MANAGING ‘MASS MARINE MIGRANT ARRIVALS’: THE SUN SEA, ANTI-SMUGGLING POLICY AND THE TRANSFORMATION OF THE REFUGEE LABEL

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ABSTRACT

"Managing 'mass marine migrant arrivals': The *Sun Sea*, anti-smuggling policy and the transformation of the refugee label," examines the Canadian government's response to the arrival of the *Sun Sea*, a ship with 492 Sri Lankan asylum-seekers onboard. After the ship's arrival and to prevent future asylum vessels from coming to Canada, the federal government implemented a new anti-smuggling policy, the Migrant Smuggling Prevention Strategy. In examining this new policy, this dissertation pursues two questions: first, how, under what conditions, and with what effects are people that enlist smugglers labelled 'irregular arrivals', i.e. 'bogus' rather than 'genuine refugees'? Second, how is the identity of smuggled asylum-seekers constructed, transformed and politicized in the context of anti-smuggling policy? Using a reformulated conceptual framework of labelling, "Managing 'mass marine migrant arrivals'" responds to these questions by drawing on interviews and access to information requests with the federal government's agencies of migration management. I argue that the legal ambiguity, classificatory struggles, and interpretive controversies surrounding the refugee label and its sub-categories allow the Canadian government to manage and, indeed, pre-emptively label, delegitimize and deny, the refugee claims of asylum-seekers that enlist the services of smugglers. The analysis reveals the instrumentality of anti-smuggling policy and its role in what Roger Zetter (2007) calls the "fractioning" of the refugee category into various pejorative sub-categories that restrict access to asylum and the rights of refugee status. The transformation of the refugee label in and through anti-smuggling policy thus serves as a means of restricting asylum-seekers from accessing the rights and procedural protections of refugee status.

DEDICATION

To my mom (July 9, 1951 - September 12, 2017)

and my Uncle Bob (August 25, 1943 - July 6, 2017).

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List of Abbreviations

Assisted Voluntary Return and Reintegration Program (AVRR)

Anti-Crime Capacity-Building Program (ACCBP)

Canada Border Services Agency (CBSA)

Citizenship and Immigration Canada (CIC)

Canadian Security and Intelligence Service (CSIS)

Department of National Defence (DND)

Frontline Officers' Awareness Training on People Smuggling for Indonesia (FLOAT)

Global Affairs Canada (GAC)

Global Assistance for Irregular Migrants Program (GAIM)

Immigration, Refugees and Citizenship Canada (IRCC)

Immigration and Refugee Board of Canada (IRB)

International Organization for Migration (IOM)

Liberation Tigers of Tamil Eelam (LTTE)

Refugee Status Advisory Committee (RSAC)

United Nations Refugee Agency (UNHCR)

United Nations Office on Drugs and Crime (UNODC)

Introduction:
'Managing mass marine migrant arrivals'

i. Introduction

'Asylum-seekers'[1], 'refugees'[2], 'economic migrants', 'criminals' and 'smugglers'—in recent years, commentators have employed an expanding catalogue of labels to categorize those who migrate 'irregularly' across the Mediterranean aboard unseaworthy vessels into Europe.[3] As the so-called 'migrant/refugee crisis' has demonstrated, often with tragic results, the pejorative labels and less privileged sub-categories used to categorize forcibly displaced people are not merely descriptive. Rather, labels, and the exclusionary discourse of migration management in which they are embedded, have a performative power, which structures how people think about, and governments respond to, forced migration. Far from being politically neutral, then, labels, as Zetter has argued, construct the world of forced migration in "convenient images" to align with the "bureaucratic interests and procedures" of wealthier destination states.[4]

The hegemonic framing of the 'crisis' in political debate and media coverage reinforces a myopic view of migration, which fails to ask why so many people risk their lives aboard flimsy overloaded vessels in the first place; it provides at best an incomplete picture, which comes at the expense of a more nuanced understanding of the conditions that compel people to search abroad for safety and opportunity.[5] Furthermore, such a partial perspective overlooks how the crisis in question is not a crisis of sheer numbers *per se*, but a crisis of governance and institutionalized responses pursued thus far in response to the perception of 'unmanageable' levels of asylum-seekers.[6] By strengthening migration control and forcing asylum-seekers to embark on risky journeys, the European Union exacerbates the conditions that led to the so-called 'crisis', and in turn, the perception of a crisis justifies additional restrictive measures to better 'manage' migration.[7]

In refugee and forced migration studies, the 'crisis' has galvanized renewed scholarly interest in and scrutiny of the catalogue of labels used to analyze and act upon forced migration.[8] The categorical distinction between 'forced' and 'voluntary' migrants that demarcates the field is the central focus of this broader critique.[9] Like the other categorical distinctions that govern human mobility, such as regular vs. irregular,[10] such a false and binary distinction rests on a reified understanding of international migration. These dichotomizing assumptions about people on the move do not correspond to the reality on the ground, in which the motivations for migration defy the dualistic framing of international legal frameworks; for this reason, it is more accurate to speak of *refugee-migrants*.[11] There is in this sense a fundamental disjuncture between contemporary patterns of displacement and the conditions in which the refugee label was formed after the Second World War, which makes it difficult to easily distinguish asylum-seekers from irregular migrants who migrate for 'economic' reasons. This reality is increasingly accepted by experts; the proliferation of policy and analytical categories in response to the diversification of migrant profiles can be understood as an attempt to account for the disconnect between labels and the changing social reality of forced migration.[12]

Recontextualized from a historical vantage point, the controversy in Europe is not unprecedented.[13] Rather, it can be understood as the most recent contentious episode in the politicisation of asylum. This debate intensified in the early 1980s with a sharp increase in South-North flows and asylum claims across wealthier destination countries and a shift in the geographies of forced displacement that followed the Cold War. The changed geopolitical realities of the post-Cold War era meant that the resettlement of refugees no longer served the national interests of the Western bloc countries.[14] Consequently, the post-Cold War era saw the reconstitution of the refugee label.[15] The relatively homogenous image of the Anti-Soviet exile, formed during the

formative bipolar era of the refugee regime, was transformed under changing conditions of neoliberal globalization, U.S. hegemony, growing inequality between North-South and increased South-North flows.[16] As a result, the conventional, legal definition of 'refugee' is increasingly disconnected from the experience of forced displacement and the realities of "new asylum-seekers."[17]

The proliferation of labels testifies to the fact that the refugee label no longer corresponds to the realities of forced displacement, in which asylum-seekers travel as part of so-called 'mixed' flows of irregular migrants, often facilitated by smugglers. The marked increase in mixed migration flows over the past three decades, driven by political persecution *and* economic displacement, has generated intense controversy about the business of moving people across borders. From the perspective of political authorities, smuggling and its role in the "migration-asylum nexus," [18] presents a significant challenge for the management of migration, because it confounds the foundational assumption of deterrence policy[19]—namely, that it is possible to easily distinguish 'genuine refugees' from so-called 'economic migrants'. As Crawley and Skleparis illustrate in their research on Syrian and Afghan asylum-seekers who migrated across the Mediterranean into Europe in 2015, often with help from smugglers, it is increasingly difficult to categorize mixed flows in such simplified, dichotomous terms.[20]

> This movement has proved deeply problematic for policy-makers and politicians, many of whom have chosen to blame refugees and migrants for their failure to fit, rather than problematizing the nature of categories and the process of category construction.[21]

Concerns about mixed flows and the role of smugglers therein have catalyzed efforts to criminalize and combat migrant smuggling. Under the Palermo Protocols, a pair of supplementary treaties to the UN Convention Against Transnational Organized Crime, signatory states are entitled to criminalize and cooperate to combat such conduct.[22] However, in an age of mixed migration

defined by the confluence of refugees and migrants into "one smuggled and unregulated flow,"[23] anti-smuggling policies are often applied indiscriminately to people on the move, regardless of their motivations and the conditions that underlie the choice to emigrate.[24] While signatory states to the Refugee Convention are prohibited from punishing asylum-seekers for using smugglers to enter a country of refuge "illegally,"[25] refugee claimants who enlist the services of smugglers to facilitate their clandestine entry "tend to be scripted as economic migrants and therefore 'bogus refugees'," as noted by Hyndman and Mountz.[26] When analyzed from a critical perspective, this pejorative label and other stigmatized sub-categories (such as 'illegal' or 'irregular' migrants) serve a vital political function in the international management of migration: to delegitimize the claims of asylum-seekers and justify interventions to combat smuggling networks in the name of security and human rights—of safeguarding state sovereignty and protecting 'genuine refugees'.

To recoup sovereign maneuverability, manage rising levels of asylum claims and limit access to the refugee category, Canada, like other wealthier destination states, has introduced a range of new pejorative labels within anti-smuggling initiatives. However, in comparison to Europe, Canada is relatively insulated from the geopolitical effects of forced displacement.[27] Nonetheless, the federal government has expressed its concerns about the possible spillover effects of forced displacement from Europe. In an internal document from the federal border enforcement agency, the Canada Border Services Agency (CBSA), "European Migrant Crisis: Impact on Irregular Migration to Canada," speculates on the effects of "downstream migration" as follows:

> … current irregular migration flows to Canada… have yet to be identified as downstream movement from the ongoing situation in Europe. [However,] as the EU tightens its borders and asylum policies in response to the influx, Canada may increasingly be considered by persons seeking refugee protection.[28]

Migration 'crises' are constructed and instrumentalized by political elites, as Mainwaring explains, even when the number of arrivals is limited.[29] Though Canada's geographic location makes it "less

vulnerable" to so-called "irregular arrivals," the document explains that the federal government shares its "partners' concerns with increasing flows of irregular migration globally."[30] While the scale of migrant smuggling pales in comparison to Europe, Canada has taken swift action to combat migrant smuggling and irregular migration in recent years—in particular in response to "the arrivals of two mass marine migrant smuggling ventures off the coast of British Columbia," the *Ocean Lady* and the *Sun Sea*.[31]

ii. Statement of research questions and argument:
The *Sun Sea* and the Migrant Smuggling Prevention Strategy

On October 17, 2009, the *Ocean Lady* arrived off the Pacific coast of Canada. Each of the 76 passengers, all men of the Tamil minority from Sri Lanka, sought refugee protection under Canada's asylum system. Less than a year later, on August 12, 2010, another ship arrived in a similar location, off the coast of Vancouver Island, British Columbia. A Thai cargo ship with 492 Tamil asylum-seekers from Sri Lanka on board, the *Sun Sea* reached Canada after nearly three months at sea on a grueling voyage from Thailand. During the journey, one person died and several passengers endured hunger and illness while being transported in cramped and dangerous conditions. After the arrival, all 380 men, 63 women and 49 children claimed refugee status. The passengers cited a fear of persecution in Sri Lanka by government security forces in the aftermath of the civil war. The next day, the federal government transferred the adult passengers into detention for further examination, in order to verify their identities, begin the criminal investigations and the preliminary assessment of their refugee claims. The CBSA separated children from their parents and sent them to the Burnaby Youth Detention Centre, while the B.C. Children's Aid Society took custody of six unaccompanied children among the passengers.[32] As a result of their detention, children already traumatized by memories of war— evidenced by the fact

that one toddler arrived with shrapnel in his head—were forced to endure additional trauma in the form of months of family separation.[33] Some of the passengers, such as Kunarobinson Christhurajah, who arrived with his wife Patrishiya, who was also pregnant at the time, were singled out as leaders in the alleged smuggling operation, and would ultimately spend more than six years in detention while enduring two trials.[34]

After a second so-called 'mass marine migrant arrival' and to prevent future vessels from coming to Canada, the federal Conservative government introduced the Migrant Smuggling Prevention Strategy, a new anti-smuggling policy with domestic and international dimensions, coordinated by the Office of the Special Advisor on Human Smuggling and Illegal Migration. Under Conservative Prime Minister Stephen Harper, the federal government wanted to send a clear message that Canada would not tolerate 'abuse' of its refugee system by organized criminal networks that profit from migrant smuggling. Throughout the ordeal, the narrative surrounding the *Sun Sea* was one of fear, anxiety and unease. News media broadcast images into living rooms across the country of the *Sun Sea* being escorted by navy, military and police forces as it entered Canadian waters. At the same time, the Minister of Public Safety Vic Toews briefed members of the national media at Canadian Forces Base Esquimalt, where he asserted that the ship's passengers included "suspected human smugglers and terrorists" intent on "abusing Canada's refugee system."[35] In a gesture that foreshadowed the essential tension between the rights of refugees and the rights of states that would animate the federal response, Toews asserted that although Canada is "very welcoming" to refugees, "the government must ensure that our refugee system is not hijacked by criminals or terrorists."[36]

This dissertation examines Canada's anti-smuggling policy developed in response to the arrival of the *Sun Sea*. My research questions are twofold: I ask, first, how, under what conditions,

and with what effects people that enlist smugglers are labelled as 'irregular arrivals', i.e. 'bogus' rather than 'genuine refugees'? Second, how is the identity of smuggled asylum-seekers constructed, transformed and politicized in the context of anti-smuggling policy? Using a reformulated conceptual framework of labelling, this dissertation responds to these questions by drawing on interviews and access to information requests with the federal government's agencies of migration management. I argue that the legal ambiguity, classificatory struggles and interpretive controversies surrounding the refugee label and its sub-categories allow the Canadian government to manage, and indeed, pre-emptively label, delegitimize and deny, the refugee claims of asylum-seekers that enlist the services of smugglers. My analysis reveals the instrumentality of anti-smuggling policy and its role in what Zetter calls the "fractioning"[37] of the refugee category into various pejorative sub-categories that restrict access to asylum and the rights of refugee status. The transformation of the refugee label in and through anti-smuggling policy, I contend, serves as a means of restricting asylum-seekers from accessing the rights and procedural protections of refugee status.

The Migrant Smuggling Prevention Strategy's stated objective was to deter migrant smuggling and prevent so-called 'irregular arrivals' from reaching Canada. According to the federal government, this new anti-smuggling policy is "not intended to punish asylum-seekers."[38] Rather, it seeks to "deter human smugglers, dissuade migrants from taking part in dangerous voyages and ensure that border authorities have sufficient time to establish the identity and admissibility of individuals before they are admitted to the country."[39] The federal government described its strategy as a "multi-faceted" and "comprehensive" approach, which included domestic and international dimensions. Through the Migrant Smuggling Prevention Strategy, the federal government sought to take steps domestically to reduce the appeal of Canada as "a

destination for smugglers" while simultaneously cooperating on an international level with "transit countries so as to prevent the launch of migrant smuggling ventures" before they depart for Canada.[40]

On the domestic level, this revised anti-smuggling policy included sweeping legislative amendments and regulatory reforms. In response to the *Sun Sea*, the Harper government introduced the Protecting Canada's Immigration System Act, an amendment to the Immigration and Refugee Protection Act.[41] The federal government introduced these legislative amendments to "deter human smuggling by limiting the rights and entitlements of smuggled migrants and imposing stricter penalties on smugglers."[42] Through the introduction of the category of 'irregular arrival', these reforms effectively bifurcated the refugee category into two sub-categories of refugee claimants, which limited smuggled asylum-seekers' access to refugee protection. They made it possible to distinguish categorically between those who make a refugee claim through official state-sanctioned means from 'self-selected', 'irregular arrivals'. By virtue of this pre-emptive labelling, Canada's anti-smuggling policy subjects the latter group to a range of punitive measures, such as mandatory arrest and detention as well as restrictions on their ability to access refugee status and its attendant rights and procedural protections against refoulement.

On the international level, the federal government developed capacity-building programs with affected governments and inter-governmental organisations (IOs). These programs sought to deter migrant smuggling and disrupt migrant smuggling ventures in transit countries throughout Southeast Asia and West Africa and return stranded asylum-seekers to their countries of origin under the technocratic guise of 'assisted voluntary return and reintegration' programs. Internal documents describe the strategy as a coordinated transnational effort "across law enforcement, intelligence, border protection and diplomatic spheres to deter and prevent migrant smuggling

ventures before they materialize overseas."[43] In effect, however, by enrolling affected governments in transit countries into the disruption of smuggling ventures within their territory and pre-emptively labelling asylum-seekers as 'transit migrants', Canada's anti-smuggling policy attempts to politicize and redefine their identities as entrepreneurial agents, allegedly motivated by the search of economic betterment, rather than individualized threats of persecution. The international dimensions of the Migrant Smuggling Prevention Strategy functioned to offshore and outsource migration management. The externalization of border enforcement in turn enabled the federal government to pre-emptively label asylum-seekers and delegitimize their claims at a distance through remote control measures.

iii. The *Sun Sea* and the political manipulation of the refugee label in anti-smuggling policy

In the weeks that preceded the arrival of the *Sun Sea*, Canada's intelligence and border enforcement agencies sounded the alarm within the federal Conservative government. Federal agencies claimed transnational organized crime groups associated with the Liberation Tigers of Tamil Eelam (LTTE) procured the vessel and facilitated the *Sun Sea* operation as part of a broader attempt to regroup in Canada. The LTTE, a government opposition force in Sri Lanka, has been recognized as a terrorist organization in Canada since 2006.[44] According to an internal CBSA document, the arrival of the *Sun Sea*:

> … resulted in heightened concerns for Canadians about security, such as the possibility of members of terrorist groups, war criminals, and other inadmissible persons gaining entry to Canada. There were also concerns over the high cost of processing large numbers of refugee claims which may take years to complete, as well as the negative optics of 'queue jumping' where migrants are able to find inappropriate means to enter Canada and take advantage of the asylum process without having to go through the formal immigration system or refugee resettlement process.[45]

Federal government officials, including several interviewed for this research, reiterated the misleading claims of the Harper government, that the vessels intended to 'test' Canada's relatively

generous refugee system; "there was a certain amount of information floating around that there were additional boats, and that those were in fact test vessels."[46] The official further stated that it was "revealing that when the *Sun Sea* arrived all the immigration lawyers had already been hired, standing on the dock"— the implication being that the claims of the passengers were illegitimate.[47] A preliminary indication of what would become a larger attempt to delegitimize nearly 500 refugee claimants, the passengers were assigned identification numbers from B001 to B492. Over the course of this bureaucratic processing, which contributed to the dehumanization of the passengers and the silencing of refugee voices, their names and individual stories became invisible to politicians and policymakers, who, meanwhile, continued to promulgate unfounded claims about the alleged threat posed by the passengers onboard.[48]

For the stated purpose of identity verification**,** the federal government detained passengers from the *Sun Sea* for an average of two to four months.[49] Although they provided detained asylum-seekers with "access to the appropriate procedures," federal immigration authorities sought to determine whether any of the passengers played an active role in the smuggling operation, belonged to the LTTE or participated in other "illegal activities which would exclude them from refugee status."[50] And while "some of the passengers may have links to terrorist networks," another internal document cautions against pre-emptively labelling the arrivals before their status has been determined, because some of them "may have legitimate claims to asylum and should have access to proper screening procedures."[51] Following their arrest and detention, the federal government ruled the majority of the passengers, a total of 451 asylum-seekers, inadmissible under s. 41 of the Immigration and Refugee Protection Act, because they arrived irregularly without visas or proper documentation. The federal government subsequently issued conditional removal orders, pending the outcome of their refugee claims. At the same time, the Minister sought to render the

remainder of the arrivals inadmissible on the basis of their association with a terrorist network, engagement in migrant smuggling and/or transnational organized crime. According to the federal government, 12 of the passengers allegedly helped operate the vessel during the voyage and for this reason, the federal government charged six men with smuggling offences.[52] Consequently, the federal government found several individuals inadmissible under s. 37(1) (b), because they participated in an organized criminal smuggling operation. As a result of being ruled inadmissible under s. 37(1) (b), a refugee claimant is peremptorily excluded from Canada without consideration of his or her claim on the merits: s. 101(1) (f).[53]

Though the Supreme Court of Canada ultimately rejected the claims of the Harper government about the identities of the passengers, as I discuss later in this dissertation, the federal government seized on the window of opportunity created by the *Sun Sea* to manipulate public sentiment, transform the refugee category and fundamentally alter the asylum system. The visibility of the large-scale arrival and the sense of crisis it generated was instrumentalized by political leaders to re-establish the appearance of sovereign control and to show the public the Harper government was "doing something" to manage irregular migration.[54] In this regard, because large-scale arrivals make migrant smuggling visible and allow political authorities to maintain the appearance of control, these high-profile events command greater attention from politicians, the public and news media. Unlike the largely invisible arrival of resettled refugees whose entry federal governments facilitate, as Mountz observes, "boat arrivals represent a direct affront to the integrity of national borders," and the visibility of such events "provokes xenophobic reactions from the public and conspicuous enforcement responses."[55]

Despite the Harper government's attempt to monopolize the framing of the *Sun Sea* and pre-emptively label the asylum-seekers, data from the *Sun Sea* cases does not support their claims

about the alleged threat posed by the passengers onboard. Since the *Sun Sea* arrived, there has only been a single criminal conviction.[56] Out of 364 refugee claims, 228 have been accepted and 107 claims were rejected, an acceptance rate of 63%.[57] Deportation orders were issued against 29 passengers, for either being part of an alleged migrant smuggling operation, or for having ties to the LTTE.[58] Only 22 of the passengers were deported after being found inadmissible. In total, 11 were found inadmissible for security reasons related to membership in the LTTE.[59] However, some refugee claimants that were deported had tenuous connections with the group.[60] All in all, in retrospect, the presence of LTTE and the alleged threat posed by its members was greatly overstated at the time of the ship's arrival. In stark contrast to the Harper government's claims about 'bogus refugees' onboard the *Sun Sea*, in 2010 the Immigration and Refugee Board (IRB) granted refugee status to Sri Lankans at a rate of 79%.[61] In comparison to the claims of the Harper government, the UN Refugee Agency (UNHCR) provides a more sober assessment of the plight of Tamil refugees from Sri Lanka. In 2011, it notes, Sri Lanka "ranked as the 12th highest source country of refugee claimants who claimed asylum in 44 industrialized countries," with close to 9000 applications.[62] It further explains that Tamils fleeing Sri Lanka, are "likely to be in need of international refugee protection on account of their (perceived) political opinion, usually linked to their ethnicity."[63] While the UNHCR states that some LTTE members may be excluded from refugee status for past crimes, they also note that current or past membership in the LTTE is an insufficient basis to exclude an individual from refugee protection.[64]

The particulars of individual cases exceed the scope of this study. However, in hindsight, that the IRB accepted the majority of refugee claims suggests that the construction of the *Sun Sea* as a challenge to the sovereignty and security of Canada, the integrity of the refugee system and the plight of 'genuine refugees' everywhere—was more significant than the veracity of the Harper

government's assertions about those onboard, in terms of dehumanizing the passengers and delegitimizing their refugee claims, rationalizing changes to the asylum system and justifying the development of the Migrant Smuggling Prevention Strategy.

iv. Resituating the study of migrant smuggling within the international politics of migration management

The realities of 'new migration' in the post-Cold War period led to the deterrence paradigm and a pre-emptive rationale of migration management.[65] While it is difficult to assess the efficacy of deterrence policies such as visa regimes and carrier sanctions, the fact that 85% of refugees remain in developing countries suggests these efforts have been remarkably effective at containing the population of forcibly displaced persons to the global South.[66] Rather than address these gross disparities in hosting refugees, also referred to as 'burden-sharing', wealthier destination states have focused on devising strategies to circumvent their obligations to asylum-seekers and refugees. In principle, while anyone has a right to seek asylum, access to the refugee label is controlled by a "draconian mix of deterrent measures" and new "pejorative labels" that are embedded in political discourses and public policy.[67] Consequently, in today's political landscape:

> Previously enjoyed rights are curtailed and, above all, restrictionism increasingly criminalizes those claiming refugee status as they desperately seek asylum. The outcome is a new set of labels which compound the perception that the protective label 'refugee' is no longer a basic Convention right, but a highly privileged prize which few deserve and most claim illegally.[68]

Today, asylum-seekers increasingly migrate under conditions characterized as a shrinking space of humanitarian protection.[69] While the number of refugees and the proportion of the global population of forcibly displaced persons continues to rise,[70] hostility towards refugees has intensified in response to the 'migrant/refugee crisis',[71] and the global web of deterrence policies has made accessing asylum and the protections afforded by full refugee status more difficult and

dangerous for the most vulnerable people on the planet.[72] Wealthier destination states, and Canada especially, continue to parrot humanitarian rhetoric that recognizes the human right to seek asylum, yet, claiming that right is hard than ever before. For most asylum-seekers, pre-emptive deterrence policies have effectively reduced access to the asylum system and the rights and procedural protections of refugee status. The Canadian government employs deterrence policy in response to the international legal norm of non-refoulement, which prohibits the return of people to countries where they face persecution. Deterrence policy can take the form of procedural measures, for example, the designation of 'safe countries of origin,'[73] or the imposition of accelerated timelines and legal-administrative processes for submitting and reviewing asylum-applications from so-called 'non-refugee producing countries.'[74] Deterrence policy can also take more coercive, carceral and violent forms. It may include mandatory detention,[75] interdiction on the high-seas,[76] or the use of extra-territorial processing of asylum-claims,[77] all of which serve to deter and prevent asylum-seekers from accessing the national territory of the state. By preventing the arrival of asylum-seekers on national territory, the Canadian government, as elsewhere, seeks to limit its obligations to refugees and maintain sovereign control over who enters and who does not.

To date, scholars in different disciplines have authored distinct yet related explanations of the trend toward increasingly restrictive deterrence policies. In political geography, as Hyndman and Mountz have argued, recent trends in deterrence policy represent a gradual shift from a legal rights-based humanitarian discourse to a security-oriented paradigm—"the shift from liberal norms of legal frameworks to more politicized practices of sovereign exceptionalism."[78] In International Relations (IR) and security studies, scholars such as Bigo, Huysmans and Bourbeau[79] have explained this process in similar ways, in terms of the securitisation of migration—understood as a shift in political logic that constructs migration according to a 'grammar' of

security. In the attempt to fortify borders against irregular migration, it is argued, deterrence policy operates according to a logic of security, outside of the rule of law and exempt from the routine procedures of liberal-democracy.[80] Although these interventions come from different disciplinary traditions, they all make a similar claim: deterrence policy, or measures to restrict access to asylum, can be understood in terms of a "permanent state of exception."[81]

The literature on the securitisation of migration has been influential in the development of critical research on migrant smuggling in Canada. It has also figured prominently within scholarly examinations of the *Sun Sea*, which, to varying degrees, have adopted securitisation theory[82] and its conceptual toolkit of exceptionalism.[83] While these studies differ in many respects, they explain the restrictive anti-smuggling policy developed in response to migrant smuggling in terms of a shift to exceptional politics, that is, as a process of 'securitisation'. Briefly summarized, securitisation describes a process whereby a political actor uses the rhetoric of existential threat to justify the adoption of exceptional measures and the suspension of 'normal' political procedure. This discursive practice or 'speech-act', it is argued, empowers political leaders to address a public policy issue through whatever means necessary.[84] These studies have focused especially on the causal links between anti-smuggling discourse in media coverage and political rhetoric and policy change, illustrating how Canadian news media frames migrant smuggling through dominant narratives that "securitize" asylum-seekers and situate them "within a discourse of risk."[85] These discursive representations, scholars have argued, construct forced migration through a 'grammar' of security and thus help legitimate an extraordinary political response to address migrant smuggling, one that violates the norms governing state behaviour toward refugee claimants.

This study builds on the small but rich research into Canada's response to migrant smuggling, as well as existing studies into the Harper government's radical reforms introduced

following the arrival of the *Sun Sea*. However, in contrast to existing accounts of the response to migrant smuggling and the *Sun Sea* specifically, this study begins from a different point of departure. While the policy changes introduced in the wake of the arrival are certainly grossly disproportionate and draconian, when viewed historically, they are by no means exceptional.[86] Indeed, they form a continuing thread in Canadian history, one that links present and past, in which draconian reforms follow in the wake of large-scale arrivals.[87] In this regard, the Harper government's response to the *Sun Sea* can be analyzed as the most recent episode in a much longer historical process—the politicisation of asylum—in which the federal government has sought to prevent the arrival of asylum-seekers and transform the refugee label through a practice of pre-emptive labelling, in order to insulate itself from presumptive protection responsibilities while enhancing its capacity for remote control.

Despite the strengths of existing research on migrant smuggling in Canada, studies of the *Sun Sea* have insufficiently analyzed the close relationship between labelling in anti-smuggling policy and emerging strategies of precautionary migration governance—what Geiger calls a transnational 'governmentality' of migration management.[88] Labelling and pre-emptive techniques of migration management converge on the anomalous figure of the 'bogus refugee', which, as Mountz argues in her analysis of the smuggling of asylum-seekers from China to Canada in 1999, represents a "particular permutation of exceptionalism that links migration to exclusion in the name of national security."[89]

> The labelling—and subsequent exclusion—of certain movements of people as human smuggling demonstrates exceptionalism at work… The term 'human smuggling' marks a category and, like any other category, produces particular identities… Those who employ smugglers fall under a range of immigration and refugee policies, but are all homogeneously produced as criminal, their access to legal avenues inhibited.[90]

Building on these insights, the alternative approach outlined below—which, following Zetter, I characterize as a conceptual framework of labelling—arises from two overarching concerns: first, to resituate the study of migrant smuggling in the context of the international politics of migration management; and second, to contextualize current trends in anti-smuggling in a longer history and in so doing, to "put the securitisation of migration in its place."[91] My approach to the analysis of Canada's response to the *Sun Sea* stems in part from my skepticism toward the tendency to interpret the politicisation of asylum and the newest generation of anti-smuggling policies as exceptional or extraordinary—with the implied connotation of historical and political rupture that accompanies such claims. At the same time, I do not wish to imply that the Harper government's response was more or less an instance of routine political procedure. As Jeandesboz and Pallister-Wilkins nicely put it, security politics are not driven exclusively by a logic of exceptionalism or routine; they are relational notions that coincide with distinct practices.[92] To be clear, I do not want to "jettison the analytics of security," as Walters cautions, since there are clearly elements of exceptionalism at play in the Harper government's response; for example, in its attempts to bypass democratic procedure, problematize the issue of migrant smuggling through a security grammar and elevate the issue above 'normal politics'. Instead, I seek to build on existing research on migrant smuggling in Canada and combine it with interventions about labelling and the politicisation of asylum from refugee and forced migration studies, while simultaneously incorporating insights about the rationality of migration governance and precautionary risk management[93] from other fields, such as International Relations and critical migration studies. By integrating these bodies of critical scholarship into a reformulated conceptual framework of labelling, I aim to analyze innovations in anti-smuggling efforts and recast them in a historical perspective. Through an analytical shift in emphasis, I seek to provide a more balanced

focus on continuity and change in deterrence policy.[94] When analyzed historically, the Harper government's response to the *Sun Sea* does not represent a radical departure from previous courses of action adopted by the Canadian government. Indeed, as I show in chapter two, anti-smuggling policies animated by a governmental concern with preventing the arrival of smuggled asylum-seekers date back to the end of the Cold War. With that said, what *has* changed over the past three decades is the way deterrence has been framed, from being a "migration control mechanism into a 'necessary' life-saving device,"[95] rationalized and legitimized through the international policy orthodoxy of migration management.

The care and control duality of migration management, as illustrated by the global battle against migrant smuggling, is distinct from the 'no-holds-barred' actions associated with exceptionalism and existential survival.[96] Indeed, anti-smuggling policies of migration management reveal the Janus-faced nature of protection in a time of heightened global mobility, in which "[t]he protector needs to know who the real population is and who is opposed to it," by monitoring the movement of people across borders and "controlling who is inside and who is outside."[97] Protection, as Bigo argues, is linked to managing access to an internal space and with monitoring the future through border surveillance and "the creation of profiles about who is at risk or who is a risk."[98] This duality is manifest in the discursive representation of migrants and refugees deemed both *threatening to* and *threatened by* the state[99]—*at* risk and *a* risk[100]—a hegemonic rendering that appears with increasing frequency, as Pallister-Wilkins argues, to frame policies that attempt to "standardize and institute 'best practice'" in border enforcement.[101] Reconceptualized in this manner, anti-smuggling policy can be understood simultaneously and contradictorily as a politics of humanitarianism and a securitising discourse defined by the objective of preserving human life, in which human life/dignity is identified as the referent object

of security, which must be protected.[102] Through the paradoxical invocation of humanitarianism within efforts to curtail the human rights of refugee claimants, legitimize interdiction and limit access to asylum,[103] and, in a word, by representing counter-smuggling measures as a humanitarian intervention concerned with protecting populations at risk, anti-smuggling policy "masks the violence of the border that renders people vulnerable" in the first place.[104] In so doing, anti-smuggling policy obfuscates and depoliticizes the close relationship between humanitarian practices and policies of border enforcement traditionally conducted in the name of controlling migration, safeguarding sovereignty and protecting national security.[105]

In tracing the continuity between past and present politicisations of 'mass marine migrant arrivals', I seek to destabilize the reified dichotomy between the politics of securitisation and humanitarianism and thereby redirect the study of migrant smuggling to examine the pernicious effects of labelling in anti-smuggling policy—proactive efforts conducted not only in the name of national security but also "under the banner of humanitarianism."[106] Despite masking the violence of political actions through the invocation of humanitarianism, in effect, anti-smuggling policy intensifies insecurity, erodes refugee protection and contributes to the marginalization of vulnerable people caught in situations of forced displacement. My analysis of anti-smuggling policy, in this sense, aims to dispense with the illusion that humanitarianism is a "distinct and separate" form of political action, which is neutral, innocent or somehow 'above politics'.[107]

In developing this analysis, I seek to shed light on how and why, paradoxically, anti-smuggling policy has been implemented in a context in which Canada and other destination states maintain a vocal public commitment to refugees.[108] While anti-smuggling policies aim to circumvent political obligations to refugees and reclaim discretionary power to control irregular migration, the mere existence of so-called extraordinary measures implicitly affirms the legal

norms and routine procedures that constrain state behaviour toward asylum-seekers, including refugee claimants whose entry was facilitated by smugglers.[109] Of course, destination states do not simply accept such constraints on their sovereign prerogative to regulate borders. And while the global North could, in principle, derogate from their commitments to the growing population of forcibly displaced persons, a wholesale departure from the Refugee Convention is not feasible, because such a move would likely intensify the effects of forced displacement on wealthier destination states.[110] Therefore, to insulate themselves from forced displacement and contain its destabilizing consequences to the global South, wealthier destination states have devised sophisticated forms of precautionary governance, such as anti-smuggling policies, and novel categories, such as 'irregular arrival' and 'transit migrant', that exploit legal ambiguities and interpretive controversies surrounding forced displacement.[111] This political practice of *pre-emptive labelling*, in short, has afforded wealthier destination states much greater flexibility in their response to irregular migration.[112]

By examining practices of pre-emptive labelling, my aim is to resituate the study of migrant smuggling against the backdrop of the international politics of migration management and its duality of care and control.[113] The goal of this analytical shift in emphasis is to enhance the analysis of the discriminatory outcomes of deterrence policy and the apparently "schizophrenic" posture of destination states in North America and Europe toward asylum-seekers.[114] Using a framework of labelling, in short, can help illuminate the policy objectives concealed within apparently apolitical strategies and categories and the "productive power"[115] of bureaucratic labels designed to restrict access to asylum. My approach makes it possible to destabilize the misleading analytical dichotomy of securitisation and humanitarianism[116] and to demonstrate how the discursive framing of humanitarianism rivals security "in its ability to legitimize emergency measures" toward

asylum-seekers.[117] By historicizing the response to the *Sun Sea*, this study aims to highlight the continuity between past and present politicisations, in contrast to scholarly works that posit a bygone era of refugee protection against a securitized present.[118] Against this dualistic interpretation, I seek to illustrate how security and humanitarian logics have been and continue to be entangled in the management of forced displacement.[119] This conceptual move troubles the opposition between securitisation and humanitarianism, by illustrating the convergence of security and humanitarian concerns into a hybrid logic of migration management.[120]

v. Re-focusing on the process of categorization through a conceptual framework of labelling

According to Foucault, every system of power confronts the same problem of order.[121] In Foucault's genealogy of the 'art' of governance, categorization and classification are essential to the exercise of power and the maintenance of political boundaries between inside/outside, us/them and normal/abnormal. As Moncrieffe argues, the power of categorization is most salient "when labelling is put into action" and affects power relations between political authorities and subordinate actors.[122] Power, in this view, is a relational phenomenon, not a material possession. Power exists in and through relations of power/knowledge. Because order, authority and the exercise of knowledge are inextricably linked, socially constructed categories inevitably reflect hegemonic meanings and reinforce asymmetrical power relations. For Foucaultians, policy categories are discursive vehicles through which issues are problematized[123] in governmental discourse. The binary oppositions that underlie our dualistic ways of thinking, as Derrida describes it, result in conceptual hierarchies that privilege one term of a binary and install an order of subordination.[124] Political order is established, authority is exercised, and identities are constituted through labelling and categorization.

