deficiency. Section 19 of the *Immigration Act*

gives visa officers the authority to deny entry to Canada, anyone likely to engage in criminal activities or endanger the safety of Canadians.¹³⁵ To assist them in the decision-making, the RCMP and CSIS have liaison officers at posts abroad. CSIS gets involved only in cases where an applicant's background presents security concerns, which is determined based on "analysis and experience."¹³⁶ Given limited resources, it would not be possible to screen all potential immigrants and refugee applicants. For example, in 1997/98, CSIS processed 53,029 requests from CIC with 51 percent of cases being processed in 24 days, on average.¹³⁷ Given that in 1997/98, there were a total of 215,848¹³⁸ immigrants, including refugees that were landed, the concern is that a number that were not screened in fact posed a threat to the security of Canada. For example Mourad Ikhlef who is facing deportation for allegedly assisting Ressaym¹³⁹ in the plot to blow up a Los Angeles airport in 1999, was granted refugee status in 1994, in spite of the fact that an Algerian court had sentenced him to death in absentia in 1993 for his alleged ties to the anti-government group known as the Armed Islamic Group. He had not admitted to this fact, and it was not discovered in the process. Although CSIS saw an additional \$1 billion¹⁴⁰ added to its budget over five years, to provide better screening both at Canada's ports of entry and abroad and to provide faster, more thorough screening of refugee claimants, "money alone won't provide any quick fix since it takes roughly five years to fully train an agent."¹⁴¹ Furthermore, the evaluation of admissibility is severely constrained. For example, there is no way of verifying the validity or reliability of the information, police checks are not required from over 40 countries (as information simply cannot be obtained), and often information obtained by CSIS in confidence from a foreign government, cannot be disclosed.¹⁴² As a result, "visa

officers often tend to avoid making negative recommendations for fear that they would be unable to defend them in Federal Court, even when there is a reasonable suspicion that someone has engaged in espionage, subversion, terrorism or violence, or may do so.”¹⁴³ The audit suggested that by coordinating the activities among the organisations involved (CSIS, RCMP and Immigration), gains could be made. It has also been suggested that information sharing between countries regarding criminality and security issues would be enhanced through the negotiation of agreements.¹⁴⁴ Unfortunately, no single Cabinet minister is responsible for Canada’s security and intelligence community. Although John Manley, presently the Deputy Prime Minister of Canada, was appointed to head an ad-hoc committee on security, no steps have been taken to make this permanent. Hence, “... concern for national security is often lost in the federal bureaucracy because no minister is responsible and accountable for national security policy.”¹⁴⁵ Given this situation, it will be very difficult to coordinate priorities and share the information required on a sustainable basis, to reduce security risks to Canadians.

To make matters worse, in their review of Bill C-11, the UNHCR urged the Canadian government to leave the determination of whether or not a refugee claimant is ineligible for refugee protection in the hands of “the authority competent for refugee status determination.”¹⁴⁶ To do so would mean that immigration officials at ports of entry would not screen claimants for security, and given the prolonged wait for refugee determination, there would be potential for terrorists to freely roam the country. This clearly indicates that when forces pull the Government in two opposing directions – national security versus humanitarianism – neither goal can be achieved satisfactorily.

Processing Delays

Since the 1980s, significant delays in the refugee determination process have been cause for concern. As stated in the 1985 report of the Neilsen Task Force:

The refugee determination system is quite incapable of handling 700 new claims a month on top of a backlog of 20,000 persons. The delays are such that a claimant is virtually assured of a stay in Canada, with permission to work or receive welfare, for at least 40 months before the claim is settled.... This situation not only places a costly burden on resources, it attracts increasing numbers of would-be settlers the longer it persists...¹⁴⁷