Naming and categorizing the unknown, as noted by Bauman, marks the "substance of modern politics."[125] Modern politics and the work of bureaucracies are thus a fight against indeterminacy and ambivalence. It is an attempt to "define precisely" and "eliminate everything that could not or would not be precisely defined"[126] by the state. The quest for order and bureaucratic question for control, what James C. Scott describes as a fight against "illegibility,"[127] is an equivalent to the need for cognitive certainty in day to day existence.[128] Labels, classifications and categorical distinctions make life possible; they enable "knowledge and action."[129] However, making categorical distinctions can be a highly fraught process. Drawing the line that separates one thing from another is "never foolproof," that is to say the application of any category inevitably leads to "the production of anomalies"[130]—irregular phenomena that do not conform to existing systems of knowledge. "No binary classification deployed in the construction of order" can match our experience of reality; and as Bauman explains, "hermeneutic problems are likely to persist as a permanent 'grey area' surrounding the familiar world of daily life."[131]

Arguably, the categorical distinctions of anti-smuggling policy fail to account for the grey area of forced migration, a discursive and epistemological arena populated by what Bauman calls "undecidables," "the not-yet classified, or rather classified by criteria similar to ours, but as yet unknown to us."[132] These unfamiliar phenomena[133] cannot be located within the false and binary oppositions of anti-smuggling discourse (e.g. legal/illegal, humanitarian/smugglers, victims/perpetrators). Put slightly differently, actions that fall into the interstices between categories—for example, "humanitarian smuggling"[134] or altruistic acts of assistance that facilitate entry without pecuniary motivations, destabilize the dichotomizing assumptions of anti-smuggling discourse. To trouble the black-and-white oppositions employed in anti-smuggling policy, the study of migrant smuggling must focus on the labels of the anti-smuggling discourse of migration

management in which such exclusionary categorical distinctions are embedded. To this end, a framework of labelling offers a way to document and conceptualize how policy categories frame, rationalize and obscure the political agendas and interests they represent.

In Zetter's formulation, labelling can be analyzed along two axes: empirical and conceptual. First, as an empirical phenomenon in which the status, needs and motivations of people are defined according to bureaucratic interests and procedures. Second, as a conceptual framework, labelling can be described as a methodological tool that examines the relationship (and disjuncture) between the social reality of forced migration and the policies of governments, non-governmental organisations, IOs and other actors whose political actions are rationalized through a humanitarian framing of refugee protection.[135] For Zetter, labels do not correspond to pre-existing objects 'out there'. Rather, they structure the identity and behaviour of those labelled. The refugee label, Zetter argues, conveys "an extremely complex set of values and judgments which are more than just definitional."[136] In his reformulation of the concept of labelling, Zetter examined how the institutionalized practices of humanitarian agencies formed, transformed and politicized the identities of Greek-Cypriot refugees in the distribution of aid and housing assistance. Nearly two decades later, in a 2007 article Zetter presented a reformulated framework. Zetter argued for the continued relevance of the concept of labelling under conditions of globalization and mixed-migration flows. In his formulation, a framework of labelling can be defined in terms of three interrelated elements: formation, transformation and politicisation.

> - the *formation* of the refugee label, largely under conditions of globalization, reflects causes and patterns of forced migration which are much more complex than in the past; this contrasts with an essentially homogeneous and stereotypical connotation of the label in the past;
> - the *transformation* of the refugee label is a response to this complexity enacted by a process of bureaucratic 'fractioning' in order to manage the 'new' migration; again this contrasts with an inclusive and homogeneous connotation of the past, although producing similarly negative impacts on those who are labelled;

> - in *transforming* the refugee label, governments in the global 'north', rather than NGOs as in the past, are now the pre-eminent agency; and
> - the refugee label has become *politicized*, on the one hand, by the process of bureaucratic fractioning which reproduces itself in populist and largely pejorative labels whilst, on the other, by legitimizing and presenting a wider political discourse of resistance to refugees as merely an apolitical set of bureaucratic categories.[137]

Following Zetter, deterrence strategies have effectively transformed the refugee label from its Convention interpretation. They have laid the groundwork for the proliferation of new pejorative bureaucratic labels whose instrumental purpose is to "fraction" the refugee category and limit access to asylum. As a result, new pejorative labels such as 'marine migrant', 'irregular arrival', 'smuggler', 'bogus refugee', 'transit migrant' and other less privileged sub-statuses, effectively restrict access to asylum and contribute to the perception "that the protective label 'refugee' is no longer a basic Convention right," but a commodity to be bought and sold to those who can afford it.[138] According to Zetter, these "pejorative," "subverted" and "degraded" labels exemplify the "pernicious power of labelling" under contemporary conditions. In this view, these new pejorative labels function as "reservoirs to contain entry and intercept access to the most prized claim" of refugee status.[139] In other words, the pre-emptive labelling of the global population of forcibly displaced persons enables wealthier destination states in the global North to circumvent legal obligations to asylum-seekers and recoup effective control by exploiting "interpretive uncertainties" and establishing "novel categories and concepts" in policy, legislation and law.[140] Labels in this sense effectively shape the relations between forced migrants and bureaucracies, including states, IOs and humanitarian agencies.

Despite significant changes in the dynamics of international migration over the past three decades that have occurred since the initial formulation of the concept, the concept of labelling and the three axioms identified by Zetter hold significant explanatory power in the analysis of contemporary trends in anti-smuggling policy. The power of labelling is evident in the context of

anti-smuggling policy, in which asylum-seekers that enlist smugglers are subject to a range of stigmatized sub-categories that shape their identities and claims to refugee status in the public arena of political discourse. This proactive strategy of delegitimization contributes to what Zetter calls "deterrence restrictionism and the bureaucratic fractioning of the refugee label."[141]

As Bakewell has argued, the tendency to take for granted established policy categories is a major analytical blind spot in refugee and forced migration studies.[142] This tendency not only naturalizes the perspective of policymakers and politicians. It also renders certain types of forced migrants invisible, both in research and policy, especially those whose profiles and experiences do not map onto the dichotomizing assumptions of existing labels.[143] As Bakewell puts it, the uncritical adoption of state-sanctioned categories limits the types of questions asked, the scope of analysis, the methodologies and methods adopted, and the sort of research conducted in the field.[144] In response to the limits of existing categories of forced migration, a number of scholars have sought to move beyond such binary oppositions, by inventing new categories such as "forced migrants,"[145] or "survival migrants,"[146] by privileging the refugee category and its distinct legal status,[147] or by refusing the distinction between forced and voluntary migration altogether,[148] and using migrants to describe the full spectrum of human mobility.[149] Still others contend that such conceptual evasions of the problem of categories, however well-intentioned, may feed into a state-centric logic of categorization that discriminates against migrants.[150]

While I am intellectually indebted to these contributions, my starting point is different. I begin with the *process* of labelling, categorization and classification and instead, focus on what Jones calls "the inchoate politics of bounding."[151]As Jones nicely puts it, the problem is not categories *per se*. Rather, the problem stems from "the way the boundaries around the categories are cognitively understood as closed and fixed even when we know intellectually that they are

open and fluid."[152] This is what Jones calls the paradox of categories. On the one hand, labels are indispensable. On the other hand, labels tend to constrain or regulate how we perceive the world. Instead of trying to invent alternative labels or abandon categories, to make the labels of anti-smuggling policy open to critical analysis, I borrow from Jones, who argues that scholars must analyze the inchoate process of bounding that "precedes the creation of all categories, concepts and entities."

> It is inchoate because it occurs over time as the boundary is just beginning to form, is incomplete and is bounding an entity that is lacking structure and organization. Employing 'inchoate' emphasizes the process of bounding rather than the already finished and fixed boundary. Boundaries are never finished or fixed, even if they appear to be, and must be re-fixed and reiterated to reify that perception. It is a process because of this ongoing necessity for re-fixing, rewriting and renegotiating the boundaries. It is about bounding because without boundaries nothing could ever be anything. Boundaries concomitantly take diversity and organize it and take homogeneity and differentiate it.[153]

To avoid the tendency that Bakewell describes as the conflation of policy and analytical categories,[154] and, moreover, to analyze the inchoate politics of bounding in anti-smuggling policy, I focus on the process of labelling itself—what Jones calls the "bounding and delimiting" of categories. An emphasis on labelling reorients the analytical focus toward the practices of "suturing" or incorporating border-crossers into the state.[155] This analytical reorientation foregrounds the incomplete nature of categorization as a deeply politicized and historical process of enactment. The analytical shift from labels to labelling and the emphasis on the inchoate politics of bounding redirects scholarly attention to how the perception of fixity and objectivity is established within performative practices of categorization. Using social constructivist and post-structuralist insights into the power of labelling can help us understand the pernicious effects of the categories deployed in anti-smuggling discourse. I thereby seek to bring together and build upon critical insights about the power of labelling from across a range of disciplines: IR and security studies, refugee and forced migration studies and critical migration studies, including

critical literature on migrant smuggling in Canada. These critiques can be brought together in an analysis concerned with labelling practices and their effects. Such an analytical shift in emphasis aims to enhance the scholarly knowledge of transformations in anti-smuggling policy and the understanding of whether, how and to what extent such draconian measures to combat smuggling are extraordinary or exceptional, indicative of a paradigm shift, or simply "business as usual."[156]

vi. Methods: The live archive

Categories, classifications and labels are only intelligible in the social context of a wider discourse or "regime of truth" that makes it possible to distinguish "true and false statements."[157] Foucault famously remarked that each historical era is defined by an *episteme* that governs dominant social and political discourses, which structure power relations and the ways people think and act. This hegemonic discourse is the effect of 'discursive' practices that can be analyzed through a critical inquiry into the 'archive'—a historical and ideational vault that encompasses "the law of what has been said"[158]—the "set of all statements that constitute a discourse and as the rules or regularities that govern what can be said within a discourse."[159] However, Foucault's investigation of the historical 'archive' is not a hermeneutical approach in which a text is analyzed to reveal the 'real' meaning under the surface of what is said. By contrast, a Foucaultian approach involves an "empiricism of the surface," which proceeds by identifying "the differences in what is said, how it is said, and what allows it to be said and to have an effectivity."[160] Discourse, in this view, is not merely representational of thought.[161] Rather, it is constitutive of social reality. Discourse actively contributes to the production of knowledge claims concerning its object of concern—it is "the source of what is true and what is false, and is thus instrumental in the articulation of the 'normal' and 'normality' in life."[162]

To document and conceptualize the fractioning of the refugee label in Canada's Migrant Smuggling Prevention Strategy, I analyze the "live archive"[163] of anti-smuggling discourse, including expert interviews and grey literature obtained through access-to-information requests from Canada's agencies of migration management. This live archive can be defined as the official texts and accounts of anti-smuggling policy in which Canada's response to the *Sun Sea* is represented and inscribed. In my analysis of the live archive, I examine Canada's Migrant Smuggling Prevention Strategy from the perspective of the federal government and specifically, Immigration, Refugees and Citizenship Canada (IRCC), the Canada Border Services Agency (CBSA), Global Affairs Canada (GAC) and the Office of the Special Advisor on Human Smuggling and Illegal Migration. Though IRCC is the lead department on most issues related to migration and immigration, citizenship, refugees, visas, passports, domestic and international policy coordination, CBSA plays the lead role in primary inspection, front-end security screening, border enforcement, detention, removal and intelligence related to the illicit flow of people and goods across Canadian borders. GAC is the focal point when it comes to the international elements of migration management, for example, liaising with state representatives, consulates and the staff of IOs and UN agencies, maintaining diplomatic missions, participating in regional and global fora on migration and multilateral capacity-building programming. The Privy Council Office houses the Office of the Special Advisor on Human Smuggling and Illegal Migration, led by Ward Elcock, which was created in response to the arrival of the *Sun Sea*. The whole-of-government approach adopted by the federal government includes a range of other actors, such as the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), the Department of National Defense (DND) and other actors. Last but not least, the IRB, an independent administrative tribunal that adjudicates refugee claims, appeals and immigration matters, often

operates in an antagonistic relationship with the aforementioned agencies of migration management.

The empirical research that informs this dissertation took place between February 2016 and April 2017 and entailed principally two research methods: (i) semi-structured, expert interviews, both on site and remotely (e.g. over the phone/Skype), most of which were recorded and (ii) online archival research.[164] In 2016-2017, I conducted interviews with 40 individuals, current and former senior public servants who worked for the federal government of Canada, specifically senior policy advisors, directors, directors-generals and managers, or similar positions (in addition to one former Minister of Citizenship and Immigration), from the most significant federal departments and agencies involved in migration management in Canada. Semi-structured interviews allowed for flexibility, depending on the topics under discussion. Appendix A includes a list of interviewees with federal government officials anonymized for confidentiality purposes.

Online archival research of a corpus of texts from the federal government of Canada also inform the empirical analysis. This research encompassed publicly available documents, such as federal immigration and refugee legislation, Parliamentary debates, jurisprudence, White papers, evaluations and audits, annual reports and so on from IRCC, GAC and CBSA. In my research, I also examined a variety of grey literature from the live archive of the federal government, specifically from the aforementioned agencies and organisations obtained through access to information requests. I have attached a select bibliography of these requests in Appendix B. I refer to these documents within the text by their access to information and privacy request code, which includes the abbreviation for the agency from which I requested the information (e.g. CBSA A201508555). I also examined a corpus of materials from IOs with whom Canada has relations,

such as the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC) and the UNHCR.

The 'top-down' perspective and scope of these documents is admittedly limited. However, the live archive provided a window of opportunity to analyze the federal government's shared understanding and perceived interests concerning migrant smuggling. In conducting an analysis of the Migrant Smuggling Prevention Strategy, which focuses primarily on the meso and macro dimensions of labelling in anti-smuggling policy, this dissertation may give the impression that the federal government is a unitary and unified actor. At the risk of reifying the state, throughout this dissertation, I use the terms 'Canada', 'the federal government', 'the Harper government,' or 'the Government of Canada' to refer to the central actors in anti-smuggling policy. The use of this terminology might leave some readers feeling uneasy. In other words, this terminology might give readers the impression that anti-smuggling policy is developed and implemented by a unitary actor that speaks in a single voice and adopts a uniform worldview of migration. As anyone familiar with the complexities of Canadian federalism and intra-governmental dynamics knows, the state is a complex network of bureaucracies, with centralizing and decentralizing tendencies—not a unitary actor.[165] However, given the whole-of-government approach to anti-smuggling policy, I refer to the federal government's action at times in ways that might suggest it is a monolithic structure.

vii. Chapter outline

Chapter one outlines my reformulated conceptual framework of labelling. To reformulate a conceptual framework of labelling, I integrate several insights from a number of disciplines, in which I build upon yet reformulate Zetter's labelling thesis to analyze anti-smuggling policy. Here, I draw on (i) critical literature on migrant smuggling, (ii) IR and security studies, (iii) refugee and

forced migration studies and (iv) critical migration studies. These areas of inquiry offer concepts for and critical insights into understanding Canada's response to migrant smuggling, in particular elements that are obscured in much of the prevailing scholarship, which provides a structural analysis of the social and economic organization of smuggling networks. Assembling these insights together, I advance my approach to the analysis of labelling. Specifically, I examine the construction, transformation and politicisation of the refugee category within Canada's anti-smuggling policy and its discursive and depoliticising effects. Adopting this framework in the empirical chapters to follow, I contend, is helpful in exploring how and with what effects asylum-seekers that enlist the services of smugglers are pre-emptively labelled in anti-smuggling policy. An analytical framework of labelling foregrounds the political power of the apparently apolitical categories used in anti-smuggling policy and the connection between pre-emptive labelling and access to the asylum system. Indeed, arguably, anti-smuggling policy frames migrant smuggling as a hybridized security/humanitarian problem in which asylum-seekers are pre-emptively labelled according to the false binaries and reified distinctions of migration management, such as legal/illegal, humanitarian/smugglers and victims/perpetrators.

To analyze the federal government's response to the *Sun Sea* first requires that one understands the historical process behind the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian acts of assistance among smuggled asylum-seekers in their flight to safety. With this task in mind, in chapter two, I focus specifically on the construction of the refugee label in an overview of the development of Canada's immigration and refugee policy since the end of the Second World War. Subsequently, I chronicle the effects of several 'mass marine migrant arrivals' in the post-Cold War period that resulted in major reforms to Canada's regime of migration management. Through a historical analysis that

traces the evolution of Canada's immigration and refugee policy, I analyze the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance in a debate that began with the arrival of the *Aurigae* and the *Amelie* in 1986 and 1987 and subsequently informed anti-smuggling discourse over the next three decades.

Against this historical backdrop, chapter three examines the arrival of the *Sun Sea,* the anti-smuggling policy introduced after this event and the political controversy that surrounded B010 v. Canada, a Supreme Court case that involved a group of refugee claimants onboard the *Sun Sea* accused of being involved in smuggling. After the *Sun Sea* arrived, the federal government introduced the Protecting Canada's Immigration System Act, a set of anti-smuggling reforms that limited access to the asylum system and transformed the refugee category. These new anti-smuggling measures bifurcated the category of refugee into two classes of refugee claimants—'genuine refugees' and 'irregular arrivals'. Despite its stated objectives, Canada's anti-smuggling policy is not simply about combatting migrant smuggling or protecting smuggled asylum-seekers. Rather, as this chapter demonstrates, the institutionalization of this categorical distinction serves a vital political function: to transform the refugee category and exploit legal ambiguities surrounding its interpretation by pre-emptively labelling smuggled asylum-seekers, as a means to avoid presumptive protection obligations and recuperate sovereign control. Thus, the political purpose of these reforms and associated policy changes was to manage, and I argue, deny and delegitimizes the refugee claims of asylum-seekers that enlist the services of smugglers. An analysis of these reforms reveals how the label of 'irregular arrival' was constructed and institutionalized, the political purpose it served and its effects on the refugee label. By examining the *Sun Sea*'s arrival and changes in anti-smuggling policy as well as the controversy over how to interpret Canadian legal obligations to asylum-seekers that enlist the services of smugglers, I show how Canada's

Migrant Smuggling Prevention Strategy attempted to fragment the refugee category and exclude asylum-seekers from accessing refugee protection.

Whereas chapter three focused on its domestic dimensions, chapter four examines the international aspects of the Migrant Smuggling Prevention Strategy. To supplement in-country policy changes and legislative reforms, the Migrant Smuggling Prevention Strategy included a range of international actions with affected governments and IOs in countries of transit. These multilateral initiatives pre-emptively label asylum-seekers as 'transit migrants' and offshore and outsource migration management to affected governments in transit countries, in order to limit the federal government's legal obligations to would-be refugees and restrict access to asylum. Simply put, in the context of anti-smuggling policy, transit migration functions as a shorthand to pre-emptively label asylum-seekers on the way to their final destination. In offshoring and outsourcing of migration management, the federal government seeks to pre-emptively label asylum-seekers, bypass political constraints to effective control and evade legal obligations to refugee claimants. These efforts included multilateral programming and diplomatic outreach to address migrant smuggling, capacity-building projects designed to deter smuggling and disrupt smuggling networks in transit countries and programs to return stranded asylum-seekers after the interception of smuggling ventures. I examine how, in response to the *Sun Sea* and to pre-emptively label and thereby prevent future arrivals, the Canadian government introduced a range of anti-smuggling capacity-building programs in which various federal agencies cooperated with affected governments and IOs in transit countries to offshore and outsource anti-smuggling policy.

In the concluding chapter I discuss several themes raised in this study. First, I reflect on the notion of policy relevance and its significance for understanding the role of categorization in refugee and forced migration studies. Second, I consider the dynamism of labelling and the ways

in which existing categories perpetuate a linear, binary and static conceptualization of forced migration, which reflects the biases of wealthier destination states in the global North. Finally, I discuss the future of the deterrence paradigm. While the deterrence regime remains intact across the world, there are also signs which suggest it may be entering a period of paradigm crisis.

CHAPTER ONE
Conceptualizing the transformation of the refugee label in anti-smuggling policy

1.0 Introduction

Over the past several decades, the study of migrant smuggling has emerged as an autonomous area of scholarly research in its own right. A multidisciplinary literature on the subject has developed, largely independently of scholarship in International Relations (IR) and refugee and forced migration studies. In its current form, the study of migrant smuggling is bound by neither particular disciplinary traditions nor epistemological frameworks; it therefore resists easy synopsis. Nonetheless, two distinct approaches are evident in the literature. The first approach, dominant among sociologists, examines the economic and social organization of migrant smuggling. Migrant smuggling, in this view, can be understood in structural terms as a global business or complex system of socio-economic networks.[166] The second approach is more critical. It focuses on the international politics of anti-smuggling policy and its implications for refugee protection.[167] It points to the need for a comprehensive understanding of the close relationship between migrant smuggling, irregular migration and the management of forced displacement. Instead of beginning from existing policy categories, it calls into question the false and binary oppositions that structure anti-smuggling discourse: of legal and illegal movement, humanitarians and smugglers, and victims and perpetrators.[168]

In the study of migrant smuggling, academics confront a "double disadvantage"[169]—a set of empirical and conceptual limitations that tend to skew scholarly analysis in ways that lend credence to the stereotypes of anti-smuggling discourse. Much of the prevailing scholarship on migrant smuggling shows how academic researchers, even when well-intentioned, tend to take the categories, concepts and assumptions of policymakers as their initial point of departure for analysis. A critical approach, by contrast, investigates the contingent conditions of possibility for

anti-smuggling discourse, the practices and processes of policy categorization and the power of bureaucratic labels that constitute the interface between political authorities and people on the move. In contrast to prevailing research, a critical approach to the study of anti-smuggling policy refuses to conflate analytical categories with policy ones[170] in ways that artificially "compartmentalize" the issues of migrant smuggling, irregular migration and refugee protection; instead, it foregrounds the underexamined interconnections between them.[171]

The alternative approach adopted here is not built from scratch. Rather, I take a more modest approach, surveying different concepts and their utility from a variety of fields. I borrow from (i) critical literature on migrant smuggling, (ii) IR and security studies, (iii) refugee and forced migration studies and (iv) critical migration studies. These areas of inquiry offer critical insights into Canada's response to migrant smuggling, especially elements that are obscured in much of the prevailing scholarship. Assembling these insights together, I outline a conceptual framework of labelling, building on Zetter's initial formulation. Adopting this framework in the empirical chapters to follow, I examine the construction, transformation, and politicisation of the refugee category within Canada's anti-smuggling policy and its discursive and depoliticising effects. I explore how and with what effects asylum-seekers that enlist the services of smugglers are labelled in anti-smuggling policy. This conceptual framework foregrounds the political power of the apparently apolitical categories used in anti-smuggling policy and the inseparable connection between labelling and access to the asylum system. Using this framework, I argue that anti-smuggling policy pre-emptively labels people in pursuit of refugee protection according to the reified categorical distinctions of migration management, such as legal/illegal, humanitarian/smugglers and victims/perpetrators, which fail to account for the unclassifiable grey area of forced displacement.

The chapter unfolds in six sections. I begin by contextualizing the emergence of anti-smuggling discourse historically and identifying the limits of the stereotypical reading of migrant smuggling, which exists in both popular and scholarly accounts. In section two, I outline the shortcomings evident in some of the prevailing research, which tends to endorse a stereotypical account of migrant smuggling. Although a critical literature on migrant smuggling has started to emerge,[172] some of the most influential scholarship limits its analysis to the social and economic dimensions of migrant smuggling, while neglecting the politics of anti-smuggling policy. Consequently, much of the prevailing literature essentializes migrant smuggling as a *problem* and takes-for-granted the constitutive effects of anti-smuggling discourse in framing smuggling and labelling asylum-seekers.[173] In section three, to lay the groundwork for my approach, I look outside the study of migrant smuggling and review how IR and security studies have analyzed state responses to forced migration, in which I highlight the value of Constructivist insights about norms, identity and the construction of migration as a security threat. In section four, I explore refugee and forced migration studies and focus on internal debates within the field. I review the debate about legal categories used to analyze forced displacement and the limits of legalistic approaches that privilege refugees as the object of analysis. In section five, I briefly review the ways critical migration studies have utilized Foucaultian analytics to analyze the rationality of migration management, which provides a historical and international focus to supplement the micro- and meso-focus on labelling in refugee and forced migration studies. Finally, in section six, I integrate these insights to elaborate the framework of labelling adopted herein, which reformulates Zetter's thesis to analyze anti-smuggling policy. This conceptual framework, I suggest, is invaluable in demonstrating the instrumentality of the labels applied within anti-smuggling policy and the effects of the labels used to categorize asylum-seekers, limit access to

the asylum system and obscure the international politics of migration management. I conclude that a critical approach to the analysis of migrant smuggling has the potential to enhance our understanding of state responses to migrant smuggling and the power of pre-emptive labelling in anti-smuggling policy.

1.1 The power of framing and labelling: The emergence of anti-smuggling discourse

The clandestine facilitation of people across borders has played a critical role in some of the most significant population movements over the past century. The actions of celebrated historical figures such as Raoul Wallenberg, a Swedish diplomat who issued fraudulent passports to Hungarian Jews and facilitated their escape from Nazi persecution, along with others like Oskar Schindler, could be categorized according to today's standards as migrant smuggling.[174] In Canada, Japanese migrants sought assistance from intermediaries in the 1920s to facilitate their entry into British Columbia in the face of restrictive policies against immigrants of Asian origin.[175] And while migrant smuggling is certainly not new,[176] today, the clandestine facilitation of migration is a global phenomenon.[177] From the inland crossings between Central and North America, to the spectacle of migrant smuggling by sea in the Mediterranean, or the more everyday use of fraudulent documents at any major international airport, migrant smuggling plays a major role in contemporary international migration flows. In this regard, while people have arguably sought assistance to cross territorial borders for as long as they have obstructed free movement, in an age of mixed-migration, migrant smuggling is the "new normal."[178]

Despite the historical parallels between past and present, important differences exist between now and then. While migrant smuggling has arguably always existed in different forms, it is "a structural feature of late-modern society" and not "an exception or social pathology."[179] Furthermore, historically, actions associated with the phenomenon of migrant smuggling—the

procurement of false identity and travel documents, the provision of accommodation and assistance in transit, the arrangement of transportation and so on—were once valorized as "crimes of solidarity" that enabled people to flee persecution.[180] While stories such as the famous Chinese smuggler, the 'Mother of All Snakeheads,'[181] and the 'coxers' of West Africa[182] that valorize intermediaries for reuniting families are present in communities of emigration, in media coverage and political debate across North America and Europe, the criminalisation of smuggling has brought into circulation a different iconic representation of asylum-seekers and smugglers across the global North.[183] The stereotypical depiction found in anti-smuggling discourse—a story of violence, exploitation and abuse, about a global enterprise coordinated by criminal networks for-profit—is hegemonic.[184] With the emergence of anti-smuggling discourse, images of people grasping on to unseaworthy vessels, riding atop of trains and dead bodies being pulled from the back of trucks and shipping containers have become embedded in the global consciousness. In this hegemonic rendering, the state is often absolved from its role in creating the conditions under which people resort to smugglers.[185] Instead, culpability for these tragedies is attributed almost exclusively to the actions of unscrupulous smugglers, who are stereotypically represented as "men from the Global South organized in webs of organized criminals whose transnational reach allows them to prey on migrants and asylum-seekers' vulnerabilities."[186]

In contrast to well-known historical accounts, however, narratives that valorize assistance to people escaping political violence and persecution are virtually nonexistent in today's political landscape of restrictive attitudes to refugees and migrants.[187] In place of the humanitarian narrative, a "criminalisation narrative," which calls for a global crackdown on smugglers and asylum-seekers, has become the dominant interpretation of migrant smuggling within anti-smuggling discourse.[188] Anti-smuggling discourse, what Sanchez calls the "dichotomist script of

smugglers as predators and migrants and asylum-seekers as victims," obfuscates the protection concerns raised by the criminalisation of smuggling as well as "the perspectives of those who rely on smugglers for their mobility," including asylum-seekers in pursuit of refugee protection.[189] While it may be politically advantageous to portray smugglers as 'criminals' and smuggled asylum-seekers as victims of exploitation and abuse, this dominant characterisation is largely disingenuous and serves to rationalize draconian deterrence measures.[190]

In contemporary anti-smuggling discourse, the hegemonic meaning of migrant smuggling as a deadly global criminal enterprise is largely taken-for-granted. It is assumed to be self-evident.[191] It is worth reflecting briefly on where and when the iconic representation of smuggling in terms of a dichotomous script in anti-smuggling discourse entered into widespread circulation. The origins of contemporary anti-smuggling discourse can be traced back to the foundational text in the global fight against smuggling and trafficking networks: the Palermo Protocols. Before the passage of the Palermo Protocols, which supplement the UN Convention against Transnational Organized Crime, the understanding of smuggling was still in its infancy.[192] The term 'migrant smuggling' was used loosely and interchangeably with 'trafficking'.[193] In the Forward to the UN Convention against Transnational Organized Crime, UN Secretary-General Kofi Annan explained that, with the signing of the Convention and the supplementary Palermo Protocols, the international community designated migrant smuggling as a global problem that challenged the national capacities of governments. The text describes migrant smuggling in terms of a Manichean battle of good and evil.

> … the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend

> human rights and defeat the forces of crime, corruption and trafficking in human beings.[194]

Anti-smuggling discourse is dependent upon what Kernerman calls a set of "interdiction scripts"—a set of metaphors, images and ideas that frame, rationalize and obscure the international politics of migration management.[195] Anti-smuggling discourse fosters and relies upon a problematic depiction of smuggling and a set of false, binary oppositions that order the social reality of forced migration from the perspective of wealthier destination states: legal/illegal, humanitarians/smugglers and victims/agents.[196] These categorical distinctions used to make irregular migration "legible to states" in turn authorize governments to redefine what was previously understood as a humanitarian activity. As Watson argues, anti-smuggling discourse "relies on and reinforces oversimplified and pure categories" that:

> … deny the complexity of undocumented migration, redefine and restrict humanitarian practices, reinforce problematic depictions of organized crime and humanitarian actors, and deny the culpability of the state in the prevalence and danger of smuggling. The criminalisation of smuggling attempts to remove all ambiguity associated with cross border movement and insists on purity or iconic representations of both asylum-seekers and smugglers to reassert categories, to make legible these liminal groups, and ultimately to reauthorize the state's [authority] to control human mobility.[197]

Thus, such a crude understanding fails to recognize the autonomy of people on the move, their aspirations, struggles and the agency they exercise in their decision to emigrate.[198] In this regard, anti-smuggling discourse reinforces an oversimplified account of smuggling as a transactional business, motivated solely by profit maximization, without regard to its potential humanitarian dimensions. To be sure, migrant smuggling is a growth industry for organized crime, which some experts estimate to be greater than the profits in other illicit activities.[199] Smugglers facilitated the irregular transit and entry of roughly 2.5 million migrants in 2016, with an estimated profit of $7 billion USD.[200] The business of migrant smuggling is not only profitable, but also dangerous and deadly; smugglers take advantage of migrants and asylum-seekers, who are

vulnerable to violence, theft, sexual assault and extortion. An estimated 30,000 irregular migrants died or disappeared between 2014 and 2018, many of whom drowned in the Mediterranean on dangerous journeys facilitated by smugglers.[201] Without a doubt, the role of organized crime in the deaths of smuggled migrants warrants careful consideration. However, as a range of critical scholarship has demonstrated, the stereotypical image of graphic stories of violence, exploitation and profit maximization as well as the proposed solution of criminalisation is limited, for several reasons. The emphasis on criminalisation and profit motivations fails to account for the interpretive controversies and legal ambiguity of migrant smuggling, the diverse profiles and motivations of smugglers and their clients and the role of smuggling in facilitating escape from persecution.

A large corpus of anti-smuggling discourse, both popular and scientific accounts, frames migrant smuggling as a self-evident problem to combat.[202] Beset by ahistorical accounts and beholden to policy agendas, much of the prevailing scholarship is state-centric in nature and rehearses a common narrative about the challenges of globalization and the capacity of transnational organized crime to circumvent the border controls of sovereign states.[203] In the conventional account of the fight against migrant smuggling in terms of a global battle between good and evil, anti-smuggling discourse obfuscates its own positivity, that is, how it constructs its object of opposition around a set of simplistic representations of both asylum-seekers and smugglers.[204] The tendency on behalf of politicians,[205] media pundits,[206] and academics[207] to uncritically accept the framing as a self-evident problem was clear in the controversy surrounding the arrival of the *Sun Sea*. This criminalisation narrative reinforces the apparent objectivity of anti-smuggling discourse and the global crackdown on smuggling worldwide. Not only does this deeply politicized rendering obscure the role of restrictive migration policies in the proliferation of smuggling networks,[208] the rising numbers of migrant deaths and the erosion of refugee

protection.[209] Additionally, anti-smuggling discourse ignores the humanitarian aspects of migrant smuggling and its role in refugee protection,[210] exaggerates its criminal dimensions and reproduces gross generalizations about the role as well as the sophistication of transnational organized crime in smuggling.[211] Furthermore, it uncritically reinforces common misperceptions of the exploitative nature of the smuggler-client relationship,[212] the structural patterns of smuggling networks and their links to other forms of organized criminal activity.[213] Perhaps most significantly, much of the established body of research[214] tends to overlook the fact that for many migrants, smuggling is a last resort—a choice forced upon them in the absence of legal channels for safe and orderly migration—and certainly not the preferred option.[215] Not only is smuggling a potentially dangerous way to navigate border controls, but being smuggled also shapes public perceptions against asylum-seekers and negatively influences the likelihood of obtaining protection and status as a refugee.[216] Thus, the decision to participate in such expensive and risky journeys and purchase the services of smugglers is not taken half-heartedly. For example, in a recent study of migrant smuggling to Canada, smuggled asylum-seekers described smuggling as a "necessary plan B." Individuals interviewed in the study only chose to do so after legal avenues and formal structures failed them.[217]

Research into migrant smuggling is largely conducted by sociologists, with significant interventions from criminologists and scholars of international law.[218] To date, academic research in the political sciences and IR has done little to provide alternative assessments of migrant smuggling. With notable exceptions among a nascent body of scholarship scattered across the social sciences,[219] much of the prevailing research, reviewed in brief below, uncritically accepts pernicious myths about asylum-seekers and smugglers**.** Whether implicitly or explicitly, as I show in the next section, much of the prevailing literature tends to endorse the state-centric account of

migrant smuggling. Driven by a desire for policy relevance and animated by debates about technical distinctions, preventive measures and the structural patterns of smuggling networks,[220] this literature does little to inform public debate, rectify misperceptions or examine the protection concerns raised by the criminalisation of smuggling, which contributes to the erosion of the human rights of refugees and asylum-seekers.[221] Finally, much of the prevailing scholarship lacks an essential reflexivity in that it takes-for-granted the constitutive effects of anti-smuggling policy in the construction of this problem in the first place.[222] The limited focus of prevailing research, discussed below, not only provides a misleading account. Such a state-centric interpretation also ignores the unintended effects of anti-smuggling policy, including the fact that such policies may inadvertently contribute to the conditions under which asylum-seekers are forced to enlist the services of smugglers.

By framing the global crackdown on migrant smuggling in terms of a battle between good and evil, anti-smuggling policy masks its constitutive role in the construction of the problem it seeks to regulate. Anti-smuggling policy transforms the refugee category and limits access to the asylum system for smuggled asylum-seekers, who are labelled as 'bogus refugees', i.e. economic migrants who move voluntarily in pursuit of financial opportunity. Anti-smuggling measures redefine previously humanitarian practices as crimes and asylum-seekers as irregular migrants, who are therefore subject to punitive deterrence measures.[223] Anti-smuggling policy thus serves a vital function in the fight against "illegibility."[224] It offers a "way of understanding and ordering the world that produces neatly defined categories that reduce the ambiguity of human mobility and justify the use of coercive force by the state."[225] Through anti-smuggling policy, the asylum-seeker is redefined as a fraudulent, economic migrant at best and at worse, criminalized or politicized as a "threat to order" and national security.[226]

As noted by Zetter, "how refugees are categorized and for what they might be eligible suggest that labelling and access are inseparable."[227] In other words, categories have significant repercussions on the treatment asylum-seekers receive and the rights and procedural protections they can access. While scholarship in refugee and forced migration studies has illustrated the state- and Eurocentrism of the international refugee regime and the effects of classifying individuals as forcibly displaced, because of disciplinary silos, the study of migrant smuggling has remained outside the remit of refugee and forced migration studies. As the prevailing literature suggests, it is largely the purview of sociologists. These disciplinary trends explain, at least in part, why prevailing research has failed to discuss the politics and governance of anti-smuggling policy. Instead, it has focused on the socio-economic organization of smuggling networks. As a result, much of the prevailing literature has examined migrant smuggling in artificial isolation from the international politics of migration management. While the critical literature, discussed below, contains a more nuanced understanding of the role of smuggling in facilitating access to asylum, much of the prevailing literature offers at best a partial account, which has failed to address why people enlist the services of smugglers, thus neglecting the role of smugglers in providing humanitarian assistance to people in order to escape persecution, navigate danger or evade border controls.[228]

The disciplinary separation of the study of migrant smuggling from refugee and forced migration studies contains obvious parallels to the real-world exclusion of migrant smuggling from the broader debate around refugees and asylum-seekers. To resituate the study of migrant smuggling within the international politics of migration management, in what follows I seek to build upon and bring together critical research from a variety of disciplines in a reformulated conceptual framework of labelling. Before I outline my approach, in the next section, I substantiate

these claims about the shortcomings of prevailing research on migrant smuggling and highlight the emergence of a critical alternative, particularly within Canadian scholarship. In the subsequent sections, I review various relevant bodies of scholarship in IR and security studies, refugee and forced migration studies and critical migration studies, to mine them for insights about labelling, categories and the power of classifications embedded in the anti-smuggling discourse of migration management. The following review does not aim to provide an exhaustive account of the diversity of scholarship within each field. Rather, its purpose is to extract insights from multiple fields in an effort to reformulate the conceptual framework of labelling and enhance the study of anti-smuggling policy.

1.2 Prevailing research on migrant smuggling and the rise of a critical approach

The sociological study of the facilitation of irregular migration for-profit initially imported theories and concepts from economics.[229] Salt and Stein's pioneering study developed an economic understanding of migrant smuggling. This conceptualization dominated early discussions among experts, academics and IOs. It conceived of migrant smuggling in minimalist transactional terms as a global business, that is, a system of inputs and outputs across a network of state and nonstate actors and institutions: an "apparatus for managing and controlling migration [with] its own economic structure, costs and benefits, and policy makers," hierarchically structured by the pursuit of profit.[230]

Salt and Stein's foundational study influenced the subsequent generation of research.[231] Regardless of its analytical merits, the influence of the economic understanding is evident throughout the broader literature, as demonstrated by the general focus on the organizational structure of smuggling networks. Using relatively crude concepts imported from economic theory, this body of work theorizes migrant smuggling and the actions of individuals through a rationalist

logic of supply and demand. It examines, *inter alia*, the structural patterns and dynamics of smuggling,[232] the interaction between smugglers and migrants,[233] efforts to control migrant smuggling[234] and the routes, methods and motivations of smuggled migrants.[235] Prevailing research explores the social organization of smuggling rings[236] and the close relationship between smuggling and illegal markets[237] and other offences such as money-laundering and document forgery.[238] Seeking to provide actionable advice to policymakers, this literature outlines both supply- and demand-oriented strategies to address the role of organized crime in smuggling,[239] evidence on the role of terrorist networks involved in smuggling migrants,[240] the potential utility of promoting legal channels such as temporary migration to curb demand for smuggling[241] and so on.

Since its influential publication, scholars have criticized Salt and Stein's model. As Baird and van Liempt argue,[242] the global business theory is deeply flawed, on both empirical and theoretical grounds. First, it reflects the nascent state of knowledge at the time, in that it failed to distinguish between trafficking and smuggling on a conceptual level, like other pioneering works.[243] Second, it contains several misleading assumptions about the nature of smuggling and the characteristics and motivations of smugglers and asylum-seekers. Third, the business theory emphasizes the economic and organizational aspects of smuggling. Fourth, the theory reproduces the understanding of migrant smuggling as a sophisticated and hierarchically organized activity of transnational criminal syndicates—a view that lacks empirical evidence.[244] Indeed, available evidence suggests that smuggling is characterized by a diverse range of structures and patterns—often in the form of "loose networks" and not simply hierarchical, mafia-like organisations.[245] Many empirical studies argue that the phenomenon may be more accurately characterized as an ad hoc and opportunistic "cottage industry," rather than a sophisticated transnational criminal

network.[246] As Kyle and Scarcelli explain, smugglers range from altruistic individuals to violent criminal networks engaged in various illicit activities.[247] And yet, the global business theory of smuggling reproduces a two-dimensional, stereotypical account of migrant smuggling, based on the erroneous assumption that smuggling networks consist of transnational criminal enterprises that move people across international borders with little regard for human life.

The smuggling-as-a-global business theory, as various scholars argue, neglects the social dimensions of migrant smuggling. The global business theory, as Triandafyllidou and Maroukis explain, provides a reductive interpretation, in which "all the factors involved in the irregular migration and using the services of a smuggler decision as a cost-benefit calculation of the migrant."[248] This reductive, economic analysis overlooks a range of social factors, for example, the level of trust or fear between smugglers and clients and the social location of the smuggler within larger networks in countries of origin, transit or destination.[249] These social factors are emphasized in alternative approaches, in which migrant smuggling is analyzed in the broader context of social networks.[250] While these studies of social networks offer a useful corrective to the narrow economic focus in some of the prevailing scholarship, they are still limited to a concern with the (social) organizational structure of smuggling networks. In this regard, these studies are beset by similar setbacks as economic approaches, inasmuch as they insufficiently address the politics of anti-smuggling policy. In this regard, prevailing research that uses economic concepts, as well as much of the leading research on the role of social networks, have failed to sufficiently examine how migrant smuggling is governed and the effects of labelling in anti-smuggling policy. As a consequence, much of the prevailing literature naturalizes the perspective of border enforcement and takes for granted the power of the state in the construction of migrant smuggling as a problem in the first place.

In a body of research animated by problem-solving theory[251] and driven by abstract taxonomic and typological concerns, critical research is sparse. Indeed, the desire for policy relevance constrains the nature of the questions asked.[252] Professional networks and funding mechanisms further incentivize strategic research that serves the interest of states and IOs. Consequently, the potential for reflexive analysis is often limited. Rather than provide a much-needed critical analysis of anti-smuggling policy and the criminalisation of smuggling, the majority of the research on migrant smuggling is often conducted within the hegemonic frames and labels of anti-smuggling policy. As a result, it fails to critically address the construction of the category of migrant smuggling and the discursive and depoliticising effects of anti-smuggling discourse. To avoid the pitfalls of prevailing research and its stereotypical account, how might one approach the subject differently, from a more critical perspective? Though a small body of scholarship has called into question prevailing research and its reproduction of anti-smuggling discourse, fewer still have offered advice on how to conduct critical research on migrant smuggling. What, then, would a critical approach look like? The critical analysis of migrant smuggling must be based on an explicit recognition of the process of labelling and its effects on our accounts—"the constructed nature of the practice" and "our explanations and understandings of it," as argued by Baird.[253] In a call for critical research into the category of migrant smuggling, which examines its function and operationalization in anti-smuggling policy, Baird has outlined three tasks for researchers:

> a) Understanding how 'human smuggling' as a category of social control and criminal sanction has arisen and how this category is translated, implemented, and shaped in diverse socio-legal contexts.
>
> b) Mapping national, sub-national, supra-national, and inter-national arenas of cooperation against human smuggling and explaining their effects.

c) Challenging and critiquing existing theory and policy as well as popular conceptions of human smuggling in the media.[254]

Following Baird's call for a critical agenda, the study of migrant smuggling must be recalibrated. First, it must attend to how the category has been defined and interpreted at the level of anti-smuggling policy. Second, it must seek to understand how the concept has been applied by different actors at various scales in different sites. Finally, it must adopt a reflexive approach, which highlights the dynamic interaction of concepts and their usage by laypersons and by technical experts.

In contrast to prevailing research in the USA and Europe, the Canadian scholarship offers an instructive destabilization of the focus on the socio-economic organization of smuggling networks and the problem-solving approach evident across much of the existing scholarship. Arguably, because of its embrace of methodological pluralism and its resistance to realist epistemologies, Canadian scholarship differs from its counterparts in the USA and Europe.[255] There is a clear critical sensibility that runs through the scholarship in the Canadian context, in that it seeks to connect migrant smuggling to the politics of migration management, refugee protection and forced displacement. While prevailing research focuses on the socio-economic organization of smuggling and combatting smuggling networks, scholars such as Bourbeau, Bradimore and Bauder, Greenberg, Mountz, Rygiel, Watson, among others[256] have investigated the state's response to migrant smuggling at the level of anti-smuggling discourse. This literature has analyzed how the framing of migration in media coverage and political debate as a security issue helps to legitimize exceptional measures towards smuggled asylum-seekers. While I build on this rich literature and its insights about the securitisation of migration in Canada, in contrast to dominant accounts of the Canadian state's response to forced migration, my analysis places greater emphasis on locating anti-smuggling policy in relation to shifts in the strategies, rationality and

governance of migration,[257] which have contributed to the transformation of the refugee label as part of a broader attempt to deter refugee claimants and limit access to the asylum system.[258]

By contextualizing the Harper government's response to migrant smuggling historically, my revised conceptual framework of labelling aims to provide an alternative account of Canada's response to the *Sun Sea*. By situating the securitisation of migration in relation to the trend toward a transnational governmentality of migration management, my analysis of Canada's response to the *Sun Sea* seeks to avoid "reifying claims of exceptionality as actual political ruptures from liberal politics," in order to focus instead on "'illiberal' practices of securitisation as a constitutive feature" of 'normal politics.'[259] To this end, I seek to provide a more balanced assessment that emphasizes the historical process of continuity through change, and which focuses on the complementarity and coexistence of "the logic of exceptionalism" and the "logic of routine" in Canada's response to migrant smuggling.[260]

More specifically, from IR and security studies, my framework incorporates a macro-focus on the securitisation of migration and states' responses to forced migration, which provides a constitutive explanation of how ideational elements, such as identities and norms enable and constrain state behaviour toward asylum-seekers. From refugee and forced migration studies, it incorporates a critical analysis of the refugee category and a micro- and meso-focus on labelling at the individual and institutional levels. And finally, from critical migration studies, it incorporates an analytics of governmentality and a historical and international sensitivity to the rise of migration management as a rationality of governance. Taken together, these elements help provide a dialectical alternative to dualistic explanations, found in Zetter's framework and some of the scholarship on the securitisation of migration, which posit a stark contrast between an era of legal-humanitarian discourses and today's geopolitical strategies of security and containment. In

refining and applying the reformulated conceptual framework of labelling, I seek to enhance the understanding of Canada's anti-smuggling policy and thereby provide a better explanation of the instrumentality of deterrence policies and their pernicious effects on refugee protection.

1.3 IR, security studies and forced migration

The boundaries that demarcate refugee and forced migration studies are only loosely defined. Refugee and forced migration studies overlap with sociology, law, development, geography, anthropology and other disciplines.[261] Scholarly interest in refugees and forced migration in the political sciences and IR was relatively belated, even though, like war, terrorism, finance and other issue-areas, it is an essentially international issue. Arguably, the international politics of forced migration have been at the centre of nearly every major development in the evolution of global politics.[262] Given the relative lack of research by political scientists and scholars of IR, scholarship has focused instead on the economic and social dimensions of forced migration. This explains, at least in part, why the literature, including the prevailing scholarship on migrant smuggling, is awash with economic concepts, mechanistic notions of push-pull factors and rational cost-benefit analyses. Concepts derived from sociology and anthropology, such as transnationalism, social networks and diaspora, also figure prominently in the literature.[263] To be sure, scholars have investigated other international dimensions of forced migration—the international refugee regime, the role of IOs and other institutional actors, and the conditions under which international cooperation to address forced migration is possible.[264] Curiously, however, in contrast to the social sciences, the political sciences and IR have paid little attention to the international politics and governance of forced migration and related phenomena such as smuggling, trafficking and the asylum-migration nexus.[265] What explains the relative dearth of

scholarly interest in the international politics and governance of forced migration in the political sciences?

Until relatively recently, international migration did not register as a major concern of Western states because it did not fit the criteria of 'high politics', defined narrowly as strategic-military affairs.[266] Scholarly interest was minimal. That is, until the end of the Cold War, when forced migration ascended on the policy agenda of Western states. Within policymaking circles and academia, the end of the Cold war entailed a shift away from the traditional national security calculus of interstate conflict. During the Cold War, security was primarily understood in terms of geopolitical rivalry, nuclear bipolarity and armed conflict. With the end of the Cold War, the concept of security was expanded beyond military issues to encompass "societal security,"[267] a conceptual evolution that introduced "'new' insecurities into the field of analysis."[268] Subsequently, migration became a prominent concern among scholars of IR and security studies.

The end of the Cold war ushered in the "age of migration,"[269] and a turn to more restrictive deterrence policies in destination states in North America and Europe.[270] The end of bipolarity catalyzed an increase in in-migration flows across the global North and the first sizeable non-European refugee outflows. Asylum-seekers, most of whom came from the global South, no longer conformed to the conventional image of the refugee that structured the Cold War. With the end of the Cold War, refugees lost their ideological value and were subsequently problematized as a challenge to states and societies.[271] As a result, the categories of inadmissibility have expanded since the end of the Cold War to encompass a variety of new threats. Criminality and terrorism emerged as central components of a reconfigured definition of security.[272] The redefinition of security occurred alongside the rise of neoliberal governing rationalities and a growing concern with risk, a political focus that converged upon asylum-seekers; in the new global security

environment, the objective of protecting threatened refugees overseas became contingent upon the task of identifying and excluding the threatening and allegedly criminal refugee claimant.[273]

With the end of the Cold War, transnationally mobile organized crime and terrorism replaced the threat previously occupied by communist subversives, at which point inadmissible categories related to national security proliferated.[274] The capitalist-communist divide that provided "the grid of intelligibility"[275] for our understanding of forced migration, a "matrix" that structured our understanding of external threats, no longer corresponded to the reality of global politics.[276] In the post-Cold War period, clandestine organisations such as transnational criminal and terrorist networks, not governments, posed the most serious danger. With the end of a bipolar world and the disappearance of a "territorialised enemy," the image of the enemy "diffracted," and as Bigo argues, this action "makes the enemy 'invisible', in the sense that it is more difficult to establish a connection with a given territory."[277] With the disappearance of a geopolitical rival, the new global security environment was defined by greater rather than less instability, and migration became part of the national security agenda.[278]

IR scholarship and political science research on the subject emerged in this context of heightened concerns about the security challenges posed by forced migration. Existing literature on forced migration in IR focuses on the implications of forced displacement for global conflict and political order. As Guild explains, mainstream IR and security studies privilege a "statist approach" and the rationalist assumptions of Realism and Liberalism.[279] Since its inception, the field oriented the analysis around the response by states to forced migration. The leading schools of thought in IR—Realism, Liberalism and Constructivism—offer different accounts of state responses to forced migration.[280] While these paradigmatic approaches are well known, it is worth reviewing the explanations offered by each approach as they pertain to forced migration.

Realist accounts offer a familiar statist account about the link between migration and security, based on a rationalist model, in which states act to maximize self-interest under structural conditions of anarchy.[281] In this view, the structural conditions of anarchy account for state responses to forced migration; the duty of the state to protect its citizens and regulate migration is self-evident.[282] Here, security is conceptualized from the perspective of powerful states as a condition or degree of political order to be maintained by restricting certain migration inflows. In the examination of state responses to forced migration, Realist scholars have analyzed the security challenges of refugees for host states as well as the relationship between conflict and forced displacement. This work is characterized by a pretense to a disinterested understanding of forced migration that explains asylum-seekers as an objective existential threat to geopolitical stability, economic prosperity, social cohesion, cultural identity and even the survival of Western civilization.[283] The Realist account of the response of states to migration is problematic for a range of reasons, which have been detailed elsewhere.[284] Briefly summarized, Realist explanations of state behaviour towards refugees and asylum-seekers treat interests and identities as fixed and therefore fail to endogenize the role of interpretation into the analysis of forced migration.

Liberalism is also popular in the IR scholarship on forced migration. Scholarship in this tradition tends to focus on the contradictions that confront Western states' response to migration. This literature has examined the paradoxes of controlling migration in the context of liberal rights-based politics and relatively open and pluralistic societies. It has explored the "control dilemmas"[285] and "dilemmas of immigration control"[286] that confront Western states in migration management; for example, why liberal societies accept "unwanted immigrants" such as asylum-seekers and refugees.[287] This work has provided a range of insightful accounts that explore the contradictions that liberal-democratic governments encounter in controlling borders under

globalization. Yet, in doing so, this literature has rationalized the overarching justifications for migration management without examining the role of the state in the erosion of norms and the perpetuation of the problems associated with forced migration.

The end of the Cold War thrust Constructivism into the mainstream of IR theory.[288] Given the inability of Realism and Liberalism to account for the end of the Cold War, a more ideational approach to global politics appeared to offer a powerful explanatory framework. Constructivism is based on constitutive rather than causal explanations.[289] Constructivist explanations foreground the social construction of knowledge and reality, the constitutive power of norms and ideas and the influence of non-state actors. In a Constructivist view, discursive, normative and social structures constrain and enable behaviour, constitute the self-understanding of actors and their perceived interests, and thus shape world politics. For example, the international refugee regime during the Cold War provided a role structure to states, based on a clear notion of "self" (refugee-protecting states) and "other" (refugee-producing states) that corresponded to ideological differences between geopolitical rivals.[290] The identities of states were constructed in a process of co-constitution, which holds that political actors contribute to making institutional structures and norms, which in turn shape the identities, interests and roles of actors. The principle of mutual constitution avoids the tendency in Realism and Liberalism to artificially reify the separation between agents and structures.

In this view, states institutionalize rules domestically in ways that shape their behaviour. As a result, norms such as non-refoulement are established practice, if not customary international law.[291] For Constructivism, there is a dialectical relation between practices of governance and norms: norms are simultaneously the products of state actions and influences upon state action. IOs, civil society, experts and other non-state actors contribute to the production and diffusion of

norms in ways that socialize actors over time.[292] In Constructivism, there is no significant distinction between social and legal norms; regardless of their formal validity, all forms of norms are constitutive, in that they not only constrain but also enable behaviour, for example, when states manipulate norms to advance their interests.[293] While politics and norms interact dialectically, the effects of norms are ultimately indeterminate; as a result, the distinction between legal and illegal actions is difficult to define in the absence of a central authority at the international level.[294] While norms matter, as Wiener argues, their meaning is constituted through an interactive and intersubjective process that transcends national and international borders. Thus, norms fluctuate in their interpretation and translation in different contexts, depending on the extent of social recognition and cultural validation; norms are inevitably contested and may acquire different meanings in different national settings without an "ultimate interpretation whose universal authority is uncontested."[295]

Critics of Constructivism argue it focuses almost exclusively on positive norms and progressive outcomes,[296] which neglects questions of power.[297] The progressive view of international norms fails to account for how states have responded to international norms instrumentally by engaging in behaviour specifically designed to circumvent legal accountability.[298] However, Constructivism can also provide a theoretical framework to understand how power relations legitimize the erosion of progressive norms, and, in this sense, it grants insight into the effects of 'negative' ideas on international politics. An example of this focus on the role of negative ideas comes from the Constructivist-inspired turn in security studies associated with securitisation theory, the Copenhagen School[299] and the literature on the securitisation of migration. More importantly for my purpose, this literature has examined the effects of labelling an issue through the discursive construction of a security threat.

While the Copenhagen School saw themselves as more intellectually indebted to post-structuralism than Constructivist IR,[300] scholarship on the securitisation of migration in Canada explicitly links securitisation theory with Constructivism to revise the original framework.[301] For example, Watson analyzes the dissolution of 'positive' norms of refugee protection in a comparative study of Canada and Australia's responses to forced migration. The study theorizes the erosion of the positive norms of the international refugee regime as a result of "securitisation attempts" by Canadian and Australian governments, which led to a decline in the levels of refugee protection afforded to asylum-seekers across the global North.[302] In another comparative study, which examines Canada and France, Bourbeau argues that securitisation theory's focus on the factors that induce the securitisation process— what it refers to as facilitating conditions—tends to neglect social and contextual factors involved in the securitisation process that limit extraordinary measures. Indeed, as Watson explains, the established international norms of refugee protection condition the possibility of state behaviour toward asylum-seekers; as a result, not all measures to deter forced migration are acceptable.[303] Incorporating the Constructivist focus on norms and role structures with securitisation theory's focus on the discursive framing of threats, Watson examines the "securitisation of humanitarianism," in which he illustrates the incorporation of a humanitarian commitment to refugee resettlement within the national identity of receiving states, such as Canada and Australia. Consequently, humanitarianism and the state's commitment to human rights, like other dimensions of national identity, may become the referent object of securitising attempts. Paradoxically, within these securitising attempts, the identity of the asylum-seeker is constructed and politicized as both *threatened by* and *threatening to* states:

> Thus, we see in both states, that securitising actors often justify the implementation of restrictive measures on the grounds that they are necessary to maintain the state's humanitarian commitments. Like all aspects of a state's identity, the state's humanitarian commitments become available as an element of their identity that needs protection from

> those who would undermine it… asylum-seekers were themselves blamed for threatening the state's humanitarian commitments to refugees by undermining public support for these programs.[304]

Watson's analysis of the securitisation of humanitarianism through visa-restrictions, detention and other deterrence policies, which, he argues, reflect anxieties about foreigners and asylum-seekers, resonates with what Bigo describes as the paradox of protection, in which the objectives of protecting national borders and protecting refugees intersect in the everyday activities of bureaucracies.[305] For Bigo**,** the managers of unease seek to monopolize the framing of migration as a security issue, in order to leverage their position and obtain political capital and financial resources in a larger institutional struggle between actors. While political elites and other securitising agents are predisposed to constructing forced migration as a threat, scholarship in the Paris School offers a useful corrective to the Copenhagen School approach, which some criticize for its exclusive focus on dramatic speech-acts that utilize the language of existential threat. Rather than limiting the focus to securitising discourses and the invocation of existential dangers, the Paris School approach to securitisation theory reconfigures the analysis to focus on governmental practices of risk management.[306] Risk can be understood as an everyday, manageable danger that does not reach the threshold of existential threat from the perspective of political elites and therefore does not necessitate extraordinary measures beyond 'normal politics'.[307] As Corry explains, in contrast to securitisation, which rests on a binary logic of norm/exception, "riskification" and the logics of risk governance involve a different grammar of security or set of discursive rules, characterized by governmental strategies that promote long-term management and precautionary governance[308] of potential future dangers within routine practices of monitoring and sorting risky populations.[309] Indeed, many of the actions conducted in the name of national security are "quiet, technical and unspectacular."[310] For the Paris School, security is "not only

about the exceptional, that which threatens survival and goes beyond normal politics, but about everyday routines and technologies of security professionals."[311]

Notwithstanding these contributions, in IR the literature on the securitisation of migration is beset by a kind of presentism, in that its claims about historical exceptionalism fail to sufficiently address the continuities between past and present in the management of forced migration.[312] Whereas much of the literature on the securitisation of migration privileges the present and theorizes exceptional measures as a rupture from established political procedures,[313] I seek to situate current trends in deterrence policy and the proliferation of anti-smuggling discourse in a longer history—the politicisation of asylum. For this reason, I look outside IR and security studies to refugee and forced migration studies as well as critical migration studies.

1.4 Refugee and forced migration studies

Disagreement over how to demarcate the field of refugee and forced migration studies reflects broader terminological debates about "who is, and who is not, a refugee—and hence what is, and what is not, refugee studies" that were central to disciplinary-defining discussions in leading academic journals.[314] This debate concerned the study of forced migration and whether the field should be expanded to incorporate questions about smuggled and trafficked migrants, irregular migrants, development-induced displacement, internally displaced persons and so on. Proponents of delimited refugee studies claimed that the expansion of the field under the banner of forced migration would enlarge the subject matter to such an extent that it would render the field meaningless as a discrete area of inquiry.[315] They sought to preserve refugee studies as an independent area of research, and therefore—or so it was argued—the unique personal focus on the legal status and rights of refugees. For Hathaway, Cohen, Goodwin-Gill and other proponents of refugee studies, the absence of a rights-based approach and the "comparatively amorphous,

phenomenon-oriented nature of forced migration studies" is incapable of challenging the erosion of refugee protection across the global North.[316]

> In the real world, legal status—and the rights that go with various forms of legal status—routinely identify and constitute fundamental social and political categories (citizens vs. non-citizens being the most obvious example). What better organizing construct could there be for engaged and solid social science than that?[317]

By contrast, advocates of forced migration studies claim that extant categories fail to capture the social reality of forced displacement today.[318] In this view, beginning with clear-cut legal categories constricts the scope of research and puts research at risk of political manipulation. In this regard, academics should not develop research to align with legal categories—the social reality of forced displacement does not map onto binary administrative reasoning, which reifies an artificial divide between refugees and migrants. In this view, conducting research according to the categorical distinctions of bureaucratic rationality serves to endorse draconian deterrence policies created in the name of protecting refugees. In addition, various scholars have argued that the refugee label is so diverse that it cannot possibly serve to delineate an area of academic inquiry distinct from the broader phenomenon of forced migration.[319]

While academic research into forced displacement began long before the "birth" of the discipline in the 1980s,[320] the systematization of the field coincided with the end of the Cold War and the emergence of 'new' asylum-seekers as a politically salient issue, which transformed the refugee label and the image of the 'normal' refugee.[321]

> By producing the image of a 'normal' refugee—white, male, anti-communist—a clear message was sent to the population with regard to the 'new asylum seeker': that asylum seekers were here for no good reason, that they abused hospitality, and that their numbers were too large.[322]

My purpose is not to rehash the key debates in refugee and forced migration studies that ultimately led to their merger. For the purpose of this section, a schematic account must suffice.

Hathaway, Cohen and others provide a legalistic argument, which claims that the marriage of refugee studies with the study of forced migration would diminish the unique political situation of refugees. By contrast, Chimni, Hyndman, Malkki, Zetter and other advocates of forced migration studies have called into question the artificial forced/voluntary distinction that forms the rationale for refugee studies as a self-contained area of academic inquiry. For advocates of forced migration studies, legal categories do not protect refugees. These arguments in favour of refugee studies are based on a form of "legal fetishism,"[323] that is, a flawed legal positivist methodology that artificially separates politics and law into separate spheres of human action and effectively depoliticizes forced displacement through an apolitical language of humanitarianism.[324] This attempt to maintain a privileged intellectual space is based on a mistaken assumption, namely, that the field of forced migration studies is problematic because it refuses to anchor the analysis around extant legal categories.[325] Without devaluing the legal codification of refugee rights, as Chimni argues, the law is not a panacea for the problem of forced displacement. On the contrary, the glorification of refugee law in refugee studies meant scholarship effectively "disarmed itself"[326] when it came to mounting a critique of the deterrence policies designed to circumvent presumptive responsibilities to forcibly displaced persons.[327] Legalistic arguments, Chimni notes, failed to appreciate the role of politics, contestation and interpretation in refugee law and thus the significance of power relations in interpreting and adjudicating between conflicting norms in the legal realm.[328]

The shift to forced migration studies in the 1990s was closely linked to the popularization of social constructivism and post-structuralism in the social sciences. From this perspective, the refugee is a historically contingent classification— "an epistemic object in construction," as Malkki puts it.[329] This view seeks to denaturalize our anthropological understanding of refugees

as "a naturally self-delimiting domain" of knowledge production.[330] To enhance our understanding of forced migration, scholars in this tradition criticize the depoliticized framing in refugee studies and the tendency toward essentialism prevalent in the field. Following Malkki, concerned scholars must problematize the anthropological construction of the refugee as an epistemic object and examine the role that academic expertise plays in this construction of the refugee identity, which is critical to the global project of maintaining the "national order of things." In this view, the "national order of things" is neither natural nor inevitable. For this reason, a "denaturalizing, questioning stance"[331] is required, one which asks, "who is a refugee and who not and by what classification process."[332]

Proponents of refugee studies privilege the inclusive dimensions of legal categories while neglecting their exclusionary functions. As argued by Zetter in his ground-breaking work on the label refugee, the institutional authors of labels set the rules for inclusion and exclusion by defining needs, determining eligibility and qualifications.[333] Refusing to limit itself to a debate about legal categories, critical scholarship in forced migration studies has instead refocused on the process of labelling itself. Zetter played a central role in reframing the study of forced displacement around the concept of labelling. In the inaugural issue of the *Journal of Refugee Studies*, Zetter called for scholarship that would "reevaluate some of our orthodox definitions as well as publish research which proposes or tests and perhaps establishes novel definitions and limitations to the label 'refugee'."[334] Zetter sought to establish space for independent critical research and innovative theoretical work in an area dominated by the "clientelist relationship" with governments, IOs and humanitarian agencies.[335] Zetter's work helped to displace the dominance of legal positivism and subsequently influenced a generation of research, in which scholars have examined the political

manipulation of the label, its ambiguity, contingency as well as the contradictory effects of its application in public policy.[336]

Despite its insightful explanation of the changing politics of deterrence policy, Zetter's analysis reproduces a set of dualistic claims about historical continuity/discontinuity. In several instances, Zetter posits a historical rupture between a postwar era of refugee protection, in which Western states were faithful to the spirit of the Refugee Convention, and the globalized era of mixed-migration. Zetter claims that current developments in deterrence policy signify a transformational shift from the *protection* to the *exclusion* of asylum-seekers.

> … a most significant difference in the contemporary era is that national governments are the dominant power in forming, transforming and politicizing the label 'refugee', not NGOs and humanitarian agencies as *in the past*…This shift to state agency in making labels for forced migrants has profound implications for refugees. *In the past,* the concept of labelling focused on how humanitarian agencies formed, reformed and politicized the refugee label. *Now,* in revealing the multiplicity of labels for refugees, the concept of labelling points to government agency. *In the past*, the objective of humanitarian labelling was the inclusion of refugees, although the consequences were often destructive. By contrast, state action mobilizes bureaucratic labelling to legitimize the exclusion and marginalization of refugees.[337]

Because of the trend toward deterrence restrictionism and the proliferation of labels for refugees, according to Zetter, forced migration studies must recalibrate the framework of labelling to suit this new historical reality. Under global conditions of mixed-migration, destination states in the global North have seized institutional agency over the refugee label and have transformed and politicized it in the process.

> *In the past* my concern was with the labelling of refugees: *now*, it is about the fractioning of the refugee label and, arguably, about de-labelling refugees.[338]

> … labels are *now* formed (and transformed and politicized) by government bureaucracies in the 'global north', not humanitarian agencies operating in the 'global south' as *in the past.*[339]

However, such dualistic claims about a bygone age of refugee resettlement—what Zetter calls a "formative era of the refugee regime, *predicated on humanitarianism*"[340]—provide a misleading historical account of the international refugee regime and the role of Western states therein.[341] In retrospect, to be sure, the Cold War period included relatively generous periods of refugee resettlement. And Zetter is correct to observe that, the post-Cold War period has witnessed the erosion of the norms of refugee protection. However, as Whitaker has argued, the state-centrism and Eurocentrism underlying claims about a "golden age" of relatively generous refugee resettlement obscures a political agenda driven by Cold War strategic concerns.[342] Similarly, Crisp argues, the notion of a "'golden age' of asylum," is historically inaccurate; "[s]tates and other actors have always been prepared to violate the laws and norms of refugee protection when it suits them to do so."[343] Indeed, strategies to manage and exclude the world's refugees and asylum-seekers are by no means unique to the current era—the strategy of "preventive protection" to contain "would-be refugees" has been employed since the end of the Cold War. [344] Furthermore, these dualistic claims engender a second sub-set of claims. Zetter argues labels are now constructed in the global North by states. However, it is an established fact that the international refugee regime was made by Western states in their interests. In this regard, institutional agency has *always* been concentrated in the global North; and as Chimni cautions, one should avoid "sharply contrasting the role of humanitarian agencies and western state policies" in the analysis of forced migration.[345]

While I seek to reformulate Zetter's conceptual framework of labelling, there are subtle areas of emphasis that distinguish my approach from his. Whereas Zetter seeks to analyze the shift in the politics of deterrence policy at the level of *institutional agency*—through an examination of *who* controls access to asylum and the refugee label—by contrast, I locate these changes at the level of *governmental rationality*. By shifting the focus to *how* forced migration is managed and

thereby analytically specifying this historical shift at the level of governmental rationality, I seek to avoid ahistorical claims about discontinuity that characterise refugee and forced migration studies, and some of the literature that analyzes anti-smuggling policy as a historical rupture toward a politics of exceptionalism. To remedy this gap in the conceptual framework of labelling, I turn to critical migration studies.[346] While it shares many concerns about labelling and the effects of categorization, my reformulated version uses critical migration studies to remedy these flaws in Zetter's initial framework. For the purpose of my framework, this body of literature offers several Foucaultian insights that can be applied in the study of anti-smuggling policy. Simply stated, the value-added of this supplementary literature is its *historical* and *international* focus—a long-term and macro-orientation that tends to be absent in refugee and forced migration studies.[347]

As Chimni contends, if proponents of forced migration studies are going to provide a meaningful alternative to the legal fetishism prevalent across refugee studies, it must reject the "internalist explanation"[348] that attributes responsibility to states and populations in the global South and fails to account for the role of the global North in precipitating forced displacement. To avoid the traps of an internalist explanation, scholars in refugee and forced migration studies should look to other fields. As Malkki argues, IR and security studies offer a "view from above," an "administrator's gaze"[349] that engages with the international politics of forced displacement. This international perspective produces a different form of knowledge than conventional (i.e. anthropological) understanding of refugees as a "problem for development," which factors in the power and role of states and IOs; instead, it situates forced displacement in a "critical history of the world system."[350] While any explanation of state responses to forced migration must take into account the structure of the international system, critical migration studies offer useful correctives to IR and security studies, on the one hand, and refugee and forced migration studies, on the other

hand. Critical migration studies provide the knowledge and conceptual tools to analyze the contingent intersection of anti-smuggling policy with the governing rationality of migration management, which emerged simultaneously in the aftermath of the Cold War. Thus, to remedy the gaps in the literature scanned so far, I turn to critical migration studies, which examines the international politics of migration management using a Foucaultian analytics.[351]

1.5 Critical migration studies

For scholars in critical migration studies, the regulation of smuggling continues the historical project of controlling human mobility and criminalizing unauthorized movement. Though he never examined migration, many scholars use a Foucaultian approach to investigate the Western 'art' of governing migration genealogically. In this view, the emergence of national government and "governmental power" is linked to the discovery of 'society' as a new social reality and thus the emergence of a new object of governance—the population. For Foucault, this historical process was coextensive with the rise of a new governance rationality in which the focus of political authorities shifted from dominance over territory as an end-in-itself to the management of the population as the primary objective of political power.[352] Scholars in this tradition have conceptualized "the international government of populations,"[353] the "governmentality of immigration"[354] and the "transnational" and "global governmentalities" of migration management.[355] These works historicize the shifting practices to govern human mobility over time and examine contemporary modes of constituting migration flows as governable. In marked contrast to critical scholars in refugee and forced migration studies, such as Chimni,[356] the management of migration cannot be reduced to the continuation of "the old games" of Western imperialism.[357] For Hindess and others using a Foucaultian approach, the international management of migration is distinctively "neoliberal" and "postimperial" in that it operates

through the active solicitation of governments in the Global South, through political and financial inducement, rather than coercive imposition.[358] In this view, the international management of populations is a long historical process of social ordering marked by the displacement of the imperial division between citizens, colonial subjects and non-citizens by a "post-imperial globalization of citizenship," in which populations of decolonized countries are constituted as autonomous subjects, through an indirect practice of neoliberal 'good governance'.[359]

For scholars in critical migration studies, the attempt to manage foreign populations must be historicized as a constitutive practice of national 'government', an authority consolidated near the end of the nineteenth century.[360] The rise of the nation-state and the principles of sovereignty, citizenship, territory and rights engendered a political concern with 'foreigners' and the regulation of movement. When the nation-state emerged as the universal model of political community, governments started to codify membership status in law and regulate employment for citizens, through a variety of practices such as the production of identity and travel documents.[361] States, in short, needed ways to distinguish their population from non-citizen others.[362] Thus, the existence of states as territorially sovereign nations depends upon their capacity to maintain borders between them and regulate the movement of people within and across states.[363] With the formation of the international system, the nation-state—states of and for a particular bounded nation—became the organizing principle of the international system. Consequently, migration became an exceptional activity to be regulated.[364] With the formation of the global system, states consolidated territorial authority and monopolized the right to regulate movement within, across and between territorial borders, a historical process that was intrinsic to the constitution of sovereignty.[365] In this sense, the "effects of rendering the global population governable by dividing it into subpopulations consisting of the citizens of discrete, politically independent and competing states" not only

worked to regulate the "conduct of states" but to constitute a "dispersed regime of governance," a governing rationality 'above' states in which practices of population management maintain and reproduce the global system's universal property of sovereignty.[366] In this view, the rationality of neoliberalism is conceptualized as an art of international government in a postimperial world order, in which post-colonial states are governed through modes of self-governance.[367]

Critical migration studies offer a Foucaultian approach that examines the governmental rationality[368] within which policy issues related to migration are constructed as political problems—what Foucault called problematization. The construction of forced migration as a problem of political order can be analyzed through a critical inquiry into the policies that are "both conditioned by and manifestations of these problematizations."[369] In this view, anti-smuggling policies of migration management are crucial to the problematization of migration, that is, "the construction of both 'problems' and 'solutions'" that provide the "cognitive framework" for our understanding and governance of migration.[370] Discourses of migration management structure our perception of problems and the solutions deemed apparently rational and legitimate, and in this regard, "categories and discourses" make migration "knowable" and therefore governable.[371] Anti-smuggling policy is shaped by the false binaries and dichotomizing assumptions of migration management, which "attempt to put mobile people in categories, or boxes, to better define the treatment they should receive."[372]

For Soguk, refugee problematizations are the outcomes of "practices of statecraft" that "normalize" forced displacement into "amenable and manageable problems."[373] Political actors frame forced displacement through a state-centric governance discourse, as a "set of distinct questions or problems for which solutions could be formulated without drastically transforming the state-oriented logic" of the international system.[374] In Soguk's analysis, the "normality

effect"[375] of these discursive interventions renders migration manageable according to state-centric epistemological criteria. Similarly, in her critical analysis of trafficking in persons, Aradau highlights the effects of anti-trafficking discourses. For Aradau, the problematization of trafficking makes it governable.[376] Problematization can be described as:

> … a truthful and legitimate form of representation and the interventions associated with it. Representations form the object they depict and purport to tell the 'truth' about what is represented… Knowledgeable discourses represent, and in this sense constitute, human trafficking as an object of knowledge. They confer particular identities and agencies on different actors (the trafficked victim, the migrant, NGOs, police, etc.) and make identifiable problems to be solved (the prevention of trafficking, of illegal migration).[377]

Scholars in critical migration studies analyze the problematization of forced migration in terms of governmentality—a new rationality or art of governing flows of people "'in the self-interest of' and 'with the help of'" migrants themselves.[378] In this view, anti-smuggling policy can be analyzed as a practice of migration management, in terms of how it subjectivizes migrants through self-disciplining practices. From this perspective, anti-smuggling policy embodies an ambivalent diagnosis of migrant smuggling as both a security problem and a humanitarian dilemma, which, in turn, reflects the "duality"[379] of migration management. In this rationality of migration governance, the imperatives of security and humanitarianism, control and protection, deterring threats and saving lives, blur together in a pre-emptive style of governance.