Part of the challenge in processing delays is caused by the surge in the number of refugee claims in the last several years. In 1999-2000, the forecasted intake of refugee claims was 25,000; however, the intake was closer to 31,000. This trend continued the following year with a projected intake in 2000-2001 of 32,000.¹⁴⁸ It was forecasted that this significant increase in intake would likely result in an inventory of 29,000 claims at the end of 2002-2003, with processing times of 11 months per claim (the target processing time for 2000-2001 was nine months).¹⁴⁹ In its 2000-2001 Report on Plans and Priorities, the IRB committed to “better manage its caseload and to enhance productivity”, but it felt that such initiatives would not fully compensate for the unexpected increase in the volume of refugee claims.¹⁵⁰ In spite of the increase in the number of refugee claims in recent years, Bill C-11 provides for the referral of claims to the IRB “within three working days of receipt of a claim for refugee protection”, which presently can take months.¹⁵¹ Although this would be ideal, given the significant backlog, unless changes are made in the way the IRB processes the claims, the results will remain unchanged with ever-increasing delays. Bill C-11 suggests the use of single-member hearings in order to increase productivity. This should enable efficiency gains,

however, the use of single-member panels may be perceived as lacking the objectivity inherent in a two-member panel. At issue is the fact that a backlog of claims requires more time for processing, hence increasing the likelihood that a potential terrorist posing as a refugee will threaten the security of Canadians. Given the surge of refugee claimants in 2001, this backlog can only worsen.

Exit Controls

The 1997 Auditor General Report was particularly concerned with the difficulty of carrying out removals as it stated, “Of the approximately 19,900 claimants awaiting removal, just 22 percent have confirmed their departure by the conclusion of our audit....we estimate that those who have not left may have been in Canada, on average, for two and a half years.”¹⁵² The problem was reported again in the 1999 Canadian Senate report on terrorism wherein some 5,272-deportation orders could not be executed, as the Federal government could not locate the subjects for them.¹⁵³ Another significant shortfall that still exists today is that there is no standing means to ensure security and intelligence inter-agency co-operation. For example, deportation orders do not appear to be instantly posted to the police forces across the country.¹⁵⁴ Although Canada does deport hundreds of people every year, almost all are people who have been convicted – often repeatedly – for violent criminal offences.¹⁵⁵ One of the difficulties was that if a claimant was denied refugee status, their file was reviewed to determine their risk of harm if they were forced to leave Canada. This additional review extended the time between refugee status determination and the carrying out of removal by seven months.¹⁵⁶ Another difficulty noted was that the Department did not have the information necessary to efficiently track the removal status of all failed refugee

claimants. This lack of a tracking mechanism also includes expired visitor visas. For example, Canadian immigration officials recently admitted that up to 50 Tunisians who arrived in Canada more than a year ago, in possession of visitor visas, were missing and “(Their whereabouts) are virtually impossible to confirm because there are no exit controls from Canada...”¹⁵⁷ The Department’s 1997 response to these weaknesses follows:

The Department has also developed a removals strategy comprising complementary measures designed to support the removals function. These include the negotiation of bilateral removal agreements with other countries (six signed to date); measures to encourage voluntary compliance with removal orders (e.g. use of cash bonds); increased exchange of information on best practices among removal offices; and the pursuit of various diplomatic channels to obtain the co-operation of countries that refuse, or take too long, to issue travel documents to their citizens.¹⁵⁸

Apparently, in spite of the planned strategy, the challenge has not been met.

In Bill C-11, the Government has removed one layer of review for serious criminals, namely the Immigration Appeal Division. Therefore, war criminals, people who are a danger to national security, members of criminal organisations, members of governments who engage in systematic or gross violations of human rights and/or people convicted of serious crimes will be denied access to an additional review for humanitarian or compassionate reasons.¹⁵⁹ However, an individual is considered a serious criminal if they have committed an offence for which a prison term of ten years or more may be imposed. Note that in the previous Act, a serious criminal was considered one who had committed an offence for which a prison term of five years or more may be imposed. On the one hand, the change to Bill C-11 will ensure that only serious criminals will not have the right to appeal and will therefore be deported more quickly. On the other hand, those that would have been considered serious criminals in the past,

will continue to have access to an additional review for humanitarian or compassionate reasons prior to being ordered deported, if at all.