The rationality of migration management is based on a logic of pre-emption, which makes a self-conscious appeal to the imagination in its anticipation of worst-case scenarios.[380] As D'Aoust puts it, the disciplining of migration according to managerial criterion rests on a logic of pre-emption, which enables action in the present in the face of incalculable and unknown futures. Pre-emption requires immediate action 'now' in the present, "'ahead of time' and 'before'" arrival at the actual border in order to avoid potentially dramatic social changes."[381] "The development of visible and traditional forms of coercion," as Pécoud argues, "relies on the disciplining of (current

and future) realities, the construction of threats and the elaboration of the geopolitical world views that underlie them."[382] Instead of (or in addition to) the violent coercion of migrants, by moulding the agency of prospective migrants, migration management operates 'through' migrants themselves, by cultivating the self-adherence to rules and norms of well-managed migration. As D'Aoust, Geiger, Hastie, Lui, Pécoud, Walters and others contend, many obvious parallels exist between the rationality of migration management and Foucaultian accounts of neoliberal governmentality. Indeed, migration management's logic of pre-emption shares many similarities with techniques of governmentality, or "mechanisms of security," which, according to Foucault, seek to manage "circulation" and therefore differ from juridical systems of sovereignty in their constitutive orientation towards the future, the aleatory and the uncertain.[383] For this reason, this growing body of scholarship traces the emergence of a new "governmentality of transnational mobility," which blurs both the distinction between coercion and protection, on the one hand, and the boundaries between the interest of states and the interests of migrants themselves, on the other hand.[384]

The rise of governmentality and the concern with the population coincided with the creation of new governing technologies invented to "discipline" the mobility of foreigners across territorially sovereign borders.[385] Here, the term "disciplining" signifies the heterogenous practices through which governments seek to regulate the conditions of possibility for safe and orderly migration—practices that transform an otherwise disruptive phenomenon into a manageable and orderly process, governed in accordance with technical standards and norms.[386] Disciplining subtly influences the decision-making processes of prospective migrants and would-be refugees and constitutes their subjectivity as rational and autonomous actors. Disciplining, in this sense, works by constructing migration policy in ways that appear to "govern through freedom" in the

Foucaultian sense.[387] Disciplining operates on domestic and international registers. On a domestic level, governments regulate the conduct of individuals and "discipline" their population through a range of intermediaries. These include educational and religious institutions, prisons, social assistance programs and so on. Whereas on the global level, unilateral actions—or even actions of a powerful group of states—cannot establish a "disciplined, well-managed mobility" without more coordinated action and multilateral cooperation from subordinate actors.[388] The conduct of less powerful sending and transit states, by entering into multilateral governance arrangements, can be manipulated by more powerful states in their national interests. In this regard, as Pécoud argues, disciplining takes place not only domestically. It also occurs in the interstices between states—in a "grey zone" of global migration governance in which states, in partnership with IOs and other non-state actors, conduct the conduct of affected states and migrant populations in the global South.[389]

Critical migration studies directs scholarly attention to the productive power of migration management and the ways in which anti-smuggling, anti-trafficking and other policies conducted in the name of "anti-policy" obscure their depoliticising effects.[390] Migration management, it must be recalled, came into being in response to the need to counter the "over-problematization" of forced migration in the post-Cold War period.[391] Since its ascendance as a governing rationality in the early 1990s, the concept spread across national, regional and global scales. Guided by the principles of a "regulated openness" toward economically beneficial flows, the maintenance of a restrictive attitude toward self-selected migrants, as well as a commitment to more coherent national immigration laws, migration management aims to make migration control more effective and efficient through "co-operative management" and the promotion of international legal and normative frameworks.[392] In contrast to the reactive, unilateral mode of migration control,

migration management designates a comprehensive, pre-emptive and multilateral style of governance, one based on the objective of making migration more orderly, humane and regular—ostensibly for the benefit of all.[393] Migration management therefore represents a new account of migration, what it is and ought to be and by extension, what it should not be—irregular, inhumane or disorderly.[394] It emerged in response to the demands of governments, experts and IOs, in the belief that a global approach was required, much like the multilateral governance arrangements that emerged after the Second World War.[395] As Geiger explains, migration management displaced the debate about the politicisation of asylum from the deliberative sphere of liberal-democratic politics into the bureaucratic realm of experts, as a technical problem to regulate according to international norms and best-practices.[396]

Critical migration studies offer a way to situate the rise of anti-smuggling policy in relation to changes in the rationality of migration governance. The "rhizomatic quality" of anti-smuggling policy, like other practices of migration management, enables universal norms, best-practices, concepts and so on to infiltrate new political spaces in contingent ways.[397] And while migrant smuggling existed in various forms throughout history, anti-smuggling is a relatively recent development in the international politics of forced migration. Since the adoption of the Anti-Smuggling Protocol, the international community, led by a coalition of wealthier destination states, has redefined a humanitarian phenomenon into a problem for migration management. As a result, today migrant smuggling is cast as a problem to fight *against* and to combat through anti-smuggling policy. Despite its claims to provide an impartial assessment in the interest of protecting the smuggled, as scholarship in critical migration studies demonstrates, the reframing of migrant smuggling in anti-smuggling policy is not merely a rhetorical shift. On the contrary, as explained by Walters, the moment a political phenomenon is recast in the depoliticized terms of "anti-policy"

suggests that a transformation in the "methods" and "presuppositions of governance" is underway.[398]

Finally, having described the various literatures that informed my approach to migrant smuggling and the analysis of anti-smuggling policy, the next section outlines my reformulated framework of labelling in greater detail.

1.6 Labelling, classification and categorization: Toward a reformulated conceptual framework of labelling

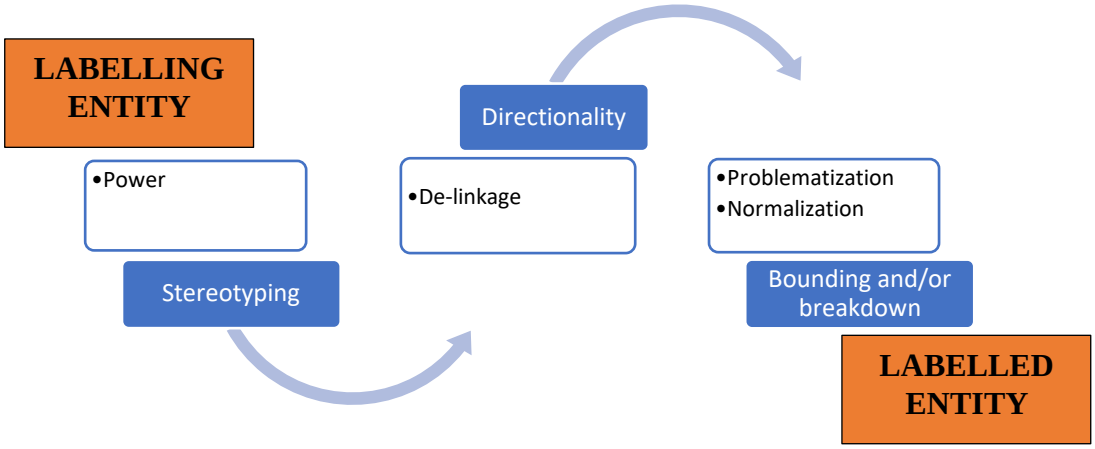
The study of labelling is not new. As is well known, labelling theory originated in studies of deviance in the disciplines of sociology and criminology. Its formal development was linked closely to the rise of social constructivism and symbolic interactionism, Goffman's frame-analysis[399] and the study of stigmatizing classifications. It contains a number of obvious affinities to other strains of social theory.[400] In the mid-1980s, labelling theory was imported into development studies. Wood, Schaffer, Zetter and their collaborators reformulated it to examine the politics of labelling and donative discourses of development policy. [401] Over time, the concept of labelling was popularized in refugee and forced migration studies by Zetter and others.[402]

A framework of labelling does not provide a unified approach or general theory. To paraphrase Hacking, there is no "general theory" of labelling; every label "has its own history."[403] In other words, labels are localized, intersubjectively negotiated and context-specific. Nonetheless, no social process is so unique as to preclude the possibility of analytical generalization. Indeed, there are identifiable characteristics of labelling that can be abstracted from particular instances to reformulate the framework of labelling. To analyze the power of labelling and enhance our understanding of its role in anti-smuggling policy, I bring together critical insights from labelling theory with IR and security studies, refugee and forced migration studies and critical migration

studies. Taken together, these fields contain a plethora of insights about labelling and its role in ordering social action. And yet, there has been little scholarly dialogue between these bodies of literature. This is surprising because these bodies of work appear to share a range of epistemological commitments and methodological concerns.[404] Despite these areas of theoretical convergence and conceptual overlap and their relevance to the analysis of migrant smuggling, there is little to no interaction between these areas of research. While labelling theory has been central to the development of refugee and forced migration studies, to date, it has been underutilized in the analysis of anti-smuggling policy.

To address this lacuna, I tap into the synergies between these literatures and assimilate their insights within a conceptual framework of labelling. Schematically, my framework focuses on the following elements of labelling: (1) *power*, (2) *stereotyping and de-linkage*, (3) *dynamism, directionality* and *scale*, (4) *problematization/normalization*, (5) *bounding* and/or *breakdown*. Despite significant changes in international migration since the formulation of earlier labelling theses, the conceptual framework of labelling and the three axioms identified by Zetter[405]—the construction, transformation and politicisation of the refugee label—hold significant explanatory power in the analysis of anti-smuggling policy. The power of bureaucratic labelling is evident in the context of anti-smuggling policy, in which smuggled asylum-seekers are subject to a range of stigmatized sub-categories that shape their identities and delegitimize their claims to refugee status.

Figure 1. A reformulated conceptual framework of labelling



The theoretical literature on labelling begins with a common refrain: labels are indispensable. Social interaction requires labelling—it is an inevitable feature of language, communication and human experience.[406] It is therefore an essential element in policymaking and political discourse.[407] The decisive issue, then, is not whether we label people, but how—"which labels are created, and whose labels prevail to define a whole situation or policy area, under what conditions and with what effects."[408] In this regard, labels are not only indispensable. They are also inadequate. Labels often fail to accurately depict the complexity of their referent object. Despite the ambiguity or disagreement of the situation they seek to describe, labels attempt to be "absolute" and not relative,[409] "mutually exclusive" and "complete" in terms of classification.[410] Through categorical distinctions, labels simplify definitions of status and need and limit ambiguity as much as possible, for the sake of efficient management.

Claims about the indispensability and inadequacy of labels follow directly from a social constructivist ontology, which questions the inevitability of the status quo.[411] In this view, labels are not just objects of ostensive definitions. In other words, labels do not represent pre-existing objects 'out there', independent of human observation. Labels, categories and expert knowledge shape the identity and thus structure the behaviour of those designated. Social reality in this sense

is conditioned by the labels applied to individuals, actions and groups. Labelling can affect human behaviour and the ways in which people are understood and governed, which results in complex feedback loops with existing systems of categorization.[412] In this regard, labelling is not just a fundamentally social process. It also serves an instrumental political purpose. As Schaffer, Wood, Zetter, Moncrieffe and others have argued, labelling is not simply evidence of power. First and foremost, labelling describes a *relationship of power* "in that the labels used by some sets of actors are more easily imposed upon a policy area, upon a situation, upon people as a classification than those labels created and offered by others."[413]

Through labelling, particular interests are represented as universally valid via the bureaucratic rationality of the state. While labels appear impartial or technocratic, far from being politically neutral, they are shot through with power relations. Labelling is therefore political, not only in the narrow sense, i.e. connected to political decisions and policymaking, but also in terms of its constitutive effects on social reality. It is an "act of politics" involving conflict and authority, one that produces and sustains power relations between labeller and the labelled, in which various political authorities, including the state and social science, occupy central roles.[414] "The authors of labels," are implicated in the exercise of power, in that they set "the rules for inclusion and exclusion," determine eligibility and define qualifications for access to resources.[415] Labels in this sense denote unequal forms of privilege and subordination in relation to human mobility. As Massey has argued, different social groups occupy distinct social relationships and positions in a hierarchy of "differentiated mobility"— "some people are more in charge of it than others; some initiate flows and movement, others don't; some are more on the receiving-end of it than others; some are effectively imprisoned by it."[416]

As argued by Wood, it is more appropriate to refer to labelling as a process of designation that in turn creates a social structure through which the "parameters for thought and behaviour" are established.[417] The analysis of labelling seeks to uncover the:

> … hidden, insidious dimensions of power, where authoritative, 'scientific' technique is used to de-politicize an essentially political process…through the realization of conformity to labels that indicated the distribution of rights to entitlements.[418]

Labelling illustrates the performative power of discourse in the Foucaultian sense; through the authorization of categorical distinctions, labels actively constitute subjects and objects of policy discourse, which structure political action, condition the behaviour of those designated and shape our understanding of policy problems in contingent ways. Apparently apolitical policy discourse structures the institutions, ideologies and classifications within which "we are socialized to act and think."[419]

The second dimension is *stereotyping* and *de-linkage*. Labelling fosters and relies upon stereotypes that abstract individuals from their socio-historical context. This process of de-linkage interpellates individuals according to a stereotyped identity, based on a set of categorically defined aspirations and needs.[420] Consequently, a unique individual "story" is transformed into a "case," a bureaucratically-defined identity designed to correspond to the categorical assumptions of the classificatory schema that created them.[421] This aspect of labelling is evident in anti-smuggling policy, which stereotypes asylum-seekers according to an interrelated set of binary oppositions that reify the phenomenon of migrant smuggling: legal/illegal, humanitarian/smugglers and victims/perpetrators.[422] As Watson argues, anti-smuggling policy fosters an idealized representation of smuggled asylum-seekers, which contrasts sharply with the victimized status of 'genuine refugees'. In this idealized representation, asylum-seekers must conform to behavioural expectations of the label: in the eyes of political authorities, they are passive victims (and not

participants) of conflict, who are forcibly displaced into refugee camps, where they await state-sanctioned resettlement; the asylum-seekers who exercise agency in their flight to safety and choose to participate in smuggling ventures violate the representation of the refugee as a passive object of forced displacement.[423] For Zetter, the counterpart to stereotyping is control, in which individuals must conform with an institutionally imposed stereotype and the assumptions of the labellers. For instance, the refugee label operates as the normative standard against which all other forms of forced migrants are sorted and measured, evaluated and identified.[424]

Labelling makes it possible for social scientists, policymakers and political elites to provide "de-linked explanations" that function ideologically to attribute culpability to target-groups for their own condition.[425] These de-linked explanations are connected to the productive power of anti-smuggling policy. Anti-smuggling policy conceals the productive power of its interventions, which exercise an "externalization effect" that dehistoricizes, decontextualizes and reframes the problem as an exogenous force that emanates from outside the state—and thus as an "aberration," rather than a historical phenomenon that links past and present.[426] The externalization effect simultaneously mobilizes the state as the provider of protection and absolves wealthier destination states for their role in the production of the conditions under which would-be refugees are forced to move through irregular channels. Instead, anti-smuggling policy externalizes culpability and attributes responsibility to smugglers and asylum-seekers themselves.[427] This "discursive exoneration" of the state for its role in the creation and reproduction of the global market for smuggling is accomplished through the construction of categorical distinctions that attempt to "remove ambiguity regarding the identity and intention of all actors involved in the movement of people across borders."[428]

Third, labelling can be analyzed in terms of its *directionality*, *dynamism* and *scale*. The *directionality* of labelling is closely linked to its source of authority. Labels acquire moral weight and expert authority when they are buttressed by the bureaucratic rationality of the state. This form of authoritative labelling "defines the boundaries of competence" and therefore determines whose labels prevail and with what effects. Labelling in this regard generally occurs from the top-down; it is a "non-participatory" process of designation and identification that involves judgement and discrimination.[429] While it is often a top-down process, intimately linked to authority and experts who impose a 'reality' on the labelled from above, as Hacking's formulation shows, labelling can also be analyzed from below. The expert-produced reality of labelling from above inevitably often runs up against the "autonomous behaviour of the people so labelled, which presses from below, creating a reality every expert must face."[430] Thus, the two vectors of labelling interact in a dynamic and iterative process. Like Hacking, Wood, Shaffer and Zetter emphasize the *dynamism* of labelling and its indeterminate effects on power relations.

Ultimately, the 'success' of labelling is an empirical question. In this sense, the asymmetrical outcomes often associated with labelling are not inevitable. Rather, labelling describes a performative and inchoate process of bounding, in which case-oriented labels may fail to 'stick' and de-linked explanations fall apart. And if people re-assert their stories in the face of the depersonalizing effects of bureaucratic rationality, then "the problem is no longer successfully contained because the separation of case and story collapses."[431] Thus, labels are produced and transformed in the context of contingent "patterns of authority, [which] can change in the course of a struggle" between labellers and the labelled.[432] In other words, authoritative labelling can give way to contestation, in which people resist the labels imposed upon them, as well as counter-labelling, in which people invent or appropriate labels in order to claim rights and access to

resources.[433] The conceptual framework of labelling, in this sense, offers a holistic explanation of the relationship between structures and agents, one which foregrounds human agency, the asymmetry of power relations, the contradictions of labelling and its indeterminate effects.

The *directionality* and *dynamism* of labelling is directly connected to *scale*. Labelling is pervasive and occurs at all levels of human interaction—it is a *multiscalar* practice that occurs at the micro-level of the individual or group. By contrast, what, following Moncrieffe, I call framing, refers to the meso- or institutional level. It describes "how we understand something to be a problem, which may reflect how issues are represented (or not represented) in policy debates and discourse."[434] The analytical distinction between labelling and framing is a matter of degree; instead of micro- and meso- levels of analysis, this conceptual framework analyzes labels (smaller) and frames (larger), in which labels refer to the designation of people and groups according to hegemonic understandings of policy discourse.

Fourth, labels and norms are closely related to the construction of problems in discourse—*problematization/normalization*. Framing displays strong affinities with Foucault's notion of problematization.[435]As argued by Wood, policy problems are constructed and defined in such a way that one label often comes to represent "the entire situation of an individual."[436] Problematization is also a process of "normalization." Labels are a means to "define norms in relation to others who bear similar or different labels."[437] As is well known, for Foucault, normalizing disciplinary techniques operate to classify individuals in relation to the standards of a norm. The norm is constituted in relation to the abnormal in a process of problematization; and in this sense, normalizing techniques of power/knowledge actually create deviancy. As McWhorter argues, normalizing techniques inevitably produce deviant identities, individuals who do not conform and "cannot be assimilated" in an existing disciplinary framework; this in turn provides

the condition to justify the subsequent invention of a set of techniques for identifying those who deviate from "normal development trajectories."[438] In Foucault's definition, problematization was not just a form of representation. It was also a form of intervention, which has a close relationship to standards of normality.[439] For example, the formalization of the refugee category and the emergence of refugee discourse serves as one of the "normality constructing-discourses" of modern statecraft; the "normality effect" of problematization, Soguk argues, describes how the refugee discourse acts as a source of truth and falsity and is thus "instrumental in the articulation of the 'normal' and 'normality'" in the management of forced displacement.[440] The historical usage of the term 'irregular' in the field of migration—which forms the basis for the bureaucratic practices that distinguish regular from irregular movement—is not neutral, and as Nyers argues, rests on a highly charged, normative set of distinctions, in which all that migration labelled as 'regular' is defined in contradistinction to the abnormal, the negative and in relation to unwanted subjects that must be controlled and managed.[441] Labelling, in this sense, illustrates what Foucault calls the "affirmative power of discourse," in which categories instantiate a norm and thereby constitute a "domain of objects, in relation to which one can affirm or deny true or false propositions."[442]

Fifth, labels are intimately linked to the formation and transformation of boundaries—or *bounding* and *breakdown*. Labels "impose boundaries and define categories" in the construction of the social world.[443] "Grouping and classification are all about boundaries,"[444] as Wood explains. Put slightly differently, classification enables cooperation and efficient management. Classifications are boundary objects, that is, "objects for cooperation across social worlds."[445] Refugee discourse is a "boundary-producing" practice, as Soguk argues, that defines group boundaries and differentiates the inside from the anarchic outside.[446] The boundaries, borders and

limits imposed by labels often reflect the attempt to manufacture political settlement in the face of ongoing controversy, a "situation of induced consensus" among contending parties.[447] The formation of boundaries is a tenuous and ongoing process of establishing political consensus through apparently impartial bureaucratic methods. As a result, boundaries may shift or the logic underpinning them can breakdown. When labels function properly, they are largely invisible. However, sometimes the self-evidence of labels is called into question, occasionally by the labelled themselves. Consequently, de-linked explanations lose their authority and capacity to persuade, rationalize and legitimize.

1.7 Conclusion

In closing, in the analysis of labelling, Wood contends that several interrelated analytical exercises are required in the attempt to "democratize the 'which' and 'whose' aspects of public policy labelling."[448] According to Wood, the first step is the act of exposure, which draws attention to the "hegemonic tendencies of policy language" and "the sources of power embodied in labelling."[449] The second step involves the identification of contradictions within the labelling process and opportunities for counter-labelling that arise from such contradictions. Since labelling is inevitable; the third step involves the "production of alternative yet authoritative labels" and thus the attempt to destabilize the monopoly of knowledge held by experts in the context of policy discourse.[450] With this task in mind, this study seeks to understand the construction, transformation and politicisation of the refugee label in anti-smuggling policy. To understand this labelling process and its transformative effects, I begin historically to understand the construction of the refugee label in Canada and attempts by the federal Canadian government to distinguish categorically between migrant smuggling for-profit and humanitarian assistance.

CHAPTER TWO
The construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance

> What's the difference between 500 individually smuggled people on a plane with a fake passport and let's say, in different instances through one smuggler that orchestrated it versus 500 arriving on a vessel. Tangibly it's the same outcome, but viscerally, because the occurrence is so rare to Canada, particularly, and because also the country has a history with boat arrivals, you know, going back to the Indian vessel in the early twentieth-century, these instances in the '80s—it seems every ten years we have something that arises like this. It grabs the attention of the country, the attention of the government, the attention of the media, and there's something about the human struggle and the fact that the people are willing to get on a boat and come across the ocean that merits attention in a different way, even if tangibly it's the same outcome. It's an open question as to whether an approach should differ from 500 irregular migrants versus a boat of people, but you can understand that the governmental response is often dictated by the amount of attention something gets and it's a public arrival. Whereas those 500 individually irregularly arriving migrants don't become part of the public sphere… so it dictates a different response from the government.
> - Interview #26, Senior official, CBSA. July 5, 2016.

2.0 Introduction

Before examining the federal government's response to the *Sun Sea*, this chapter provides an overview of the historical processes that informed the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance. With this task in mind, it examines how the federal government of Canada addressed forced displacement from the Second World War into the present. I focus specifically on the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance during this time. In the overview of the development of Canada's immigration and refugee policy since the end of the Second World War, I chronicle the effects of several 'mass marine migrant arrivals' in the post-Cold War period that resulted in major reforms to Canada's regime of migration management and the emergence of anti-smuggling policy. Through a historical analysis that traces the evolution of Canada's immigration and refugee policy, I examine the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance in a debate that began with the arrival of the *Aurigae* and the *Amelie* in 1986 and 1987 and subsequently informed anti-smuggling discourse over the next three decades.

The debate about the distinction between smuggling for-profit and humanitarian assistance remerged in 1999 with the arrival of 600 smuggled migrants by sea from China. The controversy surrounding this event informed the drafting of the revised provisions on migrant smuggling in the Immigration and Refugee Protection Act, introduced in 2001. Successive revisions to the federal provision—from its establishment in the 1987 reforms, the revisions in 2001 and the 2012 legislative amendments under the Protecting Canada's Immigration System Act—strengthened the link between organized criminality and migrant smuggling and intensified claims about 'bogus refugees'. During this same period, prosecutorial discretion, it was argued, eliminated the possibility of criminalizing humanitarian assistance among asylum-seekers. However, as this chapter shows, the unresolved issue of distinguishing migrant smuggling for-profit from humanitarian assistance remained central to the debate about how to manage migrant smuggling from the late 1980s into the present.

As Bauman explains, the essence of state sovereignty is "the power to define and to make definitions stick" and as a consequence, "everything that self-defines or eludes the state-legislated definition is subversive."[451] The construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance can be understood as an ongoing definitional struggle in federal legislation to remove legal ambiguity concerning the meaning of the offence. In other words, successive legislative reforms emerged out of the perceived failure of existing provisions to 'make definitions stick' in Bauman's terms. Major reforms enacted after each mass marine migrant arrival emerged out of the disjuncture between existing legislative provisions, on the one hand, and the complex reality of migrant smuggling, on the other hand. As this chapter shows, the debate about large-scale arrivals in Canada ultimately pivots on a recurring

question of how to define migrant smuggling and by extension, whether the definition criminalizes humanitarian assistance to asylum-seekers.

To develop my analysis of the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance, the chapter proceeds in four sections. In section one, I highlight the construction of the refugee label in the postwar period and the significance of reforms in the 1960s enacted in response to various domestic concerns, international developments in human rights and crises of forced displacement. The question of how to manage the flow of economic immigration as well as the rising number of asylum-seekers started to take its current shape during this period. In section two, I trace the origins of a rationality of migration management in the 1970s and 1980s, in which the challenge of managing asylum-seekers became central to the debate about legislative reform. I show how the application of stereotypes that define the refugee label and the distinction between smuggling for-profit and humanitarian assistance intensified in the 1980s in the context of growing asylum claims and mounting concerns about the integrity of the refugee system. Section three then turns to an analysis of the transformative effects of two 'mass marine migrant arrivals' in 1986 and 1987, in order to understand the effects of these moments of problematization and their role in the construction, transformation and politicisation of the refugee label as well as the corresponding distinction between smuggling for-profit and humanitarian assistance. These events, I suggest, engendered the emergence of a neoliberal discourse of migration management that cast smuggled asylum-seekers as 'bogus refugees' who challenge territorial sovereignty and undermine the integrity of the refugee determination system. In section four, I conclude with a discussion of developments that occurred in the 1990s. I analyze the significance of the so-called "summer of the boats"[452] to understand how the event informed the drafting of the Immigration and Refugee Protection Act,[453]

in which the term "human smuggling" appeared in federal legislation for the first time. I illustrate that the concern about the integrity of the refugee system resurfaced at the turn of the millennium amid concerns about globalization, transnational organized crime, terrorism and 'illegal migrants'. Through this historical inquiry, I document and conceptualize the emergence of the refugee label and the categorical distinction between smuggling for-profit and humanitarian assistance through an analysis of the events and reforms that led to Canada's current anti-smuggling policy, in which migrant smuggling is constructed as a problem of migration management.

Political debates that have followed 'mass marine migrant arrivals' reveal the ways in which elected officials and bureaucrats wrestled with the issue of how to categorically distinguish between smuggling for-profit and humanitarian assistance. In ways that contain parallels to more recent debates about anti-smuggling policy, during these legislative discussions, the federal government contemplated but ultimately argued against a categorical exemption for the criminalisation of humanitarian assistance. From the perspective of the federal government, it limited their capacity to respond to various situations of aiding and abetting irregular entry. In other words, a categorical humanitarian exemption limited its capacity to control unwanted migration.

2.1 The construction of the refugee label (1950s and 1960s)

"The modern institution of asylum," as Hyndman explains, "is rooted in political geographies of displaced populations during World War II."[454] In the immediate aftermath of the Second World War, growing awareness of civil, political and human rights, embodied in international legal agreements such as the Universal Declaration of Human Rights[455] resulted in the "self-limitation"[456] of state sovereignty and the recalibration of the international norms that govern the treatment of forcibly displaced persons. Because Canada does not border on areas of

geopolitical instability and situations of forced displacement, historically, the federal government rarely dealt with the phenomenon of asylum-seekers fleeing from political persecution in neighbouring countries. As a result, the federal government considered Canada a country of secondary resettlement; asylum-seekers did not register on the federal government's policy agenda, nor that of other like-minded nations, for most of the 20th century. To be sure, both inside and outside of Parliament, historical events raised ethical questions related to asylum and the responsibility of states to provide protection to people fleeing persecution, such as the *Komagata Maru* in 1914 or the *MS St. Louis* in 1939— events, which, as is well known, ended in tragedy. Nonetheless, the problem of distinguishing humanitarian assistance from migrant smuggling for-profit did not register as a problem historically, but not only because of the lack of smuggled asylum-seekers arriving at Canada's shores. But also, because Canada's sovereign right to determine who could enter national territory ultimately trumped the rights of those who sought refuge, regardless of their motivations. At the time, the claim to refugee status—the ultimate "trump card on migration control"[457]—simply did not exist.

During the Second World War, the federal government exhibited little concern with the plight of refugees or forcibly displaced persons. Geopolitical circumstances changed rapidly in the early 1950s, when the issue of forced displacement and political persecution emerged as a central problem for the international community. Attempts to forcefully repatriate Eastern Europeans displaced to Western Europe during the war provided clear evidence of the consequences of forcefully returning individuals to countries of origin in which they faced potential persecution, torture or death. Growing awareness of the plight of displaced persons resulted in a watershed moment in the history of refugee protection—the 1951 Refugee Convention. Under the terms of the Refugee Convention, signatory countries agreed not to return individuals to a country in

Eastern Europe where they might face persecution—what is referred to as the international obligation of 'non-refoulement'. Subsequently, the 1967 Protocol Relating to the Status of Refugees expanded the international obligation for refugee protection beyond Europe to address "new refugee situations"[458] that fell outside of the limited geographical and temporal scope of the 1951 Refugee Convention.[459] I detail this history because the problem of migrant smuggling must be understood in the context of Canada's international obligations that emerged during the postwar period, which constrain anti-smuggling policy in the present. As Senator Jerahmiel Grafstein cautioned during the Senate debates on Bill C-84 after the arrival of the *Aurigae* and the *Amelie*, "Canadians do not want history to repeat itself" with respect to boat arrivals of asylum-seekers—what is more, Canada is obliged by various international agreements to not turn back a refugee without due process, particularly to countries where they face political persecution.[460] Those who seek refuge in Canada, including those who arrive by sea without authorization, the Senator warned fellow legislators, must not face the prospect of "refoulement."[461]

The postwar period was explicitly exclusionary toward those in pursuit of humanitarian protection. The federal government responded to the problem of displaced persons with restrictive, reactive and short-sighted temporary measures throughout the 1950s.[462] The 1960s, by contrast, marked a period of major reforms around admissions criteria in which the rights accorded to immigrants and refugees to Canada came into existence. The emergence of liberal human rights norms in the aftermath of the Second World War encouraged a gradual opening of doors and a cautious liberalization of Canadian immigration and refugee legislation.[463] The growing concern with protection and the slow but steady liberalization and judicialization of Canadian immigration and refugee policy had unintended effects, however. That is to say, it prompted a perceived crisis of governability in which the federal government started to face a growing number of people who

sought entry through the asylum system, in large part due to the absence of viable alternatives and because of protracted situations of forced displacement.

The growing concern with forced displacement in this period is evidenced by a growing archive of statements about the perceived failures of Canada's immigration and refugee policy. Here the question of how to regulate the rising number of asylum-seekers started to take its current shape. This period laid the groundwork for the current asylum system. During this time, the sovereign prerogative to control migration started to conflict with rising numbers of refugee claimants and protection concerns that stemmed from Canada's international obligations, procedural concerns about due-process and the federal government's desire to create an impartial, effective and efficient method for the adjudication of refugee claims, within a liberal rights-based framework, without regard to racial and ethnic criteria—admissibility criteria that historically informed the federal government's immigration policy as well as its previous response to crises of forced displacement.

In 1962, the federal government officially removed the racist and discriminatory grounds for inadmissibility that prevented the entry of non-Europeans through new regulations.[464] These regulatory measures sought to align immigration policy with Prime Minister Diefenbaker's Bill of Rights. The Bill of Rights, introduced in 1960—which subsequently formed the basis for Canada's Charter of Rights and Freedoms enacted in 1982—officially eliminated the White Canada immigration policy. It rejected discrimination based on race, religion, national origin or sex within federal law and government policy.[465] Human rights legislation made federal discriminatory admissions criteria in immigration selection and refugee policy impossible to justify on legal or moral grounds.[466] The longstanding discriminatory provisions were untenable and outmoded in

the context of the human rights revolution and Canada's commitment to principles of equality and non-discrimination at the international level.[467]

In 1966, the Pearson government tabled the White Paper on immigration in order to promote public discussion around the principles and objectives of Canadian immigration and refugee policy. The White Paper marked the beginning of the modern understanding of immigration and refugee policy in which the federal called into question longstanding policies and deep-seated assumptions both with regard to economic and humanitarian migration. Yet, tellingly, it said little about unauthorized migration, or those who "bypass normal immigration procedures." In the section on admissible classes, there is a small subsection on so-called "non-immigrants," the majority of whom simply entered as tourists or visitors. The White Paper briefly mentioned the "problem" and "unfortunate tendency" of some "would-be immigrants to misuse the non-immigrants procedures by entering Canada ostensibly as visitors and then refusing to go home."[468] "The challenge for the future," the White Paper subsequently noted, concerning the "abnormally large number of visitors already here who have sought immigrant status," is to "prevent a recurrence of the problem without restricting the categories of non-immigrants or discouraging genuine visitors from coming to Canada." Whatever the reasons a "non-immigrant" seeks to "bypass normal immigration procedures," it explained, "such irregularities are unfair to the majority who follow the rules and they could result in a *complete loss of control over the number, quality and source of immigrants*."[469]

Thus, in Canada, the debate about unauthorized migration started to materialize around this time. While it did not register as a major problem for the federal government, the White Paper cautions that it may in the future. Significantly, for the purpose of this study, it mentions "the peculiar problem of refugees," a subject which received little public discussion up until this point.

It states the "ordinary standards and procedures applicable to immigrants and non-immigrants" should be "set aside or relaxed" in the case of refugees.[470] For the first time, it recommends separate legislative provisions specifically for refugees and advises the federal government to create financial and other logistical arrangements to resettle refugees, with assistance from international partners, and clarify "the responsibilities of various departments and agencies of government concerned" at the federal level. During this time, although the federal government identified refugees as a distinct category of migration policy within administrative measures, regulations and Ministerial directives, it lacked an established refugee policy and institutional mechanisms to determine refugee status for asylum-seekers.[471] Importantly, the document also recommends that the federal government accede to the 1951 Refugee Convention,[472] a major source of tension within and between the immigration bureaucracy, external affairs and the federal cabinet at the time. Ultimately, Canada did not ratify the Refugee Convention until 1969. The RCMP and the immigration bureaucracy saw the Refugee Convention as an affront to sovereignty that would interfere with the federal government's authority over admissions, border enforcement and deportation; the more internationally-focused department of External Affairs, concerned about Canada's reputation on the global level, sought to overcome this opposition without success throughout the 1960s.[473] Despite their reluctance to address the problem, the federal government could no longer maintain the notion that forced displacement was a passing phenomenon, limited to events in Europe following the Second World War. Indeed, what the federal government called the "peculiar problem of refugees" was no longer limited to persons who had been displaced as a result of "events occurring in Europe before 1st January 1951," as the original Refugee Convention described the phenomenon.

Mounting public concern forced the Department of Manpower and Immigration to reconsider existing immigration and refugee policy. Public debate led to new regulations in 1967.[474] Prior to 1967, the federal government developed and implemented immigration and refugee policy through regulation, administrative procedures and Ministerial discretion. Over time, immigration and refugee policymaking evolved in terms of greater institutionalization and legality. Tom Kent, then deputy Minister, helped to usher in major reforms to immigration and refugee policy which redefined its central objectives. Kent believed the federal government required an objective, non-discriminatory and impartial system to admit independent (i.e. unsponsored) immigrants.[475] The points system came into being with new regulations in 1967, as part of ongoing efforts to align immigration and refugee policy more closely with shifting economic conditions and human rights norms.[476]

In November of the same year, the federal government enacted the Immigration Appeal Board Act. This legislation granted individuals who faced removal the universal right to appeal to the Immigration Appeal Board, on legal or humanitarian grounds. This legislation, along with new regulations around admission, effectively reduced the discretion of immigration officers, on the one hand, and the executive branch of government, on the other hand, in the determination of admissibility for specific persons and groups. The creation of the Immigration Appeal Board "proceduralized and judicialized" immigration and refugee policy to an unprecedented degree and ultimately, these developments encouraged the extension of due-process protections and human rights provisions into other areas of immigration and refugee policy, most prominently within the refugee status determination process.[477] Though it attracted little concern at the time, section 34 of the 1967 regulations permitted visitors to apply for permanent status from *within* Canada.[478] At first, this small regulatory change went largely unnoticed. Soon, however, according to the federal

government, "unscrupulous consultants"[479] advised migrants from around the world to take advantage of this provision, which enabled them to bypass normal immigration admissions procedures in order to apply for landed immigrant status from within Canada. Within two years, according to Hawkins,[480] travel agents around the world advised their clients about this legal loophole. If the federal government rejected the application, applicants could appeal to the Immigration Appeal Board—which, by 1972, had developed a serious backlog of applications from Europe, Asia, Africa, the Caribbean and elsewhere.[481] In 1967, there were roughly 8000 applications and three years later the backlog reached 31,000.[482] Toward the end of the decade, the problem reached what was deemed crisis proportions and so the new federal Trudeau government tried to remedy the problem.[483] It is in these moments of problematization that the beginnings of a technocratic, neoliberal approach to migration governance came into being**.**

2.2 Managing migration in a turbulent world: Adjusting to new global realities (1970s)

The 1970s represented a new era for Canadian immigration and refugee policy, in which a managerial understanding of migration, one that circled around the question of how to regulate migration in a rapidly globalizing world, entered the political imagination. It was not until this period that federal politicians and policymakers began to understand immigration and refugee policy in a new way, according to a different political rationality, as a strategic tool for population management that could address the challenges of unwanted immigration, while enhancing the country's stock of human capital and its economic competitiveness through 'selective' economic immigration.[484] On February 3, 1975, the federal government tabled the Green Paper, A Report of the Canadian Immigration and Population Study,[485] a collection of four documents authored by the government on proposed policies that form the basis for national discussion.[486] The Green

Paper embodied this new beginning in Canadian immigration and refugee policy. Henceforth the federal government started to think about immigration and refugee policy in a new way; as something to manage in an impartial, transparent and principled manner, according to a highly judicialized and institutionalized process. In this regard, the Green Paper is the material embodiment of this emergent rationalization of migration as a complex phenomenon with opportunities, challenges as well as cross-cutting implications for different sectors of public policy. The Green Paper exercise provided the basis for the elaboration of the subsequent Immigration Act of 1976, which came into force in 1978—the general contours of which can be found in the current immigration and refugee legislation. When the new act came into force, it recognized Convention refugees as a class of immigrants that could be selected abroad for permanent residence and resettled in Canada.[487] The federal government subsequently incorporated the rudimentary asylum provisions in the Immigration Appeal Board Act into the new Act and formalized the ad hoc committee that advised the Minister of Immigration on asylum claims. The Refugee Status Advisory Committee (RSAC) advised the Minister on the merits of claims based on a review of written statements given to immigration officers in Canada. The recommendations of the RSAC to the Minister were not subject to review.

The new Act represented a major shift in legislation and law—it was the first to clearly define the principles and objectives underpinning Canadian refugee policy. For the first time, the Act defined refugees as a distinct category instead of an episodic phenomenon to address through ad hoc administrative measures. Though it made no mention of migrant smuggling or related terms, the 1976 Immigration Act introduced an offence to criminalize those who "knowingly" "induce, aid or abet any person to contravene any provision of this Act or the regulations," on conviction by indictment or summary conviction. Despite these developments, the number of

refugees resettled in Canada remained relatively low during this period. However, periodic surges in the number of displaced persons destabilized the international community and the newly established international refugee regime. The number of refugees admitted to Canada increased and declined over the course of the 1970s as a result of temporary resettlement efforts, which came about in response to various humanitarian crises.[488] The number of refugees admitted ranged from a low of 600 in 1971 to a high of 11,000 in 1976.[489] The numbers peaked in 1979 with 27,740 refugees admitted, due to the so-called 'Indochinese' resettlement program, in which Vietnamese refugees represented three-quarters of the overall refugee intake that year.[490]

Since the period of French colonization, individuals have come to Canada for political reasons. Yet, the "curious irony," Lanphier observes, is that a formal refugee policy has only existed since the 1976 Act. This is because, in large part, before the Act, the federal government considered refugee crises as exceptional events to respond to with ad hoc measures:

> … Canada's continuing and sometimes intense involvement with persons who immigrate as refugees required special action of the federal government and the Cabinet. Such political urgencies were considered as non-recurring issues. That a government should establish a policy within which refugee intake would be accommodated was a proposition which dawned only after the waves of post-World War II displacements. Political action slowly but inexorably occurred thereafter... This movement from a nation-centered to an internationally centered commitment developed gradually since World War II.[491]

In the postwar period, Canada's refugee policy evolved from an ad hoc, unilateral and reactive approach to an integral component of Canada's comprehensive regime of migration management by the late 1970s.[492] For most of Canada's history, it is worth recalling, there was no refugee category; the federal government did not distinguish between immigrants and refugees.[493] Before its incorporation into the new Act, the label 'refugee', however, was a flexible category in the early postwar years until the explicit adoption of the definition found in the Refugee Convention in 1969.[494] Before the 1976 Act, "no statutory reference concerning the issue of refugee status

existed" and refugees did not constitute an admissible class for resettlement.[495] Indeed, in Canada, refugees did not exist as intelligible categories of migration governance—they were illegible to existing administrative categories and processing systems. This omission was not because Canadian officials were ignorant of the problem; the federal government, as the Green Paper suggests, was reluctant to incorporate the Refugee Convention definition into domestic law because they perceived it as an affront to the sovereign right to control borders.[496] According to one former senior official, the refugee label was in its infancy; there was little in terms of institutionalized categories for administering refugees abroad:

> We opened up for refugees at that time but there was no category for them. It was all administrative. In '76 you have a class of immigrants as refugees. I remember the first refugee I processed abroad. It was in Belgrade, I was looking in the book and I thought, 'how do I code his visa?' And you know… there was no established procedure. I just had to put the letter 'R' next to the regular immigrant category—to show this person was a refugee—it was only later that we got the rules changed.[497]

Prior to its incorporation within the 1976 Act, immigration officials used the Refugee Convention definition on a provisional basis. The Convention definition served as an operational guideline to identify prospective refugees overseas, including those admitted following the Second World War through administrative measures of order-in-council.[498] From 1973 to 1978, prior to the new Act, a committee of officials within the Canada Employment and Immigration Commission reviewed the small number of asylum claims and appeals of removal orders and then offered recommendations to the Minister.[499] Following the resumption of immigration after the Second World War, the federal government admitted refugees through administrative measures and orders-in-council, which suspended normal immigration regulations and established relaxed criteria for screening and processing.[500] Despite revisionist narratives to the contrary, the selection process was highly strategic and biased in Canada's interests. Following the war, those selected for resettlement, such as Czechoslovakian refugees fleeing totalitarian regimes, were seen as "good

material," that is, young, "able-bodied," well-educated and thus desirable immigrants.[501] Other groups of refugees, such as Hungarians, were selected on the basis of Canada's labour and economic needs; seen in this light, these initiatives were motivated by a "less noble and more pragmatic motivation, namely, Canada's need for additional workers to serve the unquenchable needs of its expanding economy," as evidenced by the fact that displaced persons admitted through orders-in-council were chosen on the basis of skills and occupations.[502]

Throughout the 1970s, then, Canada continued to admit groups of *prima facie* refugees through ad hoc measures of order-in-council.[503] These included, *inter alia*, Tibetans (1971), Ugandan Asians (with British citizenship) ordered deported by Idi Amin's regime (1972-1973), American draft resisters (1971-1972), Chileans fleeing the Pinochet regime (1973-1975), Lebanese refugees (1976-1979) and so-called 'Indochinese boat people' resettled from countries throughout Southeast Asia (1979-1980). During this period, Canadian refugee policy was defined by a "double standard,"[504] in which refugees fleeing communist countries were admitted whereas those fleeing right-wing dictatorships in Latin America were not, including those fleeing Chile following the coup of the democratically elected socialist Allende government and the violent repression that followed. Although the federal government resettled nearly 7,000 Chilean refugees, after considerable public pressure by civil society organisations, the Trudeau government was reluctant to intervene in the situation, even as 50 Chileans took refuge in the Canadian embassy in Santiago, and UNHCR, various Church groups and Canadian civil society organisations pressured the government to admit the Chileans.[505] These groups did not receive the same prompt and sympathetic treatment as European refugees fleeing communist regimes, such as special waivers to bypass and accelerate the normal admissions process. Instead, the federal government refused to relax normal standards of admission.[506] According to Knowles, although the federal government

admitted Chileans fleeing violence following intense pressure from Church groups and civil society organisations, it did so "grudgingly" for fear of alienating their neighbours to the south.[507] The federal government was also reluctant to assist Central American refugees fleeing similar instability and USA-backed proxy wars in El Salvador, Nicaragua and Guatemala, a political bias that endured throughout the Cold War. Canada's apparent reluctance to assist these refugees stemmed from ideological and political preoccupations, since the federal government did not want to be seen as "intervening" in the affairs of the USA, whose strategic and economic interests were in support of capitalist regimes.[508] These instances illustrate that, historically, Canada's motivations for resettling refugees were based on political interests and concerns about sovereign control rather than protection and humanitarian considerations. Canada's subsequent response to the so-called 'boat people' fleeing from Vietnam, Laos and Cambodia, for which it received the Nansen Refugee award, reinforces this skeptical assessment. During 1979-1980, Canada resettled more than 60,000 Vietnamese and Laotian refugees from camps in Malaysia and Thailand; the plight of boat people captured media attention and elicited public sympathy. Mounting pressure from civil society caused the federal government to pursue a more aggressive refugee policy, which included logistical and financial arrangements for private sponsorship, in addition to the government-sponsored resettlement of refugees selected abroad.[509]

These massive resettlement efforts throughout the 1970s made it apparent to government officials that the "old, ad hoc, case-by-case approach" to refugee policy was no longer feasible—a clearly defined refugee policy was required if authorities were to maintain control over large movements of displaced persons, massive refugee movements whose global scope had the potential to undermine geopolitical stability.[510]

Addressing the problem of irregular migration and the growing backlog (1980s)

Asylum barely registered on the policy agenda until the late 1980s. Indeed, throughout the postwar period, Canada defined itself as a country of refugee resettlement; the problem of asylum-seekers was practically non-existent. A relatively modest number of arrivals sought humanitarian protection from inside Canadian territory.[511] Due to the practical difficulties of reaching Canada, asylum-seekers did not seek state protection in significant numbers. However, with the intensification of globalization, technological advancements in transportation and communication, growing global inequality and conflict throughout the global South, Canada's geographical isolation no longer sheltered it from so-called 'new asylum-seekers'. As a result of global forces of displacement, initially, small numbers of asylum-seekers eventually grew to tens of thousands of individuals for whom the refugee system offered the quickest, most feasible and oftentimes, the only option to gain access to Canada and achieve legal and permanent status.

At the beginning of the 1980s, refugee levels started to increase worldwide.[512] A number of reports authored over the course of the decade recommended several reforms. The 'Robinson Report' on "Illegal Migrants in Canada" (1983) and the 'Ratushny Report' entitled "A New Refugee Status Determination Process for Canada" (1984) argued that Canada's refugee system was inefficient, contradictory and subject to fraud and abuse by so-called "illegal migrants."

The Robinson report, delivered to the Minister of Employment and Immigration, Lloyd Axworthy, expressed the view that "illegal migration is a significant problem for Canada."[513] "Even the most perfunctory inquiry into the problem of illegal migration," the report begins, must recognize that "it is a universal problem."[514] A section of the report, "The Nature of the Problem," describes the "deleterious effects of illegals on the economy," their "burden on welfare systems and the failure to pay taxes," what it describes as the consequences of "illegal migration" to

Canada.[515] The greatest problem caused by "illegal migration," according to the excerpt below, is that the federal government's highly selective admission criteria is not applied, which undermines its sovereign right to control borders and regulate entry into national territory:

> These requirements are very real protections to Canadian citizens in ensuring that the immigrant will not readily become a burden on our social and health systems or import a health problem or criminal threat to Canadian society. However, the greatest negative feature of illegal migration to Canada may be its impact on the integrity of our country. The right and duty to control immigration across a country's borders has been described as a universally recognized and fundamental characteristic of a sovereign state.[516]

By the mid-1980s, a combination of geopolitical factors forced growing numbers of asylum-seekers to flee their countries of origin. By 1984, the numbers of asylum-seekers began to accelerate throughout North America and Europe, with spill-over effects in Canada. The number of refugee claimants internationally grew from approximately 1.2 million in the 1960s, to 2.5 million in 1970, to nearly 15 million by 1989.[517]

Canada's policy toward asylum-seekers proved to be the most controversial part of the emergent regime of migration management during this period, which political leaders viewed as the source of protracted bureaucratic problems throughout the 1980s.[518] Throughout the decade, reforms of the refugee system proceeded incrementally, as a result of several reports published and in response to rising numbers of refugee claimants. The question of how to effectively deal with thousands of asylum-seekers—in a legal, humane and orderly fashion—proved to be a significant political issue because the federal government designed the system with much smaller numbers in mind. For example, in 1976, the federal government received a mere 600 asylum claims.[519] These small numbers of refugee claimants, not surprisingly, received scant attention at the time. "Like a number of other states previously isolated from refugee-producing states by virtue of their geographical location," Watson observes, by the mid-1980s, Canada faced growing numbers of refugee claimants arriving by land and air, which triggered its international obligations under the

Refugee Convention that the federal government historically took-for-granted.[520] Although the federal government sought to address the broader problem of refugees in the 1976 Immigration Act—which established a highly institutionalized and judicialized process—the question of how to deal with asylum-seekers continued to go unaddressed.[521] In Senate deliberations to amend the Immigration Act, Senator Finlay MacDonald described the predicament as follows:

> … when the new Immigration Act of 1976 was passed, it was decided to create a specific procedure for the determination of refugee claims. At that time it was not anticipated that Canada would become a country of first asylum, and the procedure that was created was to deal with a very small number of cases, probably less than 300 a year, certainly less than a thousand, with the result that the system we now have in place is very long and very complex.
>
> This was not a problem for several years. It was a problem that grew and fed upon itself as the message went out to the world that by claiming refugee status one could ensure that one could stay in Canada for a long time going through the system.[522]

To address this problem, the federal government created the RSAC to adjudicate asylum claims. Shortly after its creation, this new system proved far too cumbersome to handle the increased number of asylum claims. An enormous backlog of applications quickly developed over the course of the 1980s. Thus, the issue of how to govern this growing backlog of applications in a legal, humane and expeditious manner entered the public debate once again. By 1983, the federal government stated the adjudication of the backlog would take at least three years to complete.[523]

The perception of a crisis of governability intensified after the Singh decision in 1985.[524] The Singh decision—a major victory for the rights of refugee claimants in Canada—extended significant due-process protections to asylum-seekers.[525] Though undoubtedly a victory for the rights of refugee claimants, from the perspective of the federal government, the Singh decision intensified existing backlogs and therefore added additional administrative pressure to the refugee system. After the federal government issued numerous government inquiries and reports, it

introduced a new refugee status determination system in 1986.[526] In the Ratushny Report, the federal government described the context in which the new system was formulated:

> In the past few years, Canada has seen a vast increase in refugee claims. There are several reasons for this. Many countries in the world are experiencing upheavals due to civil war or repressive regimes. Population pressures in the third world have also stimulated massive migration to developed countries ... In 1980, we had 1,600 refugee claims. By 1986, this had increased to over 18,000. This is expected to reach 25,000 for 1987.[527]

Tasked with the creation of a new refugee determination system, a former official involved provided the following account:

> We had a problem with illegal migrants, of which there were a fair number. The question was how not to grind up the system with people who had something other than a protection issue to deal with. And if you arrive at the border in 1985 and were ordered deported you had the right of appeal to the Immigration Appeal Board. It had a statutory limit of ten members. And the Singh decision says they have to have an oral hearing. So, if the Immigration Appeal Board was going to give them an oral hearing, the existing case load would've extended into this century from then. So, we had to find an expeditious model that would fulfill the requirements of fundamental justice.[528]

Less than two weeks after the Singh decision, the federal government released the 'Plaut report,' authored by Rabbi Gunther Plaut, entitled "Refugee Determination in Canada."[529] Plaut's report summarised several different options for a more equitable refugee determination system that included oral hearings, an independent decision-making panel of experts to adjudicate refugee claims, appeal mechanisms and so forth. After the Robinson Report (1983), the Ratushny Report (1984), the Plaut Report (1985) and the Singh Decision (1985), the problem of asylum-seekers and the issue of navigating control and protection concerns became central to the debate about reforming Canada's immigration and refugee policy. Facing a backlog of over 63,000 refugee claimants who, because of the Singh decision, were now entitled to an oral hearing, the federal government provided amnesty—a so-called administrative review—to refugee claimants who entered Canada prior to May 1986.

To avoid opportunities for "self-selection," as a former senior official put it in no uncertain terms, "we had to find a way to limit the number of people who could access the refugee determination process."[530] Reforms to the asylum system that affected the refugee category proceeded slowly over the course of the 1980s. However, this state of affairs changed suddenly in August 1986. The most significant event and catalyst for policy reform, the first 'irregular marine arrival' in the modern period, proved to be the primary impetus behind sweeping reforms to Canada's approach to dealing with asylum-seekers, particularly individuals whose entry was facilitated with the assistance of smugglers.

2.3 Testing hospitality: Distinguishing migrant smuggling for-profit from humanitarian assistance

The Aurigae (1986)

Three months after the introduction of Canada's new refugee determination system, following the recommendations contained in the Plaut report and in the midst of an intense debate about asylum-seekers, another significant event took place: the arrival of the *Aurigae*. This initial event through which the dominant image of migrant smuggling entered the Canadian political imagination occurred in August of 1986. On August 11, 1986, a fishing vessel rescued 155 Tamils from Sri Lanka, mostly men, along with three women and five children, in two unmarked lifeboats off the coast of St. John's, Newfoundland.[531] Captain Gus Dalton, who came across the two 24-foot, fibreglass lifeboats, designed to fit 35 people each, dumped 1500 kilograms of cod and flounder and brought 60 individuals onboard, while securing the safety of the rest of the passengers and alerting the Canadian Coast Guard and other local-liners that were fishing nearby for assistance.[532] Initially, Dalton believed the group had survived a shipwreck, only to learn they had

been deliberately set adrift three days earlier by German Captain Wolfgang Bindel, who commandeered the vessel the *Aurigae* and allegedly received $340,000 for the operation.[533]

According to Amnesty International, at the time, Sri Lanka was not safe for Tamils, who feared violence from the governing Sinhalese majority. According to their annual report in 1986, non-combatant Tamils in the northern and eastern parts of Sri Lanka were the victims of long-term detention, arbitrary killings and disappearances at the hands of government security forces, which engaged in widespread torture of political detainees.[534] At first, upon their arrival on Canadian shores, the asylum-seekers were regarded as bona fide refugees and treated as such. The federal government quickly released the passengers of the *Aurigae* after three days in university residences at Memorial University, with assistance from the Red Cross, after which most subsequently relocated to major urban centres where extensive Tamil communities live.[535] The passengers on the *Aurigae* reported that they initially departed from India and smugglers subsequently set them adrift off Canada's east coast.[536] The federal government released the arrivals on Minister's permits, the B-1 list, which provided temporary landed status and basic social assistance to refugee claimants from certain refugee-producing countries. The federal government established the B-1 list earlier that year—a list of 18 countries, including Sri Lanka, to which refugee claimants would not be returned due to unsafe conditions—to make the refugee system more efficient, expedite claims from 'refugee-producing countries' and effectively address the perceived crisis of governability that allegedly plagued the asylum system. In principle, these measures aimed to manage the growing backlog of refugee claims while simultaneously respecting Canada's international obligations.

Canada's response to the *Aurigae* highlights the role of 'mass marine migrant arrivals' in the construction, transformation and politicisation of the refugee label. It also illustrates the effects

of labelling and the political consequences of de-linking, in which deterrence policy effectively transforms people into legal-administrative objects or 'cases'. The story goes as follows. At first, the asylum-seekers and their personal stories appeared to conform to the refugee label and stereotypes associated with it. The passengers appeared to be passive victims of conflict, forced to find refuge abroad. In this instance, the refugee claimants initially stated that they left from India. However, their possession of the Deutsche Mark revealed that the passengers embarked on their voyage from West Germany in July 1986.[537] National media coverage subsequently raised questions about the authenticity of refugee claims, after the public learned that they lived in West Germany for some time and "travel agents" arranged for each passenger to be smuggled out of the Federal Republic of Germany— considered a safe third country—and into Canada for approximately $2500 USD.[538] A public backlash against the B-1 list quickly followed. The response to the *Aurigae* brings into focus the close relationship between stereotyping and the link between an individual and 'case', as described by Wood, Zetter and other scholars of labelling. In other words, it shows what happens when a unique individual 'story' is transformed into a 'case', a bureaucratically defined identity. In this idealized representation, asylum-seekers must conform with an institutionally imposed stereotype of the refugee label. Concerns about fraudulent refugee claims by so-called 'economic migrants' sparked intense debate about the refugee label and the vulnerability of Canada's refugee system to organized criminal smuggling. In this regard, being labelled a refugee requires conformity; the failure to conform can provoke an immense political backlash, as a former senior official recalled the event:

> … there had never been a more intense public backlash against foreigners than was created by that boat because they purported to be one thing and the press found out they were something else. It was revealed that they came from Germany and not from Sri Lanka directly.[539]

Another official with a first-hand account of the controversy, a former senior official of IRCC, recounted it as follows:

> John Turner, the leader of the opposition, said publicly we should use the Canadian navy to send them back. Particularly after we discovered they were what we call 'Euro-Tamils' because they were in Germany first. So, the old story is, if you mismanage this, the political cost is very high.[540]

The event engendered a neoliberal discourse of migration management in which smuggled asylum-seekers were labelled as 'illegal migrants' who imposed socio-economic burdens on the Canadian welfare state and undermined the integrity of the refugee determination system; which, in turn, the federal government claimed, threatened Canada's capacity to protect 'genuine refugees'. The B-1 list and the release of the refugee claimants on Minister's permits were no longer regarded as evidence of Canada's hospitality or a positive development that reduced the administrative burden on the refugee system; instead, the public and the news media pointed to the measure as evidence of a loss of sovereign control and the untrustworthiness of asylum-seekers that arrived by boat to Canada's shores.[541]

In this instance, the asylum-seekers were re-labelled and subsequently vilified. Stereotyping enabled a de-linked explanation of migrant smuggling that functioned ideologically to obscure and legitimize the development of new anti-smuggling measures. This de-linked explanation in turn reinforced the Canadian state's authority to stymie the 'illegal' entry of asylum-seekers. The alternative possibility, namely, that the refugee category itself—not the passengers on board the ship—failed to conform to the reality of forced displacement was implicitly placed outside the interpretative frame. As Wood argues, in the process of labelling, a category acquires an inner logic in which "specified kinds of behaviour and interaction are demanded" from the labelled.[542] The behavioural expectations of the refugee label are clearly linked to past experience. Did the passengers come directly to Canada or did they transit through a range of intermediary

countries? Were they passive victims of persecution or participants in violence? Not only time, but also geography, are therefore significant components in crafting an individual's experience of forced displacement. Political authorities deployed time and geopolitics in the construction and designation of static identities, such as 'economic migrant', which are established in a state-centric manner on the basis of past experience and "a person's relationship to an actual or potential category of state activity."[543] The separation of what labelling theory calls a 'case' from a 'story' reveals labelling as a relationship of power and not an innocent bureaucratic procedure. In the conceptual vocabulary of labelling, whereas we 'own' our personal story, bureaucratic cases are "possessed by others," such as decision-makers in positions of power and authority. The legal-administrative capacity to separate case from story and to decontextualize personal narratives is central to the authority of labelling; it is an "index of power for the possessor of the case," that is, the state and its administrative apparatus.[544]

A month after the *Aurigae* arrived, the federal government announced a review of the refugee determination system. In response to the *Aurigae,* the Minister of Employment and Immigration, Benoît Bouchard, tabled new legislation to Parliament that introduced more restrictive measures and eliminated the B-1 list, which provided temporary landed status and basic social assistance to refugee claimants from certain refugee-producing countries. Less than a year later, in response to rising levels of asylum claims, in May 1987, the federal government introduced Bill C-55, An Act to Amend the Immigration Act, 1976 and to amend other Acts in consequence thereof (1987). Bill C-55 introduced the concept of "aiding or abetting [a] person or group of persons to come into Canada in contravention of this Act."[545] Furthermore, Bill C-55 proposed stricter eligibility grounds for refugee status, introduced a two-stage, "credible basis" screening to filter out so-called 'bogus' claims, safe third country provisions, an offence for assisting

undocumented migrants and increased detention power.[546] In their description of Bill C-55 in the Ratushny Report, the federal government explained the situation as follows. In these influential reports and statements, the transformation of the refugee label and the emergence of the de-graded sub-label of 'bogus refugees' begins to take shape:

> In the past few years, Canada has seen a vast increase in refugee claims. Canada remains committed to genuine refugees in need of our protection. But many of the refugee claims in recent years have been made by economic migrants. They have been abusing the refugee determination process to avoid immigration selection abroad.[547]

The federal Progressive Conservative government introduced Bill C-55 shortly after the *Aurigae* incident. However, opposition parties stymied the legislative amendment for several months. For some time, it was uncertain whether the legislation would enter into force, because the Liberal party, which held a majority in the Senate at the time, delayed the passage of the bill; by June 1987, several provisions faced serious opposition from refugee advocates and opposition parties who argued that the bill effectively criminalized asylum-seekers and therefore restricted access to asylum.[548] Due to these political dynamics, it was unclear whether the legislation would receive royal assent. However, the political context changed overnight, with news of another boat arrival. The legislation had only received its second reading in the House of Commons by the time a second boat arrived: the *Amelie.* According to a former senior official, "Bill C-55 was halfway through at that time" and the "second boat raised images of god knows how many more are out there."[549]

The Amelie (1987)

The arrival onboard the *Amelie* of 174 refugee claimants on July 12, 1987, mostly Sikhs originally from India, at a time of fiscal austerity, neoconservatism and a renewed concern about security threats and the integrity of Canada's refugee system intensified the debate about migrant

smuggling and how to distinguish it from humanitarian assistance. According to Amnesty International, at the time, Sikhs and members of outlawed Sikh organisations in Indian faced arbitrary arrest, detention, torture, extrajudicial killings and other forms of political persecution under the country's terrorism legislation, as evidenced by the Indian government's violent crackdown against Sikh individuals at Sikh religious sites, such as the Golden Temple in Amritsar, India, in 1984.[550] In 1984, the Congress party incited anti-Sikh riots and violence in Delhi, where close to 3000 people were killed, after three Sikh bodyguards of Prime Minister Indira Gandhi were charged with her assassination.[551] Violence continued throughout the decade in response to Sikh separatist movements and ethnic tensions and religious conflict within the country.[552]

The arrival of the *Amelie* must be historicized in this geopolitical context of civil unrest and political persecution. The ship arrived less than a year after the *Aurigae* radically changed the context in which Parliament deliberated Bill C-55. It caused a major controversy in which the federal government recalled Parliament from the summer session for the second time in history. Parliament reconvened to pass Bill C-55 and a tougher supplementary piece of legislation, Bill C-84, An Act to Amend the Immigration Act 1976 and the Criminal Code in Consequence thereof (1987), to respond to migrant smuggling and prevent abuse of the refugee system by organized criminal groups.[553] Bill C-55 responded to concerns about illegitimate refugee claims by replacing the Immigration Appeal Board with the Immigration and Refugee Board (IRB), a quasi-judicial panel of experts, created to adjudicate and determine the access of asylum-seekers to the refugee status determination process and thus the refugee label. Bill C-84 authorized the interdiction of ships, expanded powers of search and seizure, conferred extended powers to detain undocumented persons considered criminal risks and deport arrivals considered inadmissible for security reasons, increased penalties for organizing "illegal entry" and introduced carrier sanctions; it also included

a provision to turn back ships at sea, though it was eventually removed.[554] According to a senior former official, Bill C-84 "gave us the power to do refugee determination on the ship, to do all sorts of terrible things."[555] Significantly, Bill C-84 did not attempt to explicitly distinguish between smuggling for-profit and the facilitation of clandestine migration for humanitarian reasons. During the Senate debates of Bill C-84, in the second reading in September 1987, Senator Finlay MacDonald described the purpose of the legislative amendment:

> This bill is designed to meet an urgent situation. It has been drafted to hit hard at a new type of criminal activity, which is the large-scale smuggling of human beings... This legislation, together with a bill yet to come before us, Bill C-55, will provide a comprehensive, long term solution to the difficulties and abuses currently surrounding the refugee determination process. They will enable us to concentrate on helping those refugees truly in need of our protection. I am convinced that this legislation is essential if we are to respect our humanitarian commitment towards refugees and if we are to prevent possible frauds against Canadians or Canadian law.[556]

While ostensibly designed to combat migrant smuggling, these companion pieces of legislation functioned to restrict access to asylum and the refugee label. This is because they "make it more difficult for a person to make a refugee claim in Canada, and, indeed to enter Canada in the first place."[557] The *Aurigae* and the *Amelie* functioned as moments of problematization that strengthened the discursive, institutional and legal linkages between 'bogus refugees', transnational organized crime and terrorism in Canada. In effect, these events catalysed major legislative changes. The arrival of the *Amelie* and the accompanying legislative debates occurred in a specific historical context, following the 1985 *Air India* bombing, a contextual factor that facilitated the framing in ways that implied a connection between Sikh terrorism and suspicions about the passengers onboard the *Amelie*. Aiken, Whitaker and Pratt[558] have illustrated the ways in which the association of criminality and terrorism with the 'self-selected', economic migrant came into being in the late-1980s, when refugee claimants from the global South displaced the Soviet exile as the common representation of the refugee—one that no longer provided

strategically useful ideological ammunition in the Cold War. According to a senior official, concerns about mixed flows and distinguishing between 'economic migrants' and 'refugees' "absolutely dominated the interest of senior people and of politicians" in the late 1980s, during his time as Director General, to the extent he referred to himself as the Director General of "unfounded refugees" because "that's where all your attention is."[559] Accordingly, he noted:

> It's the dilemma of government to separate the wheat from the chaff in a way that tries to make sure the line between the two is properly maintained—that presented more challenges than anything you can imagine, particularly with the legal framework and volume.[560]

By the 1990s, the neoliberal framing of boat arrivals as 'bogus refugees' was hegemonic. The *Amelie's* arrival, in this sense, crystallized a range of neoliberal concerns about the negative challenges associated with irregular migration in a globalized world. Legislative changes developed in response to the arrivals institutionalized the problematic depiction of migrant smuggling as a threat to the integrity of the refugee system and the plight of 'genuine refugees' for years to come.