Bill C-11 gives the Minister the authority to ‘stay removals’ to certain countries because of adverse conditions. When a removal is stayed, although terms and conditions are imposed for a set period, the individual can remain in Canada. Following a negative refugee determination, persons have a period of 15 days to file stay of leave application to the Federal Court. Bill C-11 introduces a formal Pre-Removal Risk Assessment (PRRA), which provides a final forum for reviewing risk before removal.¹⁶⁰ This additional review is in keeping with Canada’s international commitments. Although a foreign national may be inadmissible for referral to the IRB (due to serious criminality, violating human or international rights...etc), a positive PRRA based only on *Convention Against Torture* could be made. Hence, serious criminals could conceivably have their removal stayed, “unless ministerial opinion has been issued that permits removal”.¹⁶¹ For example, Manickavasagam Suresh of Sri Lanka fought deportation many years since his arrival in Canada in 1990.¹⁶² He was purported to be a key leader of the Liberation Tamil Tigers of Eelam, a minority separatist terrorist group in Sri Lanka responsible for child conscription and the torture and deaths of thousands of civilians.¹⁶³ According to the UNHCR,

Canada is, [therefore], prohibited from returning any individual who faces torture in his or her home country, regardless of crimes he or she may have committed or the danger he or she may present....an individual who invokes Article 3 of the Convention against Torture does not need to demonstrate that he or she faces torture for one of the five grounds set out in the refugee definition.¹⁶⁴

In fact, M. Suresh had his case heard by the Supreme Court of Canada that ruled:

The Federal Minister of Immigration possesses the constitutional authority to deport suspected terrorists, even if the terrorist in question faces possible torture in his homeland... They circumscribed the government's authority so thoroughly that the power to expel criminals was made to exist in theory, only. In practice, the justices said, principles of domestic and international law present a "virtually categorical" prohibition against deporting anyone who might be tortured at the other end of his flight. Barring extraordinary circumstances, they wrote, the Minister should generally decline to deport refugees where... there is substantial risk of torture. For instance, the justices ordered courts to give deference to the Minister's judgement on the question of whether a refugee poses a threat to national security, and whether he is at risk of torture once departed.¹⁶⁵

Hence, the Minister of Immigration should not deport M. Suresh if he determines that he is at risk of being tortured upon his return. To do otherwise would imply that the threat to Canada's national security caused by M. Suresh remaining in Canada is extreme. This emphasizes difficulty posed by the mutual exclusivity between Canada's international commitments to humanitarian ideals and its commitment to assure the safety of Canadians.

Detention Process

The Adjudication Division of IRB not only conducts immigration inquiries on individuals believed to be inadmissible or removable under the *Immigration Act*, but also conducts reviews of the reasons for detention. "An individual may be detained if the adjudicator is of the opinion that this person is likely to pose a danger to the public, or that he is not likely to appear for the continuation of the inquiry or for removal from Canada as the case may be."¹⁶⁶ In 2001, Canada held almost 8,800 people in custody on immigration related matters. Detention times vary, but the average is 16 days. Until recently, because of budget restraints, Canadian officials did not place a high priority on the requirement for new detention facilities. For example, individuals are being detained

at the Celebrity Inn on the Toronto airstrip. However, the heightened interest in Canada's lax control mechanisms has resulted in the Government committing some \$210M over five years to provide more space to detain those that pose a security risk.¹⁶⁷ Although Canada does not automatically detain refugee claimants who arrive without documentation, US asylum seekers without documentation are detained from a few days to several months or even a year.¹⁶⁸ The US has been moving toward detentions based on suspicion alone.¹⁶⁹ Given that over half of all claimants are genuine refugees, widespread use of detention would mean locking up people who are running away from torture and trauma. Bill C-11 builds in a safeguard to ensure that those who are undocumented for reasons beyond their control are not detained on identity grounds.¹⁷⁰ This is a clear example of the tension that exists between trying to satisfy the national interest of security while ensuring our humanitarian ideals in the treatment of refugees.