Throughout the live archive of anti-smuggling discourse, one encounters the same ideological refrain and discursive delegitimization of asylum-seekers that arrive with assistance from smugglers. In this process of problematization/normalization, by delimiting the behavioural expectations for the 'ideal' refugee and defining the normal way of achieving refugee status—through legally sanctioned resettlement programs—these anti-smuggling discourses and legislative actions simultaneously define that which is abnormal, in this case, the deviant behaviour of the 'self-selected', irregular migrant. In the Canadian context, historically, the discursive power of the genuine refugee, Pratt explains, is maintained and reproduced in contrast to the figure of the undeserving, fraudulent claimant who jumps the 'queue' and bypasses normal modes of achieving protection—secondary resettlement.[561] Under the terms of the Refugee Convention, however,

there is no queue—asylum-seekers may enter a country 'illegally' in order to claim refugee status.[562]

Here the "Convention and conventional interpretation"[563] of the refugee label served as a yardstick against which all other claims of forced migrants were evaluated. Through the attribution of economic aspirations and fraudulent motivations to refugee claimants who arrive irregularly by sea, political leaders constructed and politicized the refugee label and legitimized the mobilization of institutional resources to prevent their arrival. As part of a new "managerial approach" developed in response to the unpredictability of large-scale arrivals and the socio-economic risks associated with such events, Bill C-55 and Bill C-84, as Pratt argues, "linked the categories of bogus refugees and criminal terrorists into a new, hybrid object of governance," the smuggled asylum seeker, who embodied the challenge posed by globalizing forces such as transnational organized crime.[564]

After two years of debate, Bills C-55 and C-84 came into effect on January 1, 1989. These reforms sought to accomplish the following objectives:

> to preserve for persons in genuine need of protection access to the procedures for determining refugee claims;
>
> control widespread abuse of the procedures for determining refugee claims, particularly in light of organized incidents involving large-scale introduction of persons into Canada to take advantage of those procedures;
>
> and to deter those who assist in the illegal entry of persons into Canada and thereby minimize the exploitation of and risks to persons seeking to come to Canada; and
>
> to respond to security concerns, including the fulfilment of Canada's obligations in respect of internationally protected persons.[565]

Although it retained the initial wording found in the 1976 Immigration Act, Bill C-84 amended the offence, referred to as "organizing entry into Canada." It added the qualifying clause "of a person who is not in possession of a valid and subsisting visa, passport or travel document

where one is required by this Act or the regulations."[566] However, it bears repeating that this provision effectively criminalizes refugee claimants for arriving without proper documentation. Discriminating against refugee claimants for so-called 'illegal entry' is prohibited under the Refugee Convention.[567] Through these amendments, the federal government also enshrined carrier sanctions and introduced other provisions to regulate migrant smuggling, criminalized assistance to irregular migrants and imposed heavy fines and prison terms for the facilitation of large-scale arrivals. In keeping with the original legislation, however, under the revised provisions, the federal government still required the consent of the Attorney General to begin criminal proceedings.[568] While some members of Parliament worried that the introduction of Bill C-55 and Bill C-84, as stated during the Senate debates, "opened the door to the prosecution of church and humanitarian groups if they assist refugees,"[569] others argued that the amendments did not "create some new ground of prosecution for that which church and humanitarian groups have been doing for years; namely, presenting refugee claimants for examination."[570] In a legislative committee debate about Bill C-84, Minister Benoît Bouchard explained the perspective of the federal government with regard to defining migrant smuggling and distinguishing categorically between smuggling for-profit and humanitarian assistance. Because the concept of migrant smuggling was only vaguely understood at the time, political officials debated how to define smuggling for-profit to categorically exclude humanitarian acts while addressing loopholes that allowed the "unscrupulous" to act with impunity:

> We have all pressed lawyers and legislative drafters to consider alternatives to the current wording. We looked at phrases such as religious group, profit, reward, smuggle and clandestine entry, but every possibility creates loopholes and undermines our ability to prosecute the unscrupulous.[571]

Taken together, these reforms enacted a new refugee determination system through the creation of the Immigration and Refugee Board and attendant regulations. This legislation

established the refugee determination system that exists today, defined by the institutionalization of a quasi-judicial panel with an oral hearing that adjudicates refugee claims. Many of the provisions to address the organization of "illegal entry" informed the current federal immigration and refugee legislation, the Immigration and Refugee Protection Act, discussed below.

2.4 Managing irregular migration and the challenges of globalization (1990s)

The debate about irregular migration and the abuse of the refugee system by organized criminal smuggling networks intensified in the 1990s. A federal government document, "Managing Immigration, A framework for the 1990s,"[572] crystallized the concerns of the era. It outlined the importance of maintaining the integrity of and public faith in the refugee determination system:

> This means sorting out refugees from those who are merely searching for a 'fast-track' into Canada. Efficient measures for assessing refugee claims and for removing people whose claims are rejected are needed to discourage abuse of the system. Without such measures, our ability to help people who need Canada's protection will be undermined. If our immigration and refugee programs are to remain effective, Canadians need to be assured that they are well-managed and effectively controlled.[573]

During this time, there is a proliferation of a securitising discourse of migration management, shaped by the concerns about abuse of the refugee system by "criminals, terrorists and others who might jeopardize the safety and well-being of Canadians."[574] By the early 1990s, as Pratt explains, the figure of the fraudulent refugee claimant "represented the archetype of undesirability,"[575] which the federal government instrumentalized in support of claims about the challenge posed by migrant smuggling:

> In recent years we have seen the development of more organized, highly professional criminal networks intent on circumventing international and national law…We must ensure that criminals, terrorist and smugglers do not have the opportunity to take advantage and increase pressures on our immigration system.[576]

According to the federal government, while the "humanitarian, social and economic objectives" of the 1976 Immigration Act remain the same today "as they were in 1976," the document subsequently explains, the "circumstances in which we must pursue these objectives have changed."[577] In other words, the basic objectives of the deterrence paradigm remained intact. However, the context in which the federal government pursued these competing objectives had changed dramatically in a globalized world of heightened human mobility.

> The frequent, unpredictable, large-scale movements of people taking place today challenge our ability to maintain effective control over our borders, and to manage immigration effectively to meet Canada's needs.[578]

The text emphasizes how asylum-seekers abetted by smugglers supposedly undermined the federal government's capacity to help 'genuine refugees'. The passage below provides a paradigmatic formulation of how political authorities rationalized anti-smuggling efforts vis-à-vis the emergent anti-smuggling discourse and its false oppositions of legal/illegal:

> But a growing number of people who are not refugees attempt to abuse our refugee determination system as a way to avoid normal immigration rules and procedures. This undermines not only the integrity of our immigration program, but our ability to help people who really are refugees. Illegal migrants are increasing in number, and they are trying new ways to circumvent Canada's laws. They are abetted by increasingly well-organized and sophisticated criminals involved in forging documents and smuggling illegal migrants. We need effective measures to deter such illegal activities.[579]

Canada's regime of migration management stayed relatively stable over the decade, after a decade of reform throughout the 1980s. That is, until 1999, when, yet again, it appeared that the labels and policies contained in Canada's federal legislation no longer matched the social reality of forced migration in a globalizing world. In January 1999, the federal government released its first White Paper on immigration and refugee policy in decades, "Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation." The text signals the hegemony of a rationality of migration management and an account of migration

that dominates today. It lends insight into the technocratic rationalization of international migration in cost/benefit terms of opportunities and challenges. For instance, the subsection on forced migration, entitled "Population and refugee movements," states:

> Opportunities rarely exist without challenges. In a world where borders are ever more frequently crossed and therefore less easy to control, transnational criminal organisations ranging from drug cartels to ethnically based criminal gangs have prospered. People smuggling has become a lucrative business. Ever increasing trade links underscore the need to facilitate the entry of business travellers at ports of entry while maintaining vigilance to detect people who aim to circumvent legitimate immigration requirements. Openness must be coupled with a concern for system integrity and a determination to stem abuse…The critical challenge is to grant Canada's protection to those who need it while discouraging those who are clearly not genuine refugees.[580]

To address the opportunities and challenges posed by international migration under globalization, the document outlines the case for systemic reform. It explains that no "comprehensive review" of existing legislation has taken place over the past two decades; instead, the 1976 Immigration Act has been "amended, on an ad hoc basis, more than 30 times, resulting in a complex patchwork of legislative provisions that lack coherence and transparency."[581] As a result, Canada's immigration and refugee policy lacked systemic principles and objectives. The "logic and key principles of the Act have become difficult to discern for both immigrants and Canadians," the White Paper states.[582] Thus, at the turn of the millennium, the concern about the failure of existing approaches started to resurface in the debate about how to regulate irregular migration and its facilitation via smuggling networks.

The document subsequently proposes a number of changes to Canada's immigration and refugee policy. These reforms are rationalized as part of a broader "comprehensive strategy to address the common problem of illegal migration," to improve "system integrity" and prevent "abuse" of the refugee system.[583] To ensure Canada's refugee system is not abused by smugglers, the document proposes enhanced interdiction measures, such as "expanding the network of

specially trained immigration control officers to intercept improperly documented people before they arrive in Canada."[584] Significantly, it proposes to improve the integrity of the immigration and refugee system by "better defining who is not admissible to Canada" through the creation of new categories of inadmissibility that restrict access to asylum and the refugee label, including "people smugglers" as a distinct category.[585] It recommends, in short, that those who 'abuse' the refugee system by enlisting the services of smugglers should not be given access to the refugee label and its attendant rights and procedural protections.

When the federal government started to consider these proposals and revaluate its immigration and refugee policy as well as the existing provisions on migrant smuggling, another significant event of problematization took place: the arrival of four boats in the summer of 1999.

The "summer of the boats" (1999)

On July 20, 1999, the first of several boats of smuggled asylum-seekers from China arrived on Canada's west coast. The *Yuan Yee* arrived carrying 123 passengers from China and served to re-ignite a national debate about Canada's refugee policy and migrant smuggling that laid dormant throughout the 1990s. Through a discourse of "racialized illegality,"[586] the federal government politicized the identities of the passengers as a challenge to the refugee system. When the first boat arrived, news media coverage emphasized the "abysmal" conditions passengers endured over the course of being smuggled as well as the large sums of money paid to smugglers.[587] In the context of the discursive crisis generated by the arrival of the *Yuan Yee*, three more ships arrived along the Pacific Coast over the next two months. In total 599 people arrived without proper documentation, 500 of whom claimed refugee protection.[588] Media coverage exhibited a negative tone in which uncertainty with regard to the identity of the smuggled asylum-seeker was a central concern.[589] News coverage circled around questions about the identities of the passengers and whether those

onboard were criminals, traffickers, economic migrants or refugees, terminological confusion which reflected the vague understanding of migrant smuggling that existed at the time.

After a number of passengers absconded from their refugee status determination hearings and fled to the USA to pursue work underground, the federal government detained the majority of the asylum-seekers from the subsequent boat arrivals.[590] According to a former senior official, "the first group absconded because we had a policy of non-detention. So, then the argument became, including by me, was that if we failed to respond there will be more."[591] The official rationalized detention as a form of deterrence.

> My argument always is that, if you detain successfully, then what will happen, future people who paid $60,000 to the smugglers, won't come in because once they're in detention they can't pay off the smugglers. So, if you keep them away from the illegal labour market, then you're causing them all sorts of trouble. And they will counsel other people not to do this, because it's obvious.[592]

The disappearance of the asylum-seekers engendered claims about economic migrants, whose primary motivation for coming to Canada was not to escape from political persecution, but "upward socioeconomic mobility."[593] At the same time, juxtaposed to this view of smuggled individuals as active economic agents, news media constructed the asylum-seekers through an ambiguous discourse with both humanitarian and security dimensions—the passengers were portrayed as both criminals and victims.[594] The ambiguity of the passengers' identity was central to the discussion of how to define migrant smuggling, the failure of the existing approach as well as the culpability of smuggled asylum-seekers, a central aspect of the unresolved debate around migrant smuggling that continues today.[595]

The "summer of the boats"[596] crystallized many of the contemporary concerns about migrant smuggling that continue to inform the debate about how to manage the problem in the present. In the months following the arrival of the last boat in September 1999, in the context of

debates about the development of a new immigration and refugee legislation, migrant smuggling remained a central concern. In its report entitled "Refugee Protection and Border Security: Striking a Balance," delivered in the spring of 2000, the House of Commons' Standing Committee on Citizenship and Immigration addressed the significance of the event:

> When the boatloads of migrants arrived in Canada, the Canadian public was taken aback, as were many parliamentarians. Much of the debate that ensued was similar to that in the mid-1980s, when two other boats… arrived off the East Coast. There were important differences this time, however, as it became known that the migrants had paid, or were liable for, enormous sums for their voyage…
>
> The boat arrivals came at a time when the process of rethinking the Immigration Act was already well advanced… although the arrival of the four boats of migrants put pressure and additional public attention on Canada's immigration and refugee systems, the process of review and reform was underway well before the summer of 1999.[597]

Thus, the summer of the boats provided the backdrop against which the development of the Immigration and Refugee Protection Act occurred. The current provision on "human smuggling" in federal legislation, the offence of "organizing entry into Canada"[598] was established under the Immigration and Refugee Protection Act to conform with the international definition of migrant smuggling. In the international definition, the intention to obtain "financial or material benefit" is essential to the criteria of criminalisation. The definition explicitly excludes the criminalisation of humanitarian assistance and precludes any effect of the Anti-smuggling Protocol in contravention to international obligations, particularly the Refugee Convention. However, Canada's definition in federal legislation lacks the definitive element of profit motive, which is included as an "aggravating factor" that must be taken into account in sentencing offenders.[599] As a result of this overly broad definition, the legislative provision captures a broad range of conduct associated with the facilitation of irregular entry into Canada. It simply describes the offence of "human smuggling" in terms of "organizing entry into Canada."[600]

> No person shall organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act.[601]

The provision on migrant smuggling was introduced as part of a comprehensive reform. However, with the exception of minor changes, it retained the offence contained in the 1987 amendments, which replicated the original provisions outlined in the 1976 Immigration Act. The offence preserved similar wording introduced under Bill C-84, though it increased maximum penalties and added "aggravating factors" to be considered during sentencing. These included endangering the life of smuggled individuals; organized criminality; profit motive; degrading treatment or exploitation of smuggled individuals.[602]

Though it retained the wording of a previous offence on "organizing entry," the new Act referred to the concept of "human smuggling" for the first time and increased penalties for "organizing entry" under s. 117(1). The new Act retained the existing offence but inserted heftier fines and penalties. Under the new act, those convicted of smuggling fewer than 10 people receive a $500,000 fine, with the possibility of a maximum of 10 years in jail, with increased maximum penalties on subsequent offences up to $1 million and/or 14 years in prison.[603] Those convicted of smuggling 10 or more people now faced a maximum fine of $1 million and/or life in prison. When the House Committee received criticisms and comments about the new legislation, several experts voiced their concern about whether the enforcement provisions on migrant smuggling would be too broad and "apply to individuals who claim refugee status in good faith or who assist refugees in fleeing persecution."[604] Echoing the concerns about Bill C-55 and Bill C-84 in the late 1980s, the debate about the criminalisation of migrant smuggling circled around the central question of whether the offence criminalized humanitarian assistance and assistance among asylum-seekers.

Despite its disproportionate focus on migrant smuggling in response to the summer of the boats, the Immigration and Refugee Protection Act was progressive for its time. It offered a principled and systematic approach to refugee protection. It outlined, in an explicit fashion, that the refugee program was "about saving lives and offering protection to the displaced and persecuted,"[605] fulfilling "Canada's international legal obligations with respect to refugees" and its commitment to "international efforts to provide assistance to those in need of resettlement"[606] and "offer safe haven to persons with a well-founded fear of persecution…as well as those at risk of torture or cruel and unusual treatment or punishment."[607] It endeavoured to ensure refugee protection through "fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings."[608] The Immigration and Refugee Protection Act described refugee protection in terms of national identity, as a "fundamental expression of Canada's humanitarian ideals."[609]

While the new Act described the stated commitment to refugee protection in terms of Canada's humanitarian self-image, the federal government has long relied on deterrence policy to block the arrival of asylum-seekers.[610] These efforts have only expanded in scope in recent years, as discussed in the subsequent chapters, particularly after the arrival of the *Ocean Lady* and the *Sun Sea*. Since then, Canada has intensified its efforts to prevent the arrival of asylum-seekers that use smugglers to facilitate their access to Canada's refugee determination process.

2.5 Conclusion

This chapter provided a historical overview of Canada's immigration and refugee policy from the postwar period until the early 2000s. It focused specifically on the construction of the refugee label and the categorical distinction between smuggling for-profit and humanitarian

assistance. Through an examination of several high-profile events that brought migrant smuggling to the forefront of public debate in Canada, I explored the construction of the refugee category and illustrated the centrality of concerns about the criminalisation of humanitarian assistance to the debate about how to manage migrant smuggling over the past three decades.

The provisions on "aiding and abetting" irregular migration, introduced in 1976, amended in 1987 and revised with the Immigration and Refugee Protection Act focused on organized criminal smuggling for-profit. Significantly, these amendments claimed to address the problem in accordance with international obligations to refugees and asylum-seekers. To exempt humanitarian acts of assistance from criminal prosecution, federal legislative provisions historically granted the Attorney General discretion to forgo the prosecution of cases that involved humanitarian assistance from civil society groups or mutual-aid between family members or asylum-seekers. Significantly, the Parliamentary debates that informed the amendments in 1987 and the Immigration and Refugee Protection Act—both of which took place after large-scale arrivals—articulated similar concerns that animated the discussion after the *Sun Sea*: whether federal legislation criminalizes humanitarian assistance without a profit motive.

The federal government has consistently maintained throughout successive legislative amendments that discretion granted to the Attorney General[611] mitigates against the possible prosecution of humanitarian assistance. However, recent Supreme Court cases, discussed in the next chapter, suggest that prosecutorial discretion represents an insufficient mechanism to prevent the criminalisation and penalization of smuggled refugee claimants. Indeed, B010 v. Canada and R. v. Appulonappa, analyzed below, demonstrate that the federal provision on migrant smuggling in the Immigration and Refugee Protection Act, s. 117, not only fails to protect smuggled asylum-

seekers. Contrary to its stated objectives, it criminalizes mutual-aid between asylum-seekers, in contradistinction to the intention of the Anti-smuggling Protocol.

Moving into the case study, I now turn to the contemporary era, analyzing the arrival of the *Sun Sea* and the domestic dimensions of Canada's anti-smuggling policy introduced in its aftermath, the Migrant Smuggling Prevention Strategy.

CHAPTER THREE
Managing 'mass marine migrant arrivals'
The construction of the 'irregular arrival' and the transformation of the refugee category

3.0 Introduction

This chapter examines, first, how federal government officials framed the arrival of the *Sun Sea* through a precautionary logic of risk governance to legitimize new draconian measures; second, the anti-smuggling policy introduced in response to the arrival, and; third, a legal controversy that occurred in its wake, which centered on whether some of the passengers were ineligible for refugee protection for allegedly smuggling themselves into Canada. After the *Ocean Lady* and *Sun Sea* arrived, the federal government introduced the Protecting Canada's Immigration System Act, a set of anti-smuggling reforms that limited access to the asylum system and transformed the refugee category. Notwithstanding the decade that passed between the arrival of asylum-seekers from China in 1999 and these events, in many ways, the Harper government's response to the arrival of the *Ocean Lady* and the *Sun Sea* mirrored the responses of previous Canadian governments to 'mass marine migrant arrivals', in which the strategic demonization of asylum-seekers lent itself to the construction of a crisis narrative, which served to garner public support for extraordinary measures and new emergency powers. In effect, these new anti-smuggling measures fractioned the refugee label into two categories of refugee claimants—'genuine refugees' and 'irregular arrivals'. Despite its stated objectives, Canada's anti-smuggling policy is not simply about combatting migrant smuggling or protecting the smuggled. Rather, the institutionalization of this categorical distinction contemporaneously serves a vital political function: to transform and politicize the refugee category through pre-emptive labelling and to exploit interpretive controversies surrounding the identities of smuggled asylum-seekers, as a means to avoid legal commitments and recuperate the illusion of sovereign control. Thus, the

political purpose of these reforms and associated policy changes was to manage, and pre-emptively label, delegitimize and deny, the refugee claims of asylum-seekers that enlist the services of smugglers under the guise of combatting smuggling networks. The institutionalization of the label of 'irregular arrival' and its deployment in anti-smuggling policy serves to manage a growing number of asylum-claims under the humanitarian pretext of combatting migrant smuggling, protecting borders and thus 'genuine refugees' by maintaining the integrity of the refugee system. Analyzing these reforms reveals how the label of 'irregular arrival' was constructed and institutionalized, the political purposes it served and its transformative effects on the refugee category. Through an examination of the framing of the *Sun Sea*'s arrival, the introduction of pejorative labels in anti-smuggling policy and interpretive controversies about smuggled asylum seekers in refugee law, I seek to demonstrate the significance of pre-emptive labelling in the Harper government's attempt to fragment the refugee category and exclude smuggled asylum-seekers from accessing refugee protection.

In pursuit of these objectives, the chapter unfolds in four sections. Section one documents and examines how the federal Conservative government framed the *Sun Sea*'s arrival through a securitising discourse and criminalisation narrative—as an instance of transnational organized criminal smuggling—and pre-emptively labelled the passengers as 'bogus refugees' in order to limit their access to refugee protection. Using interviews and documents from the live archive, I illustrate how the federal government framed the inadmissibility of the passengers as a *fait accompli* through a precautionary form of risk governance. This framing and pre-emptive labelling not only rendered a fair assessment of their refugee claims almost impossible. It also served to justify the detention of the passengers and rationalize subsequent reforms to the refugee system. Section two illustrates the instrumental purpose of the labels introduced by the Harper government,

which served to transform and politicize the refugee label. It describes how the Harper government interpreted the *Sun Sea* through a language of risk management as a challenge to its institutional capacity to address migrant smuggling, given the political constraints posed by domestic legislation and international norms. For this reason, the Harper government and federal agencies advocated for a series of reforms in 2012 under the Protecting Canada's Immigration System Act, which included the mandatory arrest and detention of 'irregular arrivals'. This controversial new law, it argued, provided sufficient time to distinguish 'genuine refugees' from other refugee claimants, and determine whether any passengers were inadmissible for "organized criminality," that is, for participating in a smuggling venture and/or transnational organized crime.[612] Section three examines in detail the Protecting Canada's Immigration System Act, to document and conceptualize how the federal government reformed the asylum system and introduced the new pejorative label of 'irregular arrival' in the name of combatting migrant smuggling, safeguarding sovereignty and protecting 'genuine refugees'. The analysis chronicles how the construction of the label of 'irregular arrival' resulted in the transformation of the refugee category and draconian changes to the asylum system as a whole, which included various anti-smuggling measures, such as mandatory detention, limitations on the right to appeal a negative decision and restrictions on the ability to apply for permanent residence, barriers to family reunification and other measures, designed to deter asylum-seekers and prevent those that arrive as part of a smuggling venture from accessing refugee protection. Section four then illustrates the dynamism of and resistance to labelling through an examination of the interpretive uncertainties concerning how to apply Canada's anti-smuggling legislation. In B010 v. Canada, the Supreme Court of Canada contested the Harper government's interpretation of mutual aid among smuggled asylum-seekers on the *Sun Sea* as evidence of their participation in an organized criminal smuggling operation, which, under

the Immigration and Refugee Protection Act, rendered the passengers inadmissible and therefore excluded them from refugee status determination. The case reveals how the federal government tried to exploit the legal ambiguity of the offence of migrant smuggling in domestic legislation, as part of a broader attempt to assert sovereign control and minimize legal obligations to asylum-seekers. The analysis suggests further that, while labelling influences power relations, it is not a one-way process. Asylum-seekers can act autonomously, express agency and subvert the labels imposed upon them by political authorities.

By way of a conclusion, I discuss the reforms introduced with the Protecting Canada's Immigration System Act in light of the legal norms that regulate Canada's response to asylum-seekers. These reforms can be read as an attempt to recoup a perceived loss of sovereign manoeuvrability in the face of 'mass marine migrant arrivals' and limit access to the asylum system through new pejorative labels that function to minimize, re-interpret and evade Canada's commitments to refugees and other persons of concern. Despite this attempt by the federal government to side-step its political obligations, these reforms arguably violate the norms that govern the treatment of asylum-seekers, such as non-arbitrary detention, non-discrimination and other legal obligations to persons in need of protection.

3.1 Anticipating the arrival:
The *Sun Sea*, the Snow Tigers and migrant smuggling

Despite its invocation of a crisis narrative, the Harper government's response to the *Sun Sea* was the product of long-term planning and precautionary risk management. In anticipating the arrival, the Harper government's plan of action suggests a logic of governance predicated on risks, which, by definition, can only be managed, not eliminated once and for all; here, in the securitising discourse of anti-smuggling policy, a politics of emergency and exceptionality is replaced by what

Corry calls "a politics of permanence and long-termism."[613] Using border surveillance and intelligence from foreign partners, federal government agencies tracked the *Sun Sea* with assistance from international allies beginning in April 2010, after authorities observed the vessel in the Gulf of Thailand.[614] Its passengers entered Thailand from Sri Lanka. According to the UNODC, some of the passengers traveled from Jaffna to Bangkok by air on tourist visas, whereas other passengers travelled on fraudulently obtained visas issued in Colombo.[615] Passengers boarded the *Sun Sea* at different points between April and July 2010. Before their departure, passengers traveled from Bangkok to southern Thailand and subsequently, smugglers ferried their clients to the *Sun Sea* aboard small fishing vessels. Internal CBSA documents state that approximately 45 agents helped "populate the ship for the voyage" and while "posted at key locations," fulfilled "one or more portions of the trajectory that led to the eventual embarkation of the migrants onto the ship in Thailand."[616] Thailand, the RCMP asserts, is a "staging ground for would-be refugee claimants headed to Canada" and the base for transnational criminal networks involved in migrant smuggling and "the exploitation of Canada's immigration system" for-profit.[617] After leaving the Gulf around July 4, the Thai-registered freighter passed through Malaysian waters and the Philippines and headed toward Canada's Pacific Coast. Initially, a Thai crew operated the vessel before they eventually abandoned the ship and left the passengers to operate the vessel and navigate it across the Pacific themselves. Over the course of their journey, several passengers took on various duties, such as working the engine room, cooking, navigation, collecting rainwater and lookout.

Long before the federal government verified the identities of the passengers or adjudicated their claims to asylum, Canada's intelligence and border enforcement agencies had sounded the alarm within the federal Conservative government about the alleged threat posed by the *Sun Sea*'s

arrival. Anxieties about the passengers and their ambitions spread quickly throughout the federal government. Federal agencies claimed that the passengers were linked to transnational organized crime and smuggling networks orchestrated by the LTTE. According to federal officials interviewed for this research, the LTTE procured the vessel and facilitated the *Sun Sea* operation as part of a broader attempt to regroup in Canada. A senior official from the Office of the Special Advisor on Human Smuggling and Illegal Migration asserted that the *Sun Sea* formerly belonged to the naval wing of the LTTE: "It was a former Sea Tiger vessel. It had been used for smuggling arms." "Is that where the alleged links to the Tamil Tigers started to materialize?" I asked in response:

> You're getting into slightly more sensitive area. There was a fair amount of understanding out there that while the Tigers were defeated in the field of battle that there are some Tigers around and rumors from time to time about some of the Tigers wanting to try to rebuild (to some extent) and start another war. Some of them had ambitions.[618]

Because of the large Tamil diaspora in Canada and the displacement of the Sri Lankan Tamil population after the end of the civil war in 2009, the official remarked, "the reality is there was both a push and pull factor, there were people that wanted to get out and people in Canada that wanted to bring people to Canada."[619] Several former LTTE members, sometimes disparagingly referred to as the 'Snow Tigers', allegedly reside in Canada.[620] Furthermore, according to the UNODC, Canada is one of the most popular destination countries for smuggled migrants from Sri Lanka.[621] I asked several federal government officials about the veracity of the claims about the presence of the LTTE members amongst the passengers from the *Sun Sea*, their intentions and the alleged threat they posed.

> I'm interested in in your perspective on the veracity of the threat posed by people like those in the LTTE entering Canada via the refugee system. Is this a real concern? Is it overblown? What do you think?

> It's a real concern. Because it's one of the fundamental responsibilities of the government of Canada and this organization that we do what we can in a measured way to protect Canadian society from public safety and security threats. And terrorism can mean any number of things. Ties to the LTTE are one thing, you know. An individual with a past in a terrorist organization that came to Canada, looking to leave it all behind and start a new life. Well, you know, what would the public think if the government wasn't proactive. That person might be in violation of international law, or domestic law and might have done abhorrent things. I think Canadian society would understand that it's important for us to prevent that person from gaining safe access to Canada as a safe haven.[622]

Despite its attempt to appeal to the supposedly self-evident security concerns, this passage is misleading on several fronts. First and foremost, it is the role of the IRB and not the CBSA—which, it should be recalled, is an *enforcement* agency—to adjudicate refugee claims and determine whether an applicant poses security risks to Canadian society, including those that would disqualify them from refugee status. Nonetheless, as discussed further below, the CBSA, as the "managers of unease,"[623] tried to position itself strategically and monopolize the framing of the event in a political struggle with the IRB, in which the sovereign prerogative of states to control borders clashed with the human right to seek asylum.

I asked the same official about the alleged links between the *Sun Sea*, the LTTE and transnational organized crime and whether the passengers participated in the smuggling venture. The official reiterated the criminalisation narrative and the interdiction script based on the stereotypical claims and de-linked explanations of the federal government—that the *Sun Sea* was a clear instance of organized criminality, orchestrated in advance and motivated by the pursuit of profit.

> The *Sun Sea* was a giant money-making enterprise. Each migrant suggested they paid $15-35,000 each. How accurate that is, I don't know. One of the challenges of doing the work that we do is following the money and it's really difficult to follow it over international borders and if it's cash you don't know what's going on. But the guy who bought the boat paid one million dollars for it. And presumably, if you're going to do that, you know you're going to make a lot more. So, money is at the heart of this. Money is at the heart of organized criminality. Right? We had a ship of 492 people come to Canada. An operation of that nature wasn't going to be haphazard. It was going to have

> to be organized in advanced. OK? This vessel was very organized and it's accepted that it was a money-making proposition, organized criminality. So, for this particular vessel there was no question.[624]

Whether they are "persecuted or because they are an economic migrant," the official explained in a way that appeared to dismiss their claims to refugee status, "doesn't change the fact" that the passengers "have paid the money [to smugglers] because they have an interest in leaving where they are." What this official fails to note in this assertion, is that asylum-seekers are permitted to use smugglers to facilitate their "illegal entry" under Article 31 of the Refugee Convention. As Hathaway explains, as long as "a refugee shows good faith by affirmatively presenting herself or himself to authorities within a reasonable time and showing that the illegal arrival or presence was necessitated by a search for protection, states agreed that the refugee should not be penalized for contravening migration laws of general application."[625] What is more, the excerpt's uncritical diagnosis of the event also glosses over the fact that in 2010, in the year that the *Sun Sea* arrived and in the years afterward, the acceptance rates of Tamil asylum-seekers from Sri Lanka were high—over 70% of refugee claims were accepted by the IRB.[626]

Despite this evidence to the contrary, according to the CBSA, detention of the passengers was justified on the basis of national security concerns. Detention allowed the authorities ample time to investigate their identities and determine whether they had nefarious links to terrorist groups and criminal syndicates, or if they conformed to the built-in bureaucratic assumptions of the refugee label. However, internal documents suggest that federal authorities had convinced themselves about the identities of the passengers and their links to criminal networks and the LTTE long before the *Sun Sea* reached Canada's Pacific coast—in fact, while the vessel passed through international waters. For this reason, upon its arrival, the CBSA sought to establish a sound evidentiary basis to support such premature conclusions:

> Intelligence reports indicate that another vessel, the *Sun Sea* is on its way to Canada with up to 500 Sri Lankan persons on board. The group may include women and children and some persons with links to the Liberation Tigers of Tamil Eelam (LTTE). The vessel is expected to arrive in Canada around mid-August and all are expected to make refugee claims.
>
> In terms of ports of entry examination, CBSA will gather as much information and evidence as possible to build cases that demonstrate that the marine people smuggling is serious and poses a significant threat to the health and safety of those in Canada.[627]

This document and additional grey literature examined herein reveal how the federal government framed the event as a threat to Canadian society and hastily labelled those on board, before the ship arrived in Canadian internal waters. What Oelgemöller calls the premature labelling and stereotyping of asylum-seekers, "leads to the construction of identities with no evidential basis whatsoever."[628] While the labelling of the passengers as security threats certainly had no evidentiary basis, this act of labelling was not merely *premature*. Such forgiving language appears to suggest that the federal government levelled a crude judgment that was subsequently corrected, without consequences for those labelled. Rather, because anti-smuggling policy is fundamentally about pre-emption, I would go a step further. Anti-smuggling policy uses *pre-emptive* labelling. Such labelling is pre-emptive, in the sense that it operates according to a managerial logic of risk, which makes a self-conscious appeal to unknown futures. The operative logic of pre-emption produces a temporal orientation to a future cause, which must be able to "act on the present" by translating a distant threat into "a clear and present danger."[629] Furthermore, as de Goede argues, the performativity of pre-emptive politics not only fosters anxiety, fear and insecurity; more worryingly still, it has profoundly anti-democratic effects, which threaten to erode established legal norms, principles and procedures of liberal-democratic politics. Pre-emptive strategies of risk governance enable and constrain policymaking in de-democratizing ways that discount victims of such precautionary measures as "collateral damage," whose rights are

sacrificed in the name of an imagined future.[630] In this regard, pre-emptive labelling can lead to self-fulfilling prophecies that disavow responsibility for victims of such arbitrary measures and egregiously prejudicial human rights violations. Thus, the emergence of a pre-emptive logic within anti-smuggling policy has major implications for refugee protection, for political judgement has become much more anticipatory in nature and effectively divorced from any link to empirical fact, with devastating consequences for established legal norms and deliberative principles of liberal-democracy.

Passages from the live archive, discussed below, reveal the pre-emptive nature of the Harper government's strategy to preclude the arrival of asylum-seekers. Indeed, several documents I obtained indicate how federal government officials and the CBSA in particular framed the *Sun Sea* as an instance of organized migrant smuggling as the vessel approached the Pacific coast. The federal government sought to pre-emptively label the arrivals as active participants in an organized criminal smuggling for-profit and exhaust "all inadmissibility possibilities"[631] that would restrict their access to the asylum system. Although the Migrant Smuggling Prevention Strategy for "illegal migration" is to "disrupt smuggling networks before the marine ventures depart for Canada," in the event that "a departure is not disrupted," the CBSA and other federal agencies have operational plans "for processing further marine migrant arrivals."[632]

> The processing strategy is to: 1) exhaust all inadmissibility possibilities, 2) intervene on refugee claims where it is warranted so that persons are excluded from the refugee determination process, 3) ask the Federal Court to review the IRB's decision when our chances for success are good, 4) seek cessation or vacation of refugee status if averse information surfaces later and 5) timely removals.[633]

The construction of the passengers as inadmissible 'bogus refugees', 'criminals' and 'smugglers' and the effects of such pre-emptive labelling is evident throughout the federal government's framing of the passengers before the *Sun Sea*'s arrival. For example, another

document, "Preventing Human Smuggling," a set of speaking points distributed throughout the CBSA, highlights the ideational significance of risk, fear and uncertainty surrounding the identities of the passengers in the federal government's response:

> Often those who arrive as part of an irregular arrival will not possess primary identity documents that would allow the CBSA to form an opinion on the migrant's identity. Though the CBSA is able to detain when identity has not been established, reviews of detention are conducted by the Immigration and Refugee Board, who, taking into account a number of factors, may release the migrant before the CBSA is satisfied that identity has been established. There is an inherent risk that an individual who is inadmissible for reasons of security or criminality could be released prior to the CBSA completing its investigation.[634]

A recurring concern about political constraints abounds throughout the live archive; according to the federal government, Canadian legislation, regulations and law limited its capacity to effectively manage 'mass marine migrant arrivals'. Yet, the federal government did not simply accept these constraints on its capacity to restrict access to the asylum system. On the contrary, the legal obligations imposed by domestic legislation, regulations and law—as suggested by the CBSA's antagonistic relationship to the IRB[635]—simultaneously facilitated the search for more effective ways to evade such constraints. In a dialectical sense, legal obligations of refugee protection thus served as a catalyst for the development of new anti-smuggling practices. In this regard, within these passages, the mutually constitutive relationship between the politics of deterrence policy and legal norms, what Gammeltoft-Hansen calls a "cat and mouse game," is brought into sharp relief.[636]

"Marine Migrants: Program Strategy for the Next Arrival," a CBSA memo prepared for the agency's Vice-President, begins with a recollection of the *Ocean Lady*. It highlights the failure of the CBSA's response and proposes a "more aggressive approach" to the *Sun Sea* to "create a deterrent for future arrivals."[637] Subsequently, the account recalls the challenges that the *Ocean Lady* created from the perspective of the federal government. It also lends insight into the process

of policy learning that characterizes the response to 'marine migrants', including the shared understandings and perceived national security interests of federal officials embedded in anti-smuggling discourse. Internal documents authored in anticipation of the *Sun Sea* discussed the impending arrival through a criminalisation narrative, which compared it to previous 'mass marine migrant arrivals' and the security risks they posed to Canadians:

> Marine migrant arrivals are not new to Canada. The last vessel, the *Ocean Lady*, arrived in October 2009 with 76 Sri Lankan migrants on board. Prior to that, four vessels from China arrived between July and September 1999 with 599 persons. The arrivals of large groups of migrants are indicative of an organized smuggling operation and pose not only an operational challenge for those dealing with the arrival, but also program challenges in terms of developing the best strategy to prevent future marine arrivals.[638]

The passage compares the *Ocean Lady* to the last set of "marine arrivals" from China to Canada's west coast in 1999. In a recollection of the perceived failure of the response in 1999, the CBSA attributes responsibility to IRCC (then Citizenship and Immigration Canada) for releasing the first group of arrivals, who failed to appear in court after they absconded, "only to find out that they were using Canada for transit to the US."