Loescher describes North American governments' tendencies to use 'deterrence' in order to make it impossible for potential refugee claimants to seek asylum. She lists measures such as: "the imposition of visas; the fining of airline companies for carrying undocumented aliens; detention; severe limitations on the right of residence, accommodation, employment, social welfare benefits, and counseling and advice services in order to discourage the arrival of new asylum-seekers".¹⁷¹ It has been suggested that deterrence does not work.¹⁷² In fact, assuming their need to flee their own country is compelling, the majority of refugees are not deterred even by the threat of inhumane treatment on arrival to the host country. Given the fact that deterrent measures, such as detention, are rarely related to the complex variety of reasons for movement across borders – they do not stop the movement across borders. Although detention may not

work as a deterrent, it must be considered a viable option once undocumented, potentially dangerous illegal migrants and refugees cross borders.

Thus far, the discussion has concentrated on the difficulties the Government has in meeting its humanitarian ideals and its national security interests simultaneously. This attempt to achieve what appear to be mutually exclusive goals results in a weak immigration and refugee policy with no guarantee of attaining either goal. In its plight to improve the security of its nation by focusing on border controls, another tension is brought to light – that between maintaining the economic interests and improving national security interests.

CHAPTER 5

BORDER CONTROLS

Nowhere is the conflict between economics and national security as evident as it is regarding border controls. There are factors driving to create border-free economic spaces yet other factors calling for an intensification of border control to keep illegal immigrants and refugees out.¹⁷³ The relative openness of the US-Canada border provides the opportunity for unauthorized entry. There are over 20,000 illegal immigrants in Canada, of which a significant number are living in Ontario. Although the U.S. has accused Canada of having porous borders, the problem is universal. In the U.S, approximately 200,000-300,000 undocumented Mexican migrants flow across the border annually as do 100,000 illegal Chinese migrants.¹⁷⁴ Illegal migration is ‘big business’. The UN estimates that up to four million people are smuggled across national frontiers

each year and that people smuggling is a global business worth over \$9 billion per year. Illegal migration has become one of the primary issues on the international stage.¹⁷⁵ Given the fact that nothing is known about these illegal immigrants, it is understandable that there is a concern that some of them might be terrorists. According to Van Kessel, ‘managing access’ is the most challenging objective of immigration and refugee policies and processes.¹⁷⁶ Prior to September 11, 2001 approximately 300 agents of the US Border Patrol, supported by a single analyst were tasked to detect and intercept illegal border crossings along the vast land and water border with Canada.¹⁷⁷ However, finding a terrorist crossing the border is like finding a needle in a haystack. It is virtually impossible to check every person, passenger vehicle, truck, railcar, and airplane that passes through border inspection systems. Some 130 million people crossed the 4,000-mile Canada-US border in 2000, and approximately \$1.5 US billion worth of goods cross the border each day.¹⁷⁸ These people crossed with relative ease, seeing the border crossing as little more than a nuisance in many cases. However, September 11 caused a major shift in how Canadians see themselves and their country. For example, a poll conducted by the Environics Group and CROP found that “support for an open Canada-U.S. border had plunged, with a third saying Canadian and American citizens should be allowed to cross the border more freely, compared to 44 percent a year ago”¹⁷⁹. The challenge comes in reconciling the need to secure the border while at the same time ensuring trade, a significant Canadian national interest, remains unaffected. As such one of the four objectives of the Government of Canada’s Anti-Terrorism Plan is to “prevent the Canada-US border from being held hostage by terrorists and impacting on the Canadian economy.”¹⁸⁰

At the outset, it is important to recognize that migration can never be eliminated or even fully controlled. In fact, with rising globalization, migration pressures will most likely increase. This is occurring at a time when indeed there has been a shift in emphasis from state sovereignty to rights of individuals.¹⁸¹ Immigration policy is shaped by many forces, often with opposing objectives, from economic globalization to international agreements on human rights. Furthermore, although immigration policy is made by governments, it is increasingly influenced by international organisations and non-government organisation (NGO) lobby groups, hence public opinion and public debate have become part of the arena in which immigration policy is made. Given the potentially divergent groups influencing policy and the basic clashes between national interests and humanitarianism, and even between national interests such as the economy and national security, strong sanctions clearly cannot be formulated or implemented. If US and Canadian policymakers emphasize control too much, they risk sparking internal societal and economic chaos. Essentially,

if they [national governments] construct more regulations outlawing the transmission of undesired people...across boundaries, they run the risk of pushing more of this activity underground, making it even harder to detect, more likely in many ways to have dire effects, and easier for the criminal element to dominate cross-national distribution.¹⁸²