> As a result, future arrivals were detained during proceedings for a being a flight risk and were eventually removed to China. For the *Ocean Lady*, detention was maintained for as long as there were grounds to do so and then released on terms and conditions. The refugee claims and inadmissibility hearings are still outstanding and all the arrivals remain in Canada.[639]

The shared understandings of CBSA officials grant insight into the historical context, perceived interests and institutional settings in which the Harper government responded to the *Sun Sea*. The live archive also sheds light on how the Harper government wanted to make an example of the *Sun Sea* through what it called a more aggressive approach. A senior CBSA official agreed that the historical legacy of previous "marine arrivals" and the perceived failure to prevent them from absconding conditioned the extraordinary response to the *Sun Sea.* It formed part of the

rationale behind the agency's proposed more aggressive approach, which included the use of detention.

> Author: In 1999, the passengers on the first boat absconded and it generated a major public controversy. Subsequently, they detained the passengers onboard the rest of boats that arrived over the summer. Did this event influence the response to the *Sun Sea*?
>
> Official: Sure, it absolutely did. But you are talking about a different population with different interests. The Chinese boat people were entirely interested in going to the US. for work. I wasn't around in 1999 but some of the guys we worked with out in BC were around when that happened. The institutional awareness… We still had operational reports about what played out in 1999. But this population wasn't interested in going to the US. They wanted to stay in Canada. So, we would put forth arguments. When identity ceased to be an issue and we were seeking continued detention one of the arguments we put forth is that they are unlikely to appear because they aren't interested in being removed from Canada...and we have a history of others who when they were released from detention absconded…or whatever the case may be. But you know you need direct evidence that this will be the case for these individuals. [Nonetheless] it forms part of the corporate knowledge, corporate history for sure. Absolutely. But it became pretty clear that these individuals, while they may not have appeared for removal, and may have absconded from the government of Canada if they were faced with removal, they weren't interested in leaving Canada or going to the US.
>
> Author: Because, in the government's view, all of their networks were based here?
>
> Official: Precisely.[640]

"Marine Migrants: National Operation Plan," prepared in anticipation of the *Sun Sea*, includes a section entitled "Lessons Learned," which describes the knowledge and best practices gained from previous the 1999 arrivals from China.[641] "No single issue," the report explains, "generated the volume, intensity and scope of media coverage and public comment" as the arrivals in 1999. And while the *Ocean Lady* received an initial "flurry of media interest," the controversy surrounding the arrival did not compare to the 1999 events. This is because, according to the CBSA, "the lessons learned in 1999 were used to launch a well-planned response."[642]

> We have already processed one migrant vessel and have learned valuable lessons in terms of our processes and have identified challenges in carrying out a coordinated and integrated mission with our partners. Our contingency plan should incorporate lessons

> learned and best practices to ensure a smooth and seamless operation in any future marine arrivals.[643]

Within the internal accounts offered by CBSA, which reproduce and reaffirm a securitising discourse and criminalisation narrative, there is a glaring absence of reflection on how smuggling intersects with asylum and forced displacement. In these sanitized and bureaucratic accounts of events, the pre-emptive labelling and stereotyping of the *Sun Sea* served to legitimize the federal government's detention of the passengers. In the following passage, the CBSA refers to detention as "an effective tool," not only for investigative and removal reasons—the official purpose of such draconian measures—but to deter individuals that evade border controls and bypass state-sanctioned means of obtaining refugee protection. While the use of detention for the purpose of punishment is prohibited under Canadian law,[644] the CBSA made claims about the uncertainty of the passengers' identities to justify detention, a repressive tactic to deter asylum-seekers who participated in smuggling ventures and prevent them from accessing the asylum system.

> Detention is an effective tool against those who circumvent immigration processes. The CBSA will take maximum advantage of this tool, recognizing that there may be limitations if no legal grounds to detain exist. Immigration legislation specifies that persons may be detained if their identity is uncertain, they are a flight risk or they are a danger to the public. Although initially the CBSA will detain the arrivals for uncertain identity, it is likely that this will not be sustainable as experience shows that most Sri Lankans are able to establish their identity in a timely manner. For those suspected of LTTE involvement, detention may be sustainable for a longer period of time, especially since the CBSA proposes to be more aggressive in providing evidence of these links. There is always the possibility that the IRB will release these persons, especially since it could be argued that the current LTTE suspects are released and have proven not to be a danger. In cases where the IRB will release the person, the CBSA will argue for strict terms and conditions of release which include regular reporting.[645]

Such evidence of pre-emptive labelling suggests that the CBSA viewed the inadmissibility of the arrivals as a *fait accompli.* The agency maintained this position, despite the fact that they also admitted that the *Ocean Lady* passengers with alleged LTTE ties posed no danger to the public and were already released, awaiting the outcome of their refugee claims. And although the *Sun*

Sea was still making its way across the Pacific, the CBSA was already building the federal government's case against those on board. The CBSA fully anticipated that all of the arrivals would be found inadmissible for non-compliance, because they arrived without visas in contravention of the Immigration and Refugee Protection Act (s. 41).[646]

Notably, the CBSA made these arguments internally, long before the arrival of the *Sun Sea*, despite their awareness that all the passengers would apply for refugee protection and if accepted, would be excluded from criminal prosecution under the terms of Canadian refugee law, in which refugees hold a "trump card on migration control."[647] The CBSA clearly engaged in pre-emptive labelling, as demonstrated by the fact that they sought to establish evidence in support of what, necessarily, was a premature conclusion:

> For admissibility hearings… It is expected that the CBSA will find these persons inadmissible and issue conditional removal orders. The IRB will hold inadmissibility hearings on cases where the examination reveals additional, more serious, inadmissibility grounds. In these cases, the CBSA will be aggressive in building evidence and arguing for inadmissibility. The focus will be on the health and safety impact for Canada and the exploitation of vulnerable persons which results from the efforts of organized people smuggling.[648]

Documents suggest that the CBSA was well aware that such aggressive efforts to intervene and argue against the refugee claims of the passengers would be contested. In the passage below, the CBSA perceives the IRB's high-rate of acceptance as a "challenge"— a view that lends credence to the notion that the agency felt antagonistic toward the IRB, and was not interested in having the refugee claims adjudicated based on their individual merits. Instead, the CBSA planned to intervene in each case to argue for inadmissibility and the continued detention of the passengers.

> In terms of the approach for refugee determination hearings, they will be dealt with aggressively as well. The CBSA will advise the IRB that it intends to intervene in each case, however, the IRB's current 84% acceptance rate will be a challenge. Nonetheless, the CBSA plans to build standard evidence packages that would be used for each case *to show why the person is not a refugee*.[649]

In terms of labelling theory as described by Moncrieffe, Wood, Zetter and others, by investigating each individual's story and transforming it into a bureaucratic case, the CBSA sought to show that those onboard failed to conform to the refugee label.

3.2 Responding to the arrival:
Challenging the federal government's institutional capacity to manage migrant smuggling

The Harper government's response to the *Sun Sea* reveals not only how its border enforcement agency engaged in precautionary framing and pre-emptive labelling of those onboard. Grey literature also grants insight into the federal government's mindset of risk management during the internal preparation for the vessel. Ample evidence of internal preparation can be found throughout the live archive. For example, several tabletop exercises strategized about various "scenarios" and courses of action available to the government if, for instance, the passengers had contagious diseases, the deliberate "scuttling of the ship to force Canada's hand,"[650] a death of a migrant, migrants abandoning ship at sea and other potential scenarios.[651] Given the evidence of internal planning in the live archive, I asked a CBSA official how prepared the federal government was for the *Sun Sea*. While federal agencies developed extensive plans in anticipation of the *Sun Sea*, the official explained, the government was ill-equipped, from an operational perspective, to deal with such a large arrival because it challenged the institutional capacity of the asylum system and its procedural timelines.

> Operationally, because we knew the vessel was coming, there was a great deal of time and resources put into being ready for the arrival of this vessel. We had a general idea that there would be a lot more people coming on this vessel than on the preceding vessel. There were only 76 on the *Ocean Lady* and we had the expectation of over 200 people on the *Sun Sea.* I remember when we were in the office and we got the email from the powers that be when the vessel eventually did get into our waters and the process of engaging and bringing it in began, we got a message that said there was almost 500 people. There was a general readiness and expectation that there would be over 200 people and there was almost 500. There was an operational response ready to go, but I don't think that the scope of the

> amount of people was something we were prepared for, because they were jammed into that boat.[652]

Despite the evidence of institutional awareness of its slow passage across the Pacific, for the CBSA, the arrival of the *Sun Sea* challenged the federal government from an operational perspective. In their view, 'mass marine migrant arrivals' like the *Sun Sea* undermined the Harper government's institutional capacity to work within the constraints of the routine protocols under existing legislation and regulations. In the CBSA's view, this challenge stemmed in large part from the restrictions placed on the agency's detention powers under domestic legislation, which are supposed to conform with legal norms related to the treatment of asylum-seekers. Existing legislative provisions, it was argued, did not provide sufficient time to verify the identities of passengers in the event of 'mass marine migrant arrivals'.[653] According to the CBSA, these institutional constraints affected its ability to fulfill its enforcement mandate, that is, to determine whether the passengers were inadmissible on the basis of their involvement in smuggling for-profit, organized crime and/or terrorism. For this reason, the Harper government—specifically CBSA immigration officers who acted on behalf of the Minister of Public Safety—argued for their continued detention. Additional time was required, it was argued, to verify their identities and determine whether or not they were involved in an organized smuggling operation or posed security risks. As a senior CBSA official explained:

> The way that federal legislation is designed, is that the CBSA has the authority to arrest and detain foreigners and in some cases permanent residents when grounds arise, for example, when there are inadmissibility concerns about identity and security, the stated grounds for arresting people. Within the first 48 hours after they're arrested, detention is our authority—up to the 48 mark is up to us—after which, jurisdiction to determine whether detention is lawful shifts to the immigration division [of the IRB]. Detention review timelines set out that detention has to be reviewed after 48 hours, then again at seven days, and then every 30 days after that, so that the arrival of this vessel, from an operational perspective, really challenged the resources the government had to deal with it.[654]

As the official suggests, the asylum system, governed by the Immigration and Refugee Protection Act, includes a series of routine procedures to screen claimants and determine their eligibility, that is, whether they conformed to the Convention interpretation of the refugee label. Under the Immigration and Refugee Protection Act, foreign nationals can seek refugee protection from within Canada through the asylum system.[655] "Marine Migrants: National Operation Plan" elaborates the complexities of the asylum system and the role of the CBSA in the response to "irregular marine migrants."[656] This "strategic plan" is therefore worth quoting at length. "Stage Two – Upon Arrival" outlines this complex system designed to screen refugee claimants and exclude inadmissible refugee claimants who allegedly pose a risk to the safety and security of Canadians. After the vessel is boarded and "brought to a safe location in accordance with protocols established during preliminary planning" amongst federal partners, a "continuing assessment of the risk posed by each migrant will be conducted." With no indication of an institutional concern with the refugee claims of the passengers, and without a shred of evidence, the document anticipates that all the passengers will be found inadmissible and eventually removed from Canada:

> The examination process will begin with interviews and reviews of the documents of each migrant to determine his/her identity, admissibility to Canada, eligibility to make a refugee claim and human smuggling and trafficking issues… *It is anticipated that all of the migrants will be inadmissible because their intention is to remain in Canada as permanent residents without visas or for more serious reasons, such as being members of terrorist or criminal organisations.* They will be reported under the Immigration and Refugee Protection Act and enforcement actions will be initiated including the consideration of the use of detention and eventual removal. The CBSA will work with partners such as RCMP and CSIS to ensure that high-risk migrants are identified for screening and enforcement purposes.
>
> All irregular migrant marine arrivals in the past have sought refugee status in Canada and it is anticipated that they will continue to do so in the future. The refugee process begins with the migrant expressing a fear of return to the country of origin to the CBSA officer. …The officer will also make a decision on the migrants' eligibility to have the claim referred to the Refugee Protection Division of the IRB. The legislation provides for the claim to be suspended at this stage if there are serious concerns of security or violations of human or international rights, criminality or involvement in organized crime.[657]

"Stage Three – After Arrival," details the 'normal' detention process for "irregular migrant marine arrivals" under the Immigration and Refugee Protection Act prior to the implementation of the Harper government's reforms under the Protecting Canada's Immigration System Act. First, detention is initiated by a CBSA officer. As mentioned above, after 48 hours, the responsibility for detention switches to the Immigration Division of the IRB, at which point a detention review must be held. A detention review must occur again within the next seven days and thereafter every 30 days until the release of the detainee. At detention reviews, a CBSA hearings officer will "normally argue for continued detention."

> If the IRB orders the release of any detainee, the CBSA hearings officer will argue for strong conditions of release to maintain control of the case and prevent the migrant from going underground… It is anticipated that each migrant will make a refugee claim. Each migrant will have a removal order issued against him or her for inadmissibility to Canada for being an immigrant without a visa or for more serious grounds. The removal order will remain conditional and cannot be enforced until the Refugee Protection Division makes a final determination on the claim.[658]

As the report subsequently explains in the subsection on "Criminal Charges," cases that involved suspected smuggling or other "national security" issues required investigation to determine the extent of criminal offences. Importantly, it notes that the Immigration and Refugee Protection Act specifies that refugee claimants "cannot be criminally charged for misrepresentation for using fraudulent documents to get to Canada until after the refugee claim is denied."[659] As a signatory to the Refugee Convention, under Article 31, Canada is not permitted to exclude asylum-seekers from accessing refugee status on account of their "illegal entry," which has been interpreted to also include instances in which asylum-seekers enlist the services of smugglers.[660] According to an international expert of refugee law, "t]he meaning of 'illegal entry or presence'" may include "arriving or securing entry through the use of false or falsified

documents, the use of other deception, clandestine entry, for example, as a stowaway and entry into State territory with the assistance of smugglers or traffickers."[661]

Because of the political constraints imposed by this complex legislative and regulatory framework**,** according to a CBSA official, the pre-Harper legislation did not allow investigators to determine what role—if any—passengers played in the smuggling operation:

> The primary interest of the government of Canada in an instance like this is to determine who everyone is—on an individual basis. And identity is the foundation of understanding who someone is, and are they a threat to public safety effectively, which is one of our primary mandates. So it was a real challenge to orchestrate an organizational response to individually interview each person and begin assessing who they were and not just who they were but what their individual risk level might have been, but also what role they might have played in the larger operation that brought the vessel to Canada.[662]

In the context of the arrival of this vessel and existent political constraints, the CBSA official endorsed a precautionary logic of risk governance and mobilized the governmental unease surrounding the identities of the passengers to justify the use of detention, stating, "it was no small task to determine who everyone was" and to "determine not just who they were," but also:

> …what their threat level was, what degree of responsibility or role did they have in the orchestration of this smuggling venture itself, and did they have a past that was tied to some of the concerns of the government of Canada, that they may have been associated with what is a listed criminal terrorist entity, the LTTE.[663]

After the *Sun Sea* arrived, it took upwards of two weeks to conduct the initial interviews alone and this processing delay, they claimed, pushed the system beyond its institutional capacity. Subsequently, the CBSA argued for continued detention, because there is "an inherent risk" that someone who is "inadmissible for reasons of security or criminality could be released" prior to the completion of the CBSA's investigation and before a determination about their "threat level" could be made.[664]

> There is an entire investigative capacity that needs to initiate itself, and logistically it's no small challenge. And we were also incapable of conducting the 48-hour detention reviews in 48 hours because each hearing has to be conducted as an individual hearing...

> We had to continue detention to pursue the examination to determine their identity. Just the machine getting itself organized—we were working out of portables on the outside [at the Fraser Regional Correctional Centre] and so, it was a challenge to get everything ready to go, to get the investigative capacity of the organization prepared to begin its daunting task of investigating and examining each individual in the larger context of the arrival itself.[665]

Situated in the context of these concerns about risk management, detaining the asylum-seekers *en masse*, the federal government argued, granted officials greater flexibility and additional time to determine the identities of the passengers and gauge their level of risk while detained. I asked a CBSA official about the use of detention in this case.

> Author: The decision to detain the *Sun Sea* passengers is obviously somewhat controversial. I'm curious if you can comment on the decision to detain.
>
> Official: You have almost 500 people that arrive. Let's talk about detention as a tool that this department has in general not just for irregular arrivals. It's an enforcement tool that's there to protect the public, from perceived or potential threats to safety and security, to allow the government to know who they are dealing with in certain situations, and to ensure that people that aren't supposed to be here can be removed from Canada and for those who don't want to be compliant with leaving, the detention tool is meant to facilitate our ability to remove them. But first and foremost, I think it's a tool that's intended to safeguard public safety and security. If you don't know who somebody is, you don't know if they're dangerous. You don't know who somebody is, you don't know if they have a violent criminal history. You need to know who you are dealing with initially, and you need to know what their past is, and whether they're a threat. So, used properly and appropriately, detention can be a measured enforcement tool to ensure those goals are accomplished.[666]

My empirical research reveals that this endorsement of a precautionary approach was not unique to the CBSA—it was, rather, a shared sentiment across the federal government. While the CBSA is an enforcement agency, IRCC, ostensibly beholden to a mandate of refugee protection, also reproduces a criminalisation narrative and securitising discourse around migrant smuggling. According to IRCC, "large-scale arrivals" make it difficult to investigate "whether those who arrive including smugglers themselves, pose risks to Canada on the basis of either criminality or national security."[667] I asked a senior IRCC official why, in their opinion, these events generate so

much controversy. The official claimed that 'mass marine migrant arrivals' warranted a different type of response:

> The thing that's really important to understand with these kinds of events is how the government and various departments are reacting. A big part is the context. A big part of context is the public reaction. You've probably heard me say one of the distinguishing features is the depth and breadth and public support for immigration. Most of the Canadian public sees immigrants are contributing to Canada. Canadians and other countries as well can have visceral reaction to what they see as 'queue-jumpers' or individuals taking advantage of what's perceived as our generosity. The two boat arrivals you mentioned and previous ones really provoke a very fast, very negative reaction. The boat the *Amelie* brought back Parliament from summer session for the second time ever. That doesn't happen in Canada. But it's part of the same pattern. Canadians expect immigrants are going to do well and contribute. Canadians also want to do their part for supporting humanitarian needs of refugees. They don't like the idea of what are perceived as 'queue-jumpers'. That's the most important part of the context of how the government of the day reacted to these big boat arrivals.[668]

In other words, the official asserted, the visibility and high-profile of these events as well as the perceived association of 'irregular marine migrants' with risk, fraud and organized criminality, caused a visceral public reaction:

> Something about boat arrivals pushes a lot of people's buttons. The other part of the context, unlike what's going on between Turkey and Greece, absolutely there are organisations and people smugglers involved, but it's a much smaller operation than chartering a major ocean-going vessel and traveling across the Pacific. The other thing is that is all of a sudden, these boats appeared and the individuals on the boats said 'yeah we don't know who was running them or who chartered them'. That strikes Canadians as: 'oh come on now'! You didn't just show up in Bangkok or somewhere in Indonesia and just walk down the dock and get on a random boat! Obviously, there's a deeper and more sophisticated operation. That's a big part of the context.[669]

The above passage also shows how government officials tend to blame asylum-seekers for their failure to conform to a "convenient image"[670] of the refugee label, instead of questioning the artificial limitations of existing categories. The official's comments suggest that the autonomy exercised by asylum-seekers who enlist the services of smugglers does not align with the behavioural expectations of passivity associated with the refugee category. In this view, because the asylum-seekers used the services of smugglers, they were not 'forced' to leave their country of

origin. Instead, they chose to 'jump the queue'. However, the metaphor of a 'queue' is an incendiary and misleading element of anti-smuggling discourse that frames and rationalizes the Canadian states' actions as a way of protecting 'genuine refugees'. This metaphor and the broader "interdiction script"[671] in which it is mobilized reflect and reinforce a fundamental misunderstanding of refugee rights, which fails to account for the violent conditions that compel people to embark on dangerous journeys and put their lives in the hands of smugglers. "The government knows full well that there is no "queue" for refugees to enter, much less jump," as Macklin and Rehaag explain, "[t]here is a line for economic immigrants, there is a line for family members, but there is no line for refugees at Canadian embassies, including the embassy in Sri Lanka."[672]

In addition to concerns about fraud and risk, as another CBSA official described below, the event occurred in a specific historical context, time and place, which spoke to a "latent anxiety in Canadian society."

> We're in a time and place right now in Canada and globally, where the issue of migration, immigration and irregular migration is very much a touchstone issue... But because the issue itself had become more prominent, in the kind of Canadian political culture, the arrival of the two vessels cut to the quick of an existing issue, an anxiety, a latent anxiety in Canadian society, that made it even more pronounced, and even more than just an operational occurrence of a boat arriving; it was at a time and a place when it resonated in a lot of different ways.[673]

In retrospect, it is clear that the Harper government played upon this latent anxiety to marshal public support for new anti-smuggling reforms, discussed below. In framing the *Sun Sea* as an affront to sovereignty, security and the integrity of the refugee system, the federal government sought to legitimize new draconian reforms.

Having described how the Harper government framed the *Sun Sea* through the lens of precautionary governance and risk management, I move now to analyze the legislative reforms introduced in the wake of the arrival.

3.3 In the wake of the arrival:
Protecting Canada's Immigration System Act

In the wake of the *Sun Sea*, the federal Conservative government under Prime Minister Stephen Harper, which held a minority government, reformed the federal legislative provisions on migrant smuggling. Less than two months after the event, in October 2010, it introduced Bill C-49, Preventing Human Smugglers from Abusing Canada's Immigration System Act. While Parliament sidelined the bill when election season began, upon re-election, the federal Conservative government reintroduced most of its provisions in Bill C-4, tabled by the Minister of Public Safety Parliament in June 2011. Bill C-4 met a similar fate as the preceding bill, which opposition parties, advocacy groups and experts widely condemned. The official opposition, galvanized by refugee advocates, ultimately stymied Bill C-4, which failed to become law. However, the Harper government subsequently reinserted the most significant parts of Bill C-4 into a broader omnibus Bill C-31, Protecting Canada's Immigration System Act, an amendment to the Immigration and Refugee Protection Act, introduced in February 2012. In contrast to the previous attempts to reform Canada's approach to migrant smuggling, when Minister of Citizenship and Immigration Jason Kenney tabled Bill C-31 in Parliament, the political context and power relations in Parliament had shifted dramatically: the federal Conservative party held a Parliamentary majority and could therefore enact a range of legislative reforms in response to the perceived failures of the existing system. Nearly identical in its approach to the problem of migrant smuggling, the most significant distinction between Bill C-4 and the Protecting Canada's

Immigration System Act is that the latter exempts minors below the age of 16 from mandatory detention—a particularly controversial provision that official opposition and civil society framed as a redline issue. Despite efforts by civil society to modify the most controversial elements of the Bill, the Protecting Canada's Immigration System Act received Royal Assent on June 28, 2012 and came into force in December of that year.

These legislative amendments included a number of reforms with significant implications, not only for Canada's anti-smuggling policy, but also its asylum system. Designed to make it easier to prosecute smugglers, the reforms broadened the offence of migrant smuggling to include the notion of "recklessness"[674]; expanded ministerial discretion over admissibility decisions; and, introduced the category of "irregular arrival" in federal legislation.[675] It imposed mandatory minimum prison sentences on convicted smugglers and introduced provisions to prosecute ship owners when their ships are used in smuggling operations.[676] It also introduced the mandatory arrest and detention of persons 16 years and older who arrive as part of a designated 'irregular arrival'.[677] When a designation of an 'irregular arrival' is made by the Minister of Public Safety, a foreign national who is part of the group whose arrival is the subject of the designation becomes a *designated foreign national*. Even if one's refugee claim is ultimately vindicated through the refugee determination process, asylum-seekers stigmatized with the label of designated foreign national continue to experience its punitive effects. They are subject to restrictions on family sponsorship, a five-year ban on applying for permanent residency,[678] denial of access to relief based on humanitarian and compassionate grounds,[679] no access to temporary resident permits,[680] strict reporting requirements at regular intervals,[681] and are ineligible to receive a Refugee Travel Document and leave the country. Because designated foreign nationals are prevented from applying for permanent residence and thereby sponsoring family members, this punitive measure

ensures family separation for a minimum of five years. The Protecting Canada's Immigration System Act also strengthens the cessation powers of the federal government, or its ability to revoke the protected status of individuals, if the federal government decides they are no longer in legitimate need of protection or misrepresented themselves in the application for refugee protection.[682] These measures, in sum, punish asylum-seekers, erode refugee protection, and intensify the insecurity of smuggled asylum-seekers in the name of combatting migrant smuggling.

These legislative amendments form the domestic half of the Migrant Smuggling Prevention Strategy to "deter and disrupt irregular migration by sea" with an emphasis on "reducing the attractiveness of Canada as a destination for irregular migration by sea through domestic legislative amendments" and various disincentive mechanisms, what federal bureaucracies refer to as "access controls."[683] The close relationship between pre-emptive labelling and access to asylum is evident within these anti-smuggling reforms, which attempt to disincentivize smuggling and limit the rights and procedural protections afforded to smuggled asylum-seekers. While they are certainly draconian and disturbing, the federal government's attempt to prevent asylum-seekers from making refugee claims in Canada is not new; such measures pre-date the Migrant Smuggling Prevention Strategy and form the essential core of Canada's systematic deterrence policy, known as the Multiple Border Strategy, in which Canada enacts measures to "push the border out" and deter and deflect the arrival of asylum-seekers at the earliest point along the travel continuum, making it more difficult and dangerous to reach Canada through legal channels.[684] As Macklin notes, Canada is a pioneer when it comes to interdiction; the classic tools of deterrence policy, such as visa restrictions, biometrics, carrier sanctions, the designation of safe countries of origin and safe-third country agreements are part of the Canadian government's larger toolkit of restrictive measures used to deter and pre-empt the so-called 'illegal entry' of asylum-seekers,

bordering practices which render their movement 'illegal' and contribute to the "discursive disappearance of the refugee."[685]

While the continuities between past and present reforms developed in response to 'mass marine migrant arrivals' are obvious and multiple, changes introduced under the Protecting Canada's Immigration System Act expanded and intensified Canada's deterrence efforts in ways that weaken legal protections available to refugee claimants. In particular, the expanded scope of ministerial discretion to address migrant smuggling and designate 'irregular arrivals' is a cause for alarm. The new measures entrust the Minister of Public Safety with the discretionary power to designate a group of people as an 'irregular arrival' in the "public interest" (s. 20.1 (1)(b)), if they have reasonable grounds to suspect that a group is part of a migrant smuggling operation or associated with a criminal organization and/or terrorist group. 'Irregular arrivals' are automatically labelled "designated foreign nationals" if the Minister believes they cannot be examined in a "timely manner" due to concerns about identity verification and/or inadmissibility. If, in contravention to s. 117(3.1), federal authorities suspect that designated foreign nationals have links to migrant smuggling, organized crime or a terrorist group, the Protecting Canada's Immigration System Act excludes them from the normal asylum system and subjects designated foreign nationals to differential processing, a complementary protection stream and an alternative detention regime and review schedule. When asylum-seekers are detained, administrative barriers of the refugee determination process make advancing successful applications even more difficult.[686]

The Protecting Canada's Immigration System Act institutionalized the labels of 'irregular arrival' and 'designated foreign national'. In so doing, it fractured the refugee category into two different streams of asylum-seekers. It thereby institutionalized a draconian approach, based on

the differential treatment and mandatory arrest and detention of asylum-seekers without a warrant. As a result of this designation, the Protecting Canada's Immigration System Act limits some asylum-seekers' access to refugee protection and diverts them into a different refugee status determination process, one that excludes them from the normal due-process protections afforded to refugee claimants, including various institutional mechanisms for judicial review designed to mitigate the risk of refoulement.[687] Designated foreign nationals encounter additional rights restrictions on their applications, including no right to appeal the designation or a rejected refugee claim, a procedural mechanism normally granted to 'regular' refugee claimants.[688] Designated foreign nationals in detention are subject to a restricted schedule for detention review. Initially, as discussed above, the legislative amendments in Bill C-4 stipulated that the Immigration Division could not conduct a detention review for a year. After extensive public denunciation and following recommendations from the Standing Committee on Citizenship and Immigration, the federal government changed the provision to a mandatory review 14 days after initial detention in the final version of the Protecting Canada's Immigration System Act. This must be followed by a second review every six months thereafter.[689]

The introduction of mandatory arrest and detention for designated foreign nationals is a key component in the transformation of the refugee category and the asylum system. This measure represents a significant departure from the discretionary powers afforded to officers to detain foreign nationals under previous legislative provisions on migrant smuggling. S. 55(3) previously stated that a foreign national "may, on entry into Canada, be detained" if an officer considers it necessary for examination purposes or if they have reasonable grounds to suspect a foreign national is inadmissible for security, health or other reasons. By contrast, under s. 55(3.1), detention becomes a routine procedure—an officer *must* detain a designated foreign national upon

designation. The mandatory arrest and detention provision effectively institutionalizes a securitized response to asylum that criminalizes all refugee claimants who arrive as part of a large-scale smuggling event, though less than five percent of detained asylum-seekers are considered security risks.[690] While review measures supposedly exist to aim to ensure a proportionate response on behalf of immigration authorities, no time limit on detention currently exists.[691] Release from detention is possible only with successful refugee determination, a discretionary order from the Minister based on exceptional circumstances, or if reasons for continued detention no longer exist. Beholden to enhanced Ministerial authority, the discretion of immigration officers to negotiate release is significantly reduced under s. 55 (3.1).

The Protecting Canada's Immigration System Act grants the Minister of Public Safety considerable discretionary powers to designate and detain 'irregular arrivals' and the reason for detention—the designation by the Minister—is not subject to review. S. 58 (1) (c)) provides that the Immigration Division of the IRB must order continued detention if the Minister appears to take reasonable steps to conduct an inquiry into suspected cases of inadmissibility. IRB review power is very limited in the case of designated foreign nationals; the IRB has no ability to inquire whether the Minister's suspicions are reasonable, since it can only assess whether the Minister is taking "necessary steps to inquire into a reasonable suspicion" that a designated foreign national is inadmissible for reasons on the grounds of security or organized criminality.[692] The language of the provision gives considerable leeway to the Minister to decide that continued detention is necessary; meanwhile those detained lack legal remedies to challenge their detention. The heightened scope of Ministerial discretion grants exceptional powers that allow decision-makers to act with little regulatory oversight; there is no way to oversee the Minister's decision to deem a group an irregular arrival or the decision to detain individuals. To the best of my knowledge, to

date, the Minister has only pre-emptively labelled one group as 'irregular arrivals'. Immediately when the legislation went into effect, in December 2012, the Minister of Public Safety used the 'irregular arrivals' designation to detain a group of 85 Romanian asylum-seekers. These refugee claimants decided to return to Romania and withdraw their refugee claims rather than endure detention while their claims were adjudicated.[693]

These new Ministerial powers risk politicizing the identities of asylum-seekers and weakening the domestic legal norms that regulate their detention in Canada.[694] This measure embodies the precautionary approach to governance, which, as Aradau and van Munster explain, has anti-democratic effects in that it privileges "a politics of speed based on the sovereign decision on dangerousness," in which securitising agents acquire new emergency powers.[695] The expanded scope of ministerial discretion demonstrates how traditional dimensions of security politics, such as decisionism, motorized decision-making and the invocation of exceptional powers to address threats, occur alongside routine practices of risk management and indirect, procedural forms of deterrence policy, such as cessation and limits of family reunification. Aradau and van Munster have described this dynamic as the coexistence of decision and speed with routine procedures of "the police, the military, immigration officials and other managers of unease."[696]

According to the federal government, the Protecting Canada's Immigration System Act reforms seek to "deter human smugglers, dissuade migrants from taking part in dangerous voyages and ensure that border authorities have sufficient time to establish the identity and admissibility of individuals before they are admitted to the country."[697] The objectives of the reforms were articulated in the humanitarian language of migration management and technocratic claims about system abuse: to "protect the integrity of the system against those who may abuse it, while continuing to meet Canada's domestic and international legal obligations to protect those in

need."[698] As IRCC explains, the "longer-term expected outcomes" of the Protecting Canada's Immigration System Act are to ensure that "the underlying principles of Canada's asylum system (ensuring fairness, protecting genuine refugees, upholding Canada's humanitarian tradition, and reducing system abuse) are supported while ensuring the safety and security of Canadians."[699]

With nearly 500 refugee claims, it took several years for the adjudication of the eligible claimants from the *Sun Sea*. Some claims were being processed as recently as 2018.[700] Based on the fact that 63% of the refugee claims were accepted by the IRB,[701] it is safe to say that the Harper government instrumentalized the visibility of such a large-scale arrival to provide a misleading assessment to the public with regard to the alleged threat posed by the passengers onboard the *Sun Sea* and the challenge posed by the arrival of a relatively small number of asylum-seekers. Meanwhile, as the refugee claims were being adjudicated, the federal Conservative government was able to promulgate its speaking points about those onboard the *Sun Sea* and the threat posed by migrant smuggling, not only to security and sovereignty but also to the refugee system, which is essentially linked to the national identity of Canadians. Of course, the federal government did so even though they were well aware of the fact that the outcome of the refugee determination process would take years to complete and many of the passengers' refugee claims would ultimately be validated. In this regard, the federal government engaged in pre-emptive labelling of the passengers without regard to the collateral damage caused by such securitising moves and precautionary measures. No doubt, in the case of pre-emptive labelling, the significant degree of arbitrary discretion is alarming. Indeed, the precautionary principles that guides such political behaviour tend to favour action over restraint, encouraging policymakers to act with impunity. Pre-emption is "logically recessive," since it does not matter whether the danger actually existed or not, thus creating a disjuncture between its legitimizing discourse and the objective content of

the so-called threat.[702] What is significant, Massumi reminds us, is that "the menace was felt in the form of fear." "What is not actually real," he writes, "can be felt into being." Threats need not be real, to be affective and effective, for a threat has "an impending reality in the present."[703] The affective reality of a threat legitimizes pre-emptive action, regardless of whether or not the threat turned out to be true or not. To paraphrase Massumi, pre-emptive action "will always have been right."[704]

Nonetheless, several federal officials disagreed with the Harper government's approach. Furthermore, they argued that the response to the *Sun Sea* was "overkill," as one CBSA official explained. In part, this was because the label of 'Tamil Tiger' was so broad as to be meaningless, since, in the words of a senior CBSA official:

> Anybody who was Tamil in general would support the Tigers. Anybody. If you were Tamil, your role was defined. You had to be a supporter of the Tigers. Whether there were any real significant threats, I seriously doubt it. I never heard of one. I think that even the [Canadian Security and Intelligence] Service would agree with that. It's very unlikely we were dealing with anything related to national security threats. The [*Sun Sea*] was less about the Tigers and more about making money and making a living.[705]

Although this official seriously questioned "whether these people had legitimate claims to refugee status," he cast serious doubt on the Harper administration's assertions about the sophistication of the organized criminal network supposedly behind the *Sun Sea*, as well as the alleged threat posed by the passengers. This CBSA official, who also worked with the diplomatic envoy as part of Canada's international engagement effort with affected transit states such as Thailand (a topic examined in chapter four), recalled his experience investigating migrant smuggling networks in the region with international partners. He stated in a rather matter of fact manner that smugglers from Sri Lanka "weren't particularly sophisticated" and represented opportunistic, ad-hoc operations, whose objectives were financial, not ideological or criminal. When I asked him about the extent of organized criminality behind the smuggling of individuals

from Sri Lanka via transit countries such as Thailand and other parts of Southeast Asia, he noted that it was "a type of criminality, but I wouldn't say it was particularly well organized."[706] This demystification of smuggling and skepticism toward the criminalisation narrative supports claims within the critical literature, that cautions against such a disingenuous portrayal of smuggling as a sophisticated criminal enterprise.