In other words, although the tendency of many states is to ‘close their doors’ post September 11, this will not resolve the problem. In fact there is no consensus on how to control or deal with the problem. However, given the concerns brought about by 11 September, with fingers pointing to Canadian immigration and refugee policies and processes, it is not surprising that the Government is being pressured to be more restrictive. On this note, in the fight against terrorism, President Bush ordered US

officials to work with Canada and Mexico to ensure “maximum possible compatibility of immigration, customs and visa policies”.¹⁸³ However, some have argued that the harmonization of immigration policies and practices with the US, as part of a perimeter security agenda would undermine Canadian sovereignty and make us “less liberal, less tolerant, more like the security-conscious Americans.”¹⁸⁴ The UNHCR is concerned that as we attempt to harmonize our refugee and immigration policies, that Canada will lower its standards in dealing with refugees.¹⁸⁵ It is evident that the desire to harmonize US-Canada immigration policies has brought to the forefront the clash between national security and humanitarianism. This does not mean that humanitarian ideals should be disregarded. It does mean that the pendulum has shifted towards meeting security requirements in order to provide a more balanced approach to the attainment of Canada’s immigration and refugee policy objectives.

Although we cannot strive for complete invulnerability, clearly much more can be done to reduce the risk of terrorists attacking our homeland or using our nation as a staging base. Any potential solution will involve a degree of risk given the opposing pursuits of humanitarian ideals and national economic and security interests. The goal is to minimize the risk by focusing solutions away from the low-risk areas, toward the high-risk areas. There are a number of initiatives, other than the introduction of Bill C-11 that Canada is pursuing in order to ensure the security of its citizens. Unilateral efforts to manage migration are insufficient. We need to pursue increased multilateral and bilateral approaches among affected countries through partnership agreements, which will allow us to share information on security threats, trends in illegal migration, and the activities and movements of criminals. In this vein, in December 2001, Canada and the US signed

a declaration aimed at developing a 'smart border' in an attempt to improve security while not impeding the flow of trade.¹⁸⁶ The Government infused \$1.2 billion in improving Canada's borders with the US.¹⁸⁷ The objective of the 'Secure and Smart Border Action Plan' is to "allow the secure, free flow of people and goods...reflects the largest trading relationship in the world."¹⁸⁸ The plan entails a list of 30 items to attain this objective. As expected, the items listed to secure the flow of people primarily address weaknesses in the immigration policies and processes of both countries as well as air transportation. For example, in the processing of refugee/asylum claimants, the goal is to review "practices and procedures to ensure that applicants are thoroughly screened for security risks and take necessary steps to share information on refugee and asylum claimants."¹⁸⁹ However, as previously seen, presently Canada, on its own, only screens potential security risks, which historically were less than 10 percent of all landed immigrants (including refugees). Although sharing information will prove useful, and an influx of additional funding will help, it is highly unlikely that *all* claimants will be screened. Another item related to the handling of refugee/asylum claims is, "Negotiate a safe third-country agreement to enhance the handling of refugee claims."¹⁹⁰

Interestingly, the 1997 Auditor General report noted that, "in the first five months of 1997, for instance, more than half the claims at ports of entry were made by individuals arriving from the United States."¹⁹¹ However, the fact is that under the "safe third country provision",¹⁹² Canada could deny access to the refugee determination process by claimants arriving from countries known to respect human rights, thus discouraging "asylum shoppers". In negotiations, Canada is urging the U.S. to allow each country to recognize each other as a safe place for asylum seekers. Although such an agreement

would then allow Canada to turn back refugee claimants arriving from the U.S., the U.S. is reluctant to enter into the deal that overwhelmingly favours Canada.¹⁹³ The UNHCR's principle concern is that such responsibility-sharing agreements do not lead to *refoulement*.¹⁹⁴

According to John Manley, the key to the Canada-US negotiations over border control "is to ensure trade flows across the border as free from interruption as possible."¹⁹⁵ If it is perceived that Canada is not pulling its weight in matters of security, and the US feels threatened by potential terrorist activities emanating north of their border, they could impose tight border restrictions that could economically cripple Canada. In this vein, one of the most important items in Canada-US negotiations over border control is "relaxing border truck negotiations."¹⁹⁶ With nearly 90 percent of Canada's foreign trade being with the US, and 60 percent of that moved by trucks¹⁹⁷, the successful negotiation is essential to the economic security of Canadians. For example, the Peace Bridge between Buffalo and Fort Erie, Ontario handles more than \$20 billion (U.S.) in trade annually.¹⁹⁸ In order to secure the flow of goods, while attempting to improve security, one of the points in the action plan for a secure US-Canada border is "away-from-the-border processing for truck/rail cargo (and crews)."¹⁹⁹

In addition to the 'Secure and Smart Border Action Plan', another measure that emphasizes a harmonized approach to Canadian and US efforts to target cross-border criminal activity is the 'Integrated Border Enforcement Team' (IBET). The main goal of the IBET is "to protect Canada and the US from potential terrorist threats, and to impede smuggling of drugs, humans, contraband cigarettes, or other illegal substances."²⁰⁰ An integrated policing approach is used with involvement from the RCMP, Canada Customs

and Revenue Agency, Citizenship and Immigration Canada, provincial and municipal police forces, US Border Patrol, the US Attorney General's office, US Customs Service and US state police. To date, IBETs have been established in four locations: British Columbia, New Brunswick, and Ontario (Cornwall and Windsor). This measure is in support of both countries common objective that is to ensure that the border is open for trade, but closed to crime.

It should be noted that many of the items being proposed to increase national security, were actually proposed and in the works prior to 11 September. Some would argue that Canada-US immigration and refugee policies are more similar than they are dissimilar and that the gap between them is "not one of rules and standards, but simply of enforcement, due to the allocation of fewer resources".²⁰¹ September 11 served to place security on the national agenda. This provided the necessary impetus to fund programs that would otherwise not be considered a high priority.

Ironically, tighter border controls can, in some instances be just as much of a threat to the stability of a state as high levels of migration. For example, although the illegal migration of Mexicans to the U.S is well documented, to take action to eliminate it could destabilize Mexico resulting in more problems than their illegal migration causes. Not only does it lead to a reduction in unemployment and an increase in wage levels, but the remittances by Mexican immigrants to their family members is one of the largest sources of foreign exchange for Mexico. Estimated at \$2-\$3 billion annually, these remittances have a cumulative effect on the economy, increasing job opportunities and growth. Therefore, restrictions against Mexican emigration could potentially threaten

political and economic stability of Mexico, which in turn could lead to massive and uncontrolled migration to the US.²⁰²

Understandably, solutions to the security dilemma posed by the international migration are not simple. In the ideal world, the root causes of migration would be resolved. In this vein, fewer refugees would be created if there were more respect for human rights and humanitarian principles.²⁰³ These movements will continue to grow until states address the causes of migration and devise appropriate international mechanisms to handle them. It has been argued that the burden posed by refugee flows on receiving states is such that intervention to prevent refugee flows may be justified on security grounds as well as humanitarian grounds.²⁰⁴ “There is no way of isolating oneself from the effects of gross violation abroad: they breed refugees, exiles, and dissidents who come knocking at our doors – and we must choose between bolting the doors, thus increasing misery and violence outside, and opening them, at some cost to our own well being”.²⁰⁵ In other words, in order to protect its economic and security interests, states should intervene when there is visible evidence of internal disorder and human rights violations instigating refugee flows. This view supports Canada’s foreign policy tenet of human security. Although Canada must continue to meet its international obligations, it cannot do so at the detriment of national security. Humanitarian ideals cannot be attained unilaterally nor can they be attained in the short term. Canada must place more emphasis on national security in the application of its immigration and refugee policies in the short term, while its humanitarian ideals must be seen as a long term objective to be achieved in cooperation with other countries.

CONCLUSION

The suicide terrorist attacks of September 11, 2001 sent a chilling reminder to American and Canadian citizens and their governments that their homeland was not secure. In fact, within minutes of the attacks, the movement of people and goods at border control points had been reduced to a trickle in order to gain some semblance of control. This action was soon followed by accusations that Canada's immigration and refugee policies and processes were not up to the task of opening its doors to immigrants, while closing its doors to terrorists. Even if all of the terrorists that committed the heinous acts of aggression on September 11 were legally in the US, the fact that over 50 terrorist organisations were known to operate in Canada, was enough cause for finger-pointing. Given the fact that over 80 percent of Canada's trade is with the US, it was of vital interest to the Government to appease their concerns over lax controls.

The US had cause for concern. Since the early 1980s, Canada has increasingly been trying to balance its humanitarian ideals and its economic interests through its immigration and refugee policies. Being a country of immigrants and being dependant on immigrants for population growth and economic growth, Canada encourages immigration. Given its emphasis on human security as one of the main tenets of its foreign policy, Canada is also committed to the pursuit of humanitarian ideals including the declaration of international human rights. The difficulty is that in the last decade, these divergent goals have become increasingly difficult to attain due to the increase in international migration flows. In particular, those fleeing civil strife, ethnic conflict, natural disasters, environmental degradation, and economic and political upheaval in their home countries are often in need of refuge. Others simply seek a better way of life for

themselves and their families. For many, Canada is the destination of choice. Simply put, by focussing on its humanitarian commitments, the safety valve potentially offered through immigration policies and processes had been opened too much.

Not only are states becoming alerted to border control issues due to direct attacks on their homeland by terrorists, but also due to perceived threats to their political, economic and social stability resulting from the mass migration problem. However, Canada's immigration and refugee policies will not ensure the safety of Canadians while satisfying the humanitarian agenda of resettling legitimate refugees. Many of the weaknesses inherent in its policies and processes stem from its unachievable dual mandate.

The tendency of states that are threatened by illegal migrants is often to take strict control measures to prevent their entry. Investigation and interdiction abroad, efficient screening at border and airport entry points, and timely removal activities in Canada are necessary adjuncts to an open immigration policy. However, given that deterrence measures such as detention do not address the root causes of movements across borders, they will not resolve the problem in the long term. This is not to say that Canada should not improve its control measures. On the contrary, the weaknesses must be addressed with a greater emphasis on security than there has been in the past. Furthermore, tackling terrorism is inevitably leading to a harmonizing of US and Canadian immigration and refugee/asylum policies. Bilateral agreements such as the "Secure and Smart Border Action Plan" are a step in the right direction. In fact, such a plan addresses another of Canada's challenges, which is to improve security while not impeding the flow of trade. The concept behind the plan, which is to apply smart technologies in order to move the

focus from low-risk to high-risk cargo and people is the only way this dual mandate can be achieved.

The changes to immigration and refugee policies and processes and the increased focus on border controls, albeit necessary, are short-term solutions. As interstate conflicts rise, the number of displaced persons and refugees also grows, bringing with it social, economic, political and, therefore, security challenges. Canada is not and cannot be removed from the effects of the increased international migration flows. By choosing to emphasize the importance of continued high rates of immigration to this country and its commitment to human rights internationally, there are elements of Canada's national security that are at risk. Although there is a lot of room for improvements within the *Immigration and Refugee Act*, these changes alone will not resolve the problem. The tension between humanitarian ideals and national interests will always be present and an attempt to simply close the doors would not make the problem go away, nor would it ensure a stable political base for international relations. Hence, as Canada tightens its immigration and refugee policies and its borders, in the short term greater emphasis must be placed on national security versus national ideals. However, in the long term, achieving humanitarian ideals by stemming the tide of poverty, violence, persecution abroad is actually a matter of self-interest if ultimately it means ensuring Canadian national security. Therefore, Canada must continue to pursue its national ideals such as the human security agenda in meeting its international commitments, which in cooperation with other countries, should result in the preservation of Canadian national security.

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