The same official offered several insights about the detention of passengers on the *Sun Sea* and the use of mandatory detention. On the one hand, while the official agreed with my assessment of the process of policy learning—that the fear of absconding informed the federal government's response to the *Sun Sea* and predisposed the CBSA to argue for mandatory detention—it was "the one thing we learned from the Chinese boats" in 1999. On the other hand, the official believed "detention was warranted" in the 1999 case, whereas he disagreed with the decision to detain those onboard the *Sun Sea*, not only because these passengers were unlikely to abscond, but also because detention fails to deter smuggling in the first place:

> With the Sri Lankans, in my view they would never go anywhere except here. Extended detention periods for them were unwarranted. Detention is not necessarily a deterrent particularly if people have nothing to lose. They gave everything up, they have absolutely nothing left, so putting them in detention will not necessarily deter them. I'm not a strong proponent of detention as a deterrent for human smuggling unless it's the organizers themselves… with the actual people being smuggled, there is no incentive to detain them unless they are a national security threat.[707]

Having discussed the significance of the legislative reforms introduced under the Protecting Canada's Immigration System Act, the next section analyzes the dynamism of labelling and its contradictory effects through an examination of two related judgments at the Supreme Court. While these cases unfolded after the introduction of the new reforms, they involved an interpretive controversy about how to apply the pre-Harper legislative provisions on the offence of migrant smuggling in cases that involved passengers from the *Ocean Lady* and the *Sun Sea*.

3.4 Smuggler or smuggled?

B010 v. Canada and resisting labels from below

Labelling often occurs from the top-down, by persons in positions of political authority. In contrast to this vector of labelling from above, as Hacking argues, is "the autonomous behavior of the person so labelled, which presses from below."[708] The effects of labelling are unpredictable. While labels tend to misrepresent and stigmatize, as Moncrieffe explains, labels are dynamic and contradictory; "malevolent labelling can lead, unexpectedly, to productive outcomes" in which people exercise agency, resist the labels imposed upon them and engage in a kind of counter-labelling.[709]

Two related judgments at the Supreme court, in cases that involved asylum-seekers from the *Sun Sea*, B010 v. Canada,[710] and the *Ocean Lady*, R. v. Appulonappa,[711] demonstrate the dynamism of labelling, its contradictory effects and the ways in which the boundaries created by authoritative labellers can breakdown when challenged by the autonomous behaviour of those targeted by pejorative labels. In this regard, these landmark cases reveal not only how the federal government engages in labelling from above in the "bureaucratic fractioning"[712] of the refugee category, in order to avoid practical commitments to the global population of forcibly displaced persons. They also illustrate what happens when people resist labels and they breakdown. Specifically, these cases show how the federal government sought to pre-emptively label asylum-seekers en route at sea as smugglers and thereby prohibit them from accessing refugee protection.

In these two related judgments, the Supreme Court of Canada found that provisions contained in the Immigration and Refugee Protection Act related to the criminalisation of smuggling were overly broad and unconstitutional. According to the Supreme Court, they criminalized humanitarian assistance and mutual assistance among refugee claimants on their journey to Canada, which contradicted the federal government's legal obligations under the

Refugee Convention, which states that refugees shall not be penalized on account of their illegal entry—provided they "present themselves without delay to the authorities and show good cause for their illegal entry or presence."[713] The Supreme Court ruled that the government could neither find inadmissible (in B010 v. Canada) nor prosecute (in R v. Appulonappa) smuggled asylum-seekers for helping one another enter the country irregularly in the context of a smuggling venture, nor could it criminalize actions of people acting from non-pecuniary motives.[714]

B010 v. Canada exposed the law as overly broad and unconstitutional. In B010 v. Canada, the Supreme Court contested the Harper government's interpretation of mutual aid between smuggled asylum-seekers as evidence of an organized smuggling operation for-profit. The appellants in the case were asylum-seekers from the *Sun Sea*, all of whom took on various duties (e.g. cooking, navigation, lookout, engine room) during the three-month voyage, after the Thai crew abandoned the vessel and the passengers were forced to commandeer the ship. As discussed previously, the passengers were found to be inadmissible to Canada on the basis of participating in organized criminal smuggling, without an assessment of their refugee claims on individual merits. The decisive question in the case was: how to apply and interpret federal legislative provisions on migrant smuggling with regard to the intent of Parliament and the purpose of the Anti-smuggling Protocol, while upholding political obligations under the Refugee Convention.[715]

The appellants argued that they simply assisted fellow refugee claimants to flee from persecution; they were not engaged in migrant smuggling for-profit. In this case, the meaning of migrant smuggling and the distinction between smugglers (perpetrators) and smuggled (victims) was central to the legal debate about statutory interpretation.[716] The case boiled down to an argument about whether such acts meet the international definitional criteria of migrant smuggling for-profit contained in the Anti-Smuggling Protocol and whether the passengers should be

excluded from applying for refugee protection based on alleged involvement in migrant smuggling. The Supreme Court ultimately ruled that the definition of migrant smuggling in federal legislation was unconstitutional on the basis that s. 37(1) (b) was overly broad "in catching migrants mutually aiding one another and humanitarian workers."[717] In this case, the Court had to determine what conduct constituted migrant smuggling because engaging in the act of smuggling made a person ineligible for refugee status determination. The IRB found the appellants inadmissible on the basis that migrant smuggling provisions in the Immigration and Refugee Protection Act covered all acts of assistance to "illegal migrants," even those which did not meet the criteria of financial or material benefit. In their defense, the appellants argued for a narrow interpretation of migrant smuggling based on the profit motive in the context of transnational organized crime, which conforms to the international legal definition found in the Anti-smuggling Protocol. The Court ultimately ruled that appellants cannot be criminalized for mutual assistance and aiding the 'illegal' entry of other refugee claimants in a collective flight to safety. The Court concluded the actions of the appellants were not based on profit motive. The appellants were therefore entitled to a new refugee determination hearing. With this judicial decision, the four cases were remitted to the Immigration Division of the IRB for redetermination on their individual merits. As a result of this judicial decision, this group of asylum-seekers, once categorized as smugglers and criminals, were relabelled as refugee claimants. After a series of protracted legal disputes, the appellants were eligible to apply for refugee protection once again.

B010 v. Canada shows what happens when the bounding process of labelling breaks down and inaccurately labelled individuals resist the categories imposed upon them by the state, in order to assert claims to rights and entitlements under the law. In this regard, the federal government was not the only actor who sought to exploit the contradictions associated with the refugee label.

The refugee claimants, in short, effectively subverted the labels imposed upon them and exploited their contradictory interpretations to gain access to the asylum system and reclaim the refugee label. Although B010 v. Canada was considered a victory for the rights of refugees, since the Supreme Court found the legislation was overbroad, the case dealt with pre-Harper, anti-smuggling provisions in the Immigration and Refugee Protection Act; as a result, the most draconian elements of the 2012 human-smuggling amendments remain in place, including the category of irregular arrival.[718]

Nonetheless, the instructive case of B010 v. Canada shows that the federal government sought to exploit the legal ambiguity of the pre-Harper legislative provisions to argue that some of the refugee claimants were smugglers, in order to interpret the concept of migrant smuggling in ways that aligned with their bureaucratic interests, that is, without regard to the criteria of profit motive—the essential dimension of the international definition. The ability of states to interpret the ambiguous concept of migrant smuggling without the criteria of profit motive may lead states to criminalize acts of humanitarian assistance between passengers of asylum vessels and exclude smuggled asylum-seekers from accessing the rights associated with refugee status. In this sense, the Protecting Canada's Immigration System Act, while ostensibly created in the name of combatting migrant smuggling, in order to protect the refugee system and 'genuine refugees' from unscrupulous smugglers, does precisely the opposite. It contributes to the bureaucratic fractioning of the refugee label and paradoxically, risks eroding refugee protection and penalizing asylum-seekers for being smuggled. The categorical distinctions of migration management, as B010 v. Canada reveals, can be difficult to maintain in practice, as the supposedly clear boundary that demarcates the smuggler (agent) from the smuggled (victim) dissolves over the course of being smuggled.

> But the larger question is can someone be smuggler and smuggled at the same time? Can you be legitimately seeking protection from persecution and have played a prominent role in the smuggling venture? I think that with a vessel like this the answer is yes. Fine. But the legislation is designed in such a way that if you are a people smuggler or a party to people smuggling, that will prevent you from gaining protection in Canada because you're inadmissible for organized criminality.[719]

As this CBSA official's comments suggest, in this regard, the legal ambiguity of the offence of smuggling in Canada made it possible for someone to be "smuggler and smuggled at the same time." While the Supreme Court ultimately vindicated the claims of the passengers in B010 v. Canada, whom the Harper government alleged were participants in the smuggling operation, the vague provisions contained in the Immigration and Refugee Protection Act remain open to abuse, in that refugee claimants in the future may be excluded from the possibility of obtaining refugee protection by virtue of being a party to migrant smuggling, despite the absence of evidence of pecuniary motivations underlying such conduct. However, as Hathaway explains, there is no basis to deny Article 31(1) protection to a refugee "who has engaged in a collective effort to access protection which results in not only her or his own illegal entry or presence but also in the illegal entry or presence of others."[720]

Through the penalization and criminalisation of smuggled asylum-seekers, the Harper government's actions appear to run counter to the intentions of the Refugee Convention, the Anti-smuggling Protocol as well as the intent of Parliament. Rather than providing a legislative exemption for such humanitarian acts or mutual assistance among smuggled asylum-seekers, to exclude them from criminal prosecution—a measure contemplated in response to 'mass marine migrant arrivals' in the late 1980s, as discussed in the previous chapter—the Protecting Canada's Immigration System Act is designed to exclude these acts at the prosecution stage by conferring discretion on the Attorney General under s. 117 in order to prevent family members and humanitarian actions from being prosecuted for such conduct.[721] Prosecutorial discretion has been

key to the federal government's attempt to distinguish migrant smuggling from humanitarian assistance to asylum-seekers. Nonetheless, in the other related judgment, R v. Appulonappa, the Supreme Court ruled that this discretion is insufficient. The Court ruled that s. 117 criminalizes conduct beyond the intent of Parliament and the legislative objectives of the Protecting Canada's Immigration System Act, which, the Court argued, did not intend to prosecute people at risk of prosecution. To address this concern, the Court used its discretion to "read in" a humanitarian exemption to exclude asylum-seekers implicated in the provision of mutual assistance from criminalisation.[722] However, this use of discretion does not appear to resolve the problem of distinguishing between migrant smuggling and humanitarian assistance, except on an ad-hoc basis.

Despite the draconian measures implemented by the Harper government in response to the *Sun Sea*, the Anti-smuggling Protocol makes clear that anti-smuggling measures should not criminalize or penalize asylum-seekers that resort to smugglers. Though it allows signatory states to criminalize related offences under domestic law, Article 19 of the Anti-Smuggling Protocol provides a savings clause, which cautions signatory states about their treatment of asylum-seekers. This clause explicitly limits the scope of the Anti-Smuggling Protocol. It also outlines several exceptions to criminalisation: it states that nothing in the Anti-Smuggling Protocol "shall affect the other rights, obligations and responsibilities of States and individuals under international law," in particular the Refugee Convention and the principle of non-refoulement.[723] In other words, combatting migrant smuggling should not come at the cost of eroding refugee protection, the Refugee Convention and its fundamental principles of non-penalization, non-discrimination and non-refoulement. In principle, any state party that acts in contravention to international refugee or human rights law is in violation of the central provisions of the Anti-smuggling Protocol, which includes the protection of the rights of smuggled asylum-seekers.[724] While it would be naïve to

limit our critique of anti-smuggling policy to legal norms and categories alone, it seems unlikely that the savings clause under Article 19 of the Anti-smuggling Protocol is enough to prevent governments from interpreting legal and normative frameworks in their self-interest. According to the leading experts on the international law of migrant smuggling, the penalization of smuggled asylum-seekers contravenes international obligations, particularly in cases like the *Sun Sea*, where some of the alleged facilitators of the smuggling operation are also refugee claimants.

> Irrespective of how it came about, the loss of immunity from penalty for unlawful entry would not affect the right of the smuggled asylum-seeker to access protection, including associated due process rights. It also does not affect the State's obligation of *non-refoulement*… Can migrant smugglers who are themselves claiming asylum from persecution benefit from the Refugee Convention's non-penalization clause in Article 31? The wording of this article does not appear to preclude such a situation, at least in respect of the smuggler's own entry and stay, and provided the other requirements of the clause (presenting without delay and showing good cause) are satisfied. In other words, a migrant smuggler who is also a refugee will, under the terms of the Refugee Convention, be immune from penalty for breaching the law at least in the limited sense of he or she arrived or stayed without authorization.[725]

Indeed, there is no legal basis to exclude a person from accessing refugee status for engaging in migrant smuggling. The "failure to deliver Convention rights" stemming from a decision under the Immigration and Refugee Protection Act and the criteria of organized criminality under S. 37(1)(b), is "contrary to international law," as Hathaway explains.[726]

By creating new legal categories and subjecting asylum-seekers to the designation of irregular arrival, anti-smuggling policy seeks to transform the refugee label and prevent access to the most privileged category and the asylum system that mediates access to it. While the label of the refugee is shaped by the definition in the Refugee Convention, the case of B010 v. Canada suggests that "its interpretation and application take place at the national level reflecting national interests."[727] In this regard, the attempt by the Harper government to alter the refugee category by reinterpreting its legal obligations and limiting access to asylum show how the refugee label is

neither fixed nor politically neutral. Rather, it is in a state of constant transformation in response to "shifts in political allegiances or interests on the part of refugee-receiving countries."[728] Thus, labelling is a multiscalar, interactive and dynamic phenomenon, which blurs the boundaries between national and international in a recursive process.

> In other words, policy and legal categories may appear fixed, neutral or objective but are, in fact, constantly subject to challenge across different national and regional contexts as lawyers, advocates and academics push at the boundaries of international law. Developments in case law and policy— and the iterative process between the two— can serve to bring some people into the category of refugee whilst simultaneously excluding others.[729]

The case of B010 v. Canada nicely illustrates the constructed nature of legal categories as a historical and highly politicized process, one characterized by a dynamic relation between developments in jurisprudence, anti-smuggling policy and international norms. This dynamic reveals the unpredictable and contested nature of labelling; it may function to include or exclude individuals from the refugee label. Far from being politically neutral, then, the refugee category is constantly contested, transformed and fractioned in response to debates about the legal ambiguity, classificatory struggles and interpretive struggles over the meaning of categories at the national level. In other words, the refugee category, despite the appearance of impartiality and universality, is subject to constant change, negotiation and translation across different national contexts in space and time.

3.5 Conclusion

A conceptual framework of labelling shows how apparently apolitical bureaucratic practices, purportedly designed to combat migrant smuggling, can produce discriminatory and de-graded categories of forced migration that mediate the interests of the state to limit access to asylum and the refugee category. The pejorative sub-category of *irregular arrival* reveals how

apparently objective labels conceal the role of bureaucratic practices in the erosion of refugee protection—how, in Zetter's words, "apparently legitimate and objective processes are in fact pernicious tools which fraction the claim to a fundamental human right" to seek asylum, as outlined in Article 14 of the Universal Declaration of Human Rights.[730] Indeed, Canada's response to the *Sun Sea* suggests that wealthier destination states will exploit the legal ambiguity of and interpretive controversies surrounding the refugee category in order to limit their responsibilities to people in pursuit of humanitarian protection. And while the federal Conservative government claimed that the Protecting Canada's Immigration System Act reforms aligned with legal obligations to asylum-seekers, I will now conclude by discussing the ways the Protecting Canada's Immigration System Act may undermine refugee protection and violate Canada's obligations to asylum-seekers, including those that resort to smugglers to facilitate their flight to safety.

Critics argue the Protecting Canada's Immigration System Act is unconstitutional because it violates norms of refugee protection that Canada is legally obligated to uphold. These include the institutional principles of procedural guarantees of non-discrimination and equal treatment, non-arbitrary detention and commitments to persons in need of protection.[731]

The Protecting Canada's Immigration System Act appears to violate a number of norms that govern the treatment of refugee claimants. The unequal treatment of designated foreign nationals contradicts the principles of non-discrimination and equal treatment before the law that underpin the Charter and the Refugee Convention.[732] There is no right to appeal the designation and designated foreign nationals are prevented from accessing the Refugee Appeal Division to appeal a negative refugee determination decision. The absence of sufficient review mechanisms for designated foreign nationals contravenes section seven of the Charter because the loss of liberty is imposed in an arbitrary way that violates principles of fundamental justice.[733]

Though detention of refugee claimants is permitted under the Refugee Convention, established practice has created expectations for signatory states that detention is expected to be exceptional, non-arbitrary and humane.[734] According to the IRB, under federal law, preventive detention is "an exceptional measure,"[735] not a routine procedure. International experts such as the UN Committee Against Torture have expressed concerns about arbitrary detention with regard to the Protecting Canada's Immigration System Act's provisions around mandatory detention, the exclusion of 'irregular arrivals' from appealing a negative claim as well as the procedural problems that arise from excessive Ministerial discretion in the highly politicized designation and detention process.[736] The Committee recommended that Canada modify the provisions on mandatory detention and the absence of appeal mechanisms because they risk violating due-process procedures established under the Refugee Convention. The Committee further advised that detention should be used solely as "as a measure of last resort"[737] and cautioned that the lack of appeal mechanism for those labelled 'irregular arrivals' increases the risk that designated foreign nationals will be deported to countries of origin where they face potential persecution. The UNHCR also expressed its concern that the removal of appeal procedures for 'irregular arrivals' risks contravention of the non-refoulement principle.[738] The exclusion from the procedural protections and entitlements of refugee status is often equivalent to refoulement. Refoulement, as Hathaway explains, can occur through the "denial of access for certain categories of persons to existing asylum or other procedures which would determine the risk of refoulement," including the removal of appeal procedures that can determine the risks associated with returning rejected refugee claimants.[739]

Indeed, available evidence suggests that the Protecting Canada's Immigration System Act raises serious concerns about returning individuals to countries of origin. What is known about the

case of B-189, Tharmaradnam Arumaithurai, illustrates the potential risks under the current legislative framework.[740] Mr. Arumaithurai was the last of the *Sun Sea*'s passengers in federal custody. As Bell observes,[741] as an ex-LTTE member, if returned to Sri Lanka Arumaithurai potentially faces violence. Initially, Arumaithurai tried to cover up his connection to the LTTE. Eventually, however, he confessed to his past role in the organization. Subsequently, the IRB attempted to deport him in March 2011. However, the IRB was unable to enforce a removal order, because he refused to sign off on travel documents. Facing deportation, Arumaithurai disclosed his past with the LTTE, hoping that the Harper government would delay or overturn the deportation order, because he faced the possibility of persecution in Sri Lanka by government security forces. In January 2014, however, the federal government concluded that Arumaithurai no longer faced a risk to his life: since he left the LTTE in 1997, they argued, the Sri Lankan government would not be interested in persecuting him.

Arumaithurai's fears of persecution are well-founded. The Sri Lankan government has a well-established record of human-rights abuses against the Tamil minority and LTTE members. Another passenger, Sathyapavan Aseervatham, was detained and tortured by Sri Lankan government officials upon his return.[742] Eventually, he was killed on September 6, 2013. While he was killed by a truck, the circumstances surrounding his death are suspicious. Arumaithurai said "the same thing will happen to me, that's what I'm afraid of... I can't go and live peacefully there because I am ex-LTTE … they will come after me."[743] Originally scheduled to be deported on February 11, 2014, after an appeal to the Federal Court, the Canadian government granted him a stay of removal while he contested the Harper government's conclusion that he is not at risk of danger in Sri Lanka. The federal government finally released Mr. Arumaithurai in December 2015 after five years in detention. Currently, he is awaiting the result of a final pre-removal risk

assessment to determine whether he faces danger if returned. While it may not meet the legal threshold of refoulement, because his refugee claim was denied, if Arumaithurai is sent back to Sri Lanka, the Canadian government risks potentially violating its legal obligations to what it calls "persons in need of protection," defined as "a person in Canada whose removal to their [home] country, would subject them personally to danger, torture or cruel and unusual treatment or punishment."[744]

UNHCR has argued that the stated reasons for the 'irregular arrival' designation do not justify the differential treatment of refugee claimants with respect to detention, access to appeal mechanisms and ability to obtain permanent residency.[745] According to UNHCR, the relevant provisions of the legislation contravene non-discrimination guarantees found in the Refugee Convention.[746] The Refugee Convention states refugee claimants shall not be discriminated against nor penalized for their mode of entry.[747] In this regard, through the creation of a designation for 'irregular arrivals', the Protecting Canada's Immigration System Act contravenes the principle of non-discrimination according to mode of entry. Furthermore, the Protecting Canada's Immigration System Act violates customary practices of refugee status determination, which must be based on individual and not group assessment.[748]

The reforms introduced in the wake of the *Sun Sea*'s arrival are certainly grossly disproportionate and draconian. However, when viewed historically, they are by no means exceptional. Rather, Canada's response to the *Sun Sea* can be analyzed as the most recent episode in a much longer historical process of contention, the politicisation of asylum in Canada, in which the federal government has sought to transform the refugee label and redefine humanitarian assistance, in order to insulate itself from legal obligations to people in pursuit of protection.

However, these domestic reforms are only part of the story of Canada's response to the *Sun Sea*. While this chapter focused on the domestic dimensions of the federal government's Migrant Smuggling Prevention Strategy, the next chapter analyzes its international aspects, which externalize border enforcement outward to regions in Southeast Asia and West Africa. In the pages that follow, I examine the anti-smuggling programs enacted by the federal government, in cooperation with affected governments in transit countries across regions in the global South and IOs to prevent and disrupt migrant smuggling ventures before they depart for Canada.

CHAPTER FOUR
'Pushing the border out' and offshoring and outsourcing anti-smuggling policy to transit countries

4.0 Introduction

Whereas chapter three focused on its domestic dimensions, this chapter examines the international aspects of the Migrant Smuggling Prevention Strategy. To supplement in-country policy changes and legislative reforms, the Migrant Smuggling Prevention Strategy included a range of international actions with affected governments and IOs in countries of transit. According to internal assessments, these "international elements" of Canada's anti-smuggling policy "complement and reinforce domestic actions" designed to prevent and deter migrant smuggling.[749] Despite this apparently neutral description, these multilateral initiatives, like their domestic counterparts, are not simply about countering migrant smuggling. Rather, these extraterritorial measures, designed to offshore and outsource anti-smuggling policy to transit countries, served to further fragment the refugee category and limit access to asylum under the humanitarian guise of combatting migrant smuggling in affected regions. For the federal government, extraterritorial measures to deter and disrupt migrant smuggling in countries of transit were politically expedient and legally instrumental. In effect, the offshoring and outsourcing of migration management made it possible for the federal government to bypass geopolitical and legal constraints to effective control. These extraterritorial efforts included: multilateral programming and diplomatic outreach; capacity-building projects designed to deter smuggling and disrupt smuggling networks in transit countries, and; programs to return asylum-seekers left stranded after the interception of smuggling ventures in transit countries—deportations conducted under the moniker of 'assisted voluntary return and reintegration' (AVRR), a technocratic euphemism that helps to mask the violence of anti-smuggling initiatives. In what follows, I examine how, in response to the *Sun Sea* and as part

of the broader effort to stymie the arrival of asylum-seekers that enlist smugglers, the Canadian government introduced a range of anti-smuggling programs in which various federal agencies, acting under the Office of the Special Advisor on Human Smuggling and Illegal Migration, cooperated with affected governments and IOs in transit countries to offshore and outsource anti-smuggling policy.

Extraterritorial anti-smuggling programs detailed herein can be analyzed as a practice of *pre-emptive labelling at a distance*.[750] To understand how the Harper government engaged in pre-emptive labelling as part of its systematic effort to fragment the refugee category and limit access to asylum, this chapter examines the transnational anti-smuggling initiatives developed under the Migrant Smuggling Prevention Strategy, the conditions under which they emerged and their erosive effects on the protection of would-be refugees. I analyze how the federal government engaged in pre-emptive labelling at a distance through anti-smuggling programs ostensibly designed to address 'transit migration'[751] in Southeast Asia and West Africa, in collaboration with IOs and affected governments. In the context of anti-smuggling policy, transit migration is not merely a descriptive technical term. Rather, it functions as a shorthand to pre-emptively label asylum-seekers on the way to their final destination. In this sense, the application of the label of transit migration/migrant in anti-smuggling policy is an attempt to transform the refugee label and restrict access to the asylum system by containing would-be refugees to regions of origin in the global South. The label of transit migration, due to its association with agency, voluntarism and economic self-interest, plays a vital political role in the transformation of the refugee label, the delegitimization of asylum-seekers and the rationalization of initiatives to contain the effects of forced displacement.

Anti-smuggling policies and the pre-emptive labelling of so-called transit migrants function politically as a legal-administrative reservoir "to contain entry and intercept access to the most prized claim" of refugee status.[752] Access to the refugee label and refugee status determination are effectively blocked by proactive measures designed to contain asylum-seekers within a geopolitical space outside of legal norms, which leads to what Hyndman and Mountz call neo-*refoulement*—the return of asylum-seekers to regions of origin "*before* they reach the sovereign territory" and make a refugee claim.[753] By containing asylum flows to regions of origin, where refugee claimants are forced to seek protection through official means, the externalization of migration management reinforces the 'normality' of the international state system—the "national order of things"[754]—and thus state-sanctioned forms of resettlement, which anti-smuggling discourse casts in opposition to the deviant, 'irregular' mode of arrival undertaken by the asylum-seeker, whose clandestine entry is framed as threatening and risky.

The ensuing analysis unfolds in five parts. Section one begins with a discussion of the hegemonic framing of migrant smuggling through the lens of migration management, *as a global issue in need of global solutions*. In this view, the international community shares a responsibility to manage forced displacement through multilateral cooperation, due to the perceived lack of capacity within (and the disproportionate burden shouldered by) affected governments in countries of transit. Here, I situate Canada's anti-smuggling policy and its political manipulation of the label of transit migration within a new generation of cooperative deterrence policies. Section two outlines the international dimensions of Canada's anti-smuggling policy. For the federal government, this multilateral programming was devised not only in response to the failure to prevent the arrival of the *Sun Sea*, but also in relation to a series of perceived political constraints on its capacity to prevent the arrival of asylum-seekers: Parliamentary politics, judicial

contestation and legal norms, all of which restricted the Harper government's capacity to effectively prevent asylum vessels from arriving in Canada. To overcome these constraints and recoup the illusion of sovereign capacity for control, the Special Advisor on Human Smuggling and Illegal Migration oversaw a multilateral approach, which, in effect, amounts to neo-*refoulement.* Notably, this new multilateral approach involved diplomatic engagement and capacity-building with affected governments in transit countries—actors less constrained by legal norms of refugee protection and human rights. Against this backdrop, section three traces the origins of this multilateral approach in the Anti-Crime Capacity-Building Program and describes some of the projects implemented under its umbrella. It focuses on the pejorative label of transit migrant and the securitising discourse surrounding transit migration through an overview of the anti-smuggling programs implemented under the Human Smuggling Envelope. This series of projects, developed to prevent and disrupt migrant smuggling in transit countries in Southeast Asia and West Africa, was implemented in cooperation with the IOM and the UNODC. This approach is rationalized from the perspective of wealthier destination states, through reference to the conventional wisdom of migration management, that is, the notion that affected governments lack the institutional capacity to address migrant smuggling ventures that pass through their territories en route to wealthier destinations. I illustrate, however, that the official rationale and apparently apolitical quality of these actions obscure the instrumentality of the label of transit migrant/migration in the management of migrant smuggling. Section four turns to an examination of the Global Assistance for Irregular Migrants program, AVRR program implemented in West Africa in cooperation with the International Organization for Migration. This program provides return assistance, medical aid and financial inducements to Tamil asylum-seekers from Sri Lanka stranded in West Africa following the interdiction of smuggling ventures. According to the federal

government, the disruption of smuggling networks in the region revealed a major capacity gap in the Migrant Smuggling Prevention Strategy: the *consequences* of interceptions, which left stranded asylum-seekers vulnerable to human rights abuses in transit countries that lacked an institutional infrastructure for refugee protection. Despite these apparent humanitarian concerns on behalf of the federal government, I argue the use of financial inducements to incentivize 'return' combines 'development' and 'deportability'[755] in a humanitarian framing that depoliticizes the return of asylum-seekers to their country of origin—what Collyer has called "deportability as development"[756]—while augmenting the Canadian state's capacity to effectively contain forced displacement to affected regions in the global South.[757]

Through an examination of anti-smuggling programs in countries of transit, I show how, and with what effects, the Harper government engaged in pre-emptive labelling. Specifically, I illustrate how, in the case under study, asylum-seekers were pre-emptively labelled as transit migrants and the discursive and depoliticising effects of this designation in the externalization of anti-smuggling policy. The political manipulation of the ambiguous label of transit migration is arguably a sleight of hand by the federal government, one designed to limit access to asylum, minimize presumptive commitments to people in pursuit of protection and pre-emptively disrupt smuggling ventures, while justifying such actions in a hybrid security-humanitarian framing that combines logics of care and control into a rationality of migration management. The label of transit migration is critical to this act of political legerdemain, which mobilizes the destination state (and its delegates) as the providers of protection. While it was designed initially to provide social scientists a more nuanced account of the fragmented journeys of refugees and migrants, the label of transit migration serves in policy practice to stigmatize asylum-seekers that enlist smugglers and in effect, discursively divorce their identities from the core attributes of the refugee category,

including the human right to seek refuge and procedural safeguards against non-refoulement. By enrolling affected governments into the disruption of smuggling ventures transiting through their territory, anti-smuggling policy constructs and transforms the identities of asylum-seekers into transit migrants—narrowly understood in neoliberal terms as entrepreneurial agents motivated by the search of opportunity, rather than individualized threats of persecution. Programs designed with this objective implemented under the Human Smuggling Envelope have thus enabled the federal government to pre-emptively label asylum-seekers at a distance and to offshore and outsource migration management through indirect deterrence measures in which control is framed, rationalized and obscured by claims about refugee protection, human rights and socio-economic development.

4.1 Offshoring and outsourcing migration management: Building capacity in transit countries

Convened in 2016 at the height of the 'migrant/refugee crisis' to address the growing phenomenon of "large movements of refugees and migrants," the UN Summit for Refugees and Migrants was considered a "watershed moment" in the global governance of migration.[758] At the summit, the international community signed the New York Declaration for Refugees and Migrants. The New York Declaration expressed solidarity with people "forced to flee" and encouraged the international community to strengthen multilateral cooperation to address irregular migration as well as migrant smuggling and trafficking in persons. The Declaration emphasizes the necessity of multilateralism. The global phenomenon of large movements—mixed flows of refugees and migrants— "call for global approaches and global solutions."

> No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected. Their capacities have been severely stretched in many cases.[759]

According to the Declaration, because of the "varying capacity" of affected governments to address forced migration, the international community shares the responsibility to manage large movements through multilateral cooperation. The "profound benefits" of multilateral cooperation, it declares, cannot be understated—they are championed in the trite mantras of migration management, as a "win-win" for "humanity" as a whole.[760] At the same time, the Declaration does recognize that many people caught in situations of forced displacement are compelled to enlist "the services of criminal groups," which expose them to danger, exploitation and abuse in the pursuit of profit. The Declaration calls on signatory states to cooperate to address the role of transnational organized crime in the facilitation of clandestine movement. Yet, upon closer inspection, underneath its confident declarations, international cooperation is revealed as a site of political struggle, characterized by the competing claims of state sovereignty, on the one hand, and legal obligations toward refugees, on the other hand:

> Recognizing that States have rights and responsibilities to manage and control their borders… We will promote international cooperation on border control and management as an important element of security for States, including issues relating to battling transnational organized crime, terrorism and illicit trade... We will strengthen international border management cooperation, including in relation to training and the exchange of best practices. We will intensify support in this area and help to build capacity as appropriate. We reaffirm that, in line with the principle of *non-refoulement,* individuals must not be returned at borders. We acknowledge also that, while upholding these obligations and principles, States are entitled to take measures to prevent irregular border crossings.[761]

In its depiction of this site of struggle, this passage provides an exemplary rendition of how the global discourse on migration management uncritically problematizes migrant smuggling as, first and foremost, a matter of management, control and security. It reproduces a securitising discourse on migration and a set of claims about the alleged necessity of border control as integral to the national security of states, which exist in tension with the Declaration's professed commitment to international human rights. Despite its pretense to the supposed self-evidence of

such measures, there is nothing natural nor inevitable about how states view migration control as a matter of national security. Of course, this framing is not unique to the Declaration.[762] As scholars of refugee and forced migration studies note, multilateral efforts to manage migration are skewed toward the sovereignty of states and the interest of governments in the global North.[763] The recent Global Compact for Safe, Orderly and Regular Migration—a non-binding framework to promote enhanced multilateral cooperation on forced migration that builds on the commitments outlined in the Declaration—is a good case in point, in which the goal of safe, orderly and regular migration is undermined by securitisation and the perceived link between migration control and national security.[764]

Canada, in collaboration with the European Union, Jordan, Fiji, Kenya, Lebanon and Turkey, played a leadership role in building support for the Compact.[765] The Compact commits signatory states to, *inter alia*, cooperate more effectively to build the capacities of source and transit countries to prevent migrant smuggling.[766] The objective of the Global Compact is "to identify what an ideal, uncontested, migration world should look like."[767] The Global Compact suffers from what Nyers calls "humanitarian hubris," in its confident declaration about the capacity of the international community to manage migration, which reaffirms a state-centric perspective that blinds politicians and policymakers to "other ways of framing the challenges and opportunities" associated with international migration.[768] The Global Compact, like the broader corpus of worldviews and arguments that shape perceptions of forced displacement at the UN level—what Pécoud calls international migration narratives—functions as a myth, which legitimizes the international politics of migration management and attempts by destination states to contain the destabilizing effects of forced displacement to regions of origin in the global South.[769] While the Global Compact is grounded in a recognition of the fundamental rights of all

people on the move, regardless of their status, it is based on a categorical distinction between refugees and migrants, which it describes as "distinct groups governed by separate legal frameworks," under which only "refugees are entitled to the specific international protection as defined by international refugee law."[770] In light of the rising levels of forcibly displaced persons, the reaffirmation of the unique rights of refugees may appear geared toward refugee protection, however, it reproduces the artificial categories of the deterrence paradigm, which do not hold in contemporary situations of forced displacement defined by extreme precarity.[771] This categorical distinction between refugees and migrants is foundational to the myth of international migration management, which reinscribes the status quo of state sovereignty at the heart of global migration governance. By reaffirming the false binary between migrants and refugees and reinforcing it within the two-pronged international framework, as Squire argues, the Global Compact engenders an approach to migration management rooted in voluntarism and goodwill "rather than legal obligation," a set of non-binding commitments that are translated into policies that construct forced migration in apparently benign, though highly problematic terms—as a problem of development—a framing that obscures the role of socio-economic development initiatives in the perpetuation of precarious migration.[772] Despite the welcomed attempt to recentre refugee protection, the other component of the international framework, the Global Compact on Refugees, which states to be "non-political in nature,"[773] offers a 'thin' notion of refugee protection[774] and an approach to refugee rights that must be examined by locating it "in the management paradigm it embraces," as Chimni nicely puts it.[775] Additionally, as Chimni notes, it is silent regarding the role of Western states and external actors in the production of large refugee-outflows as a result of recent armed interventions in Afghanistan, Iraq, Libya and Syria.[776] Within the text, there is no mention of

migrant smuggling beyond a single sentence, which commits states to strengthening international efforts to combat it, without mention of the rights of asylum-seekers forced to enlist smugglers.[777]

The silences and strategic acts of omission throughout the text speak volumes about the interest and objectives of global migration governance. In the global dialogue on forced migration, there is little discussion of *the smuggling of refugees* or the role of smuggling in facilitating access to asylum.[778] Instead, multilateral cooperation often addresses migrant smuggling as part of a broader debate about *transit migration*. From the perspective of wealthier destination states such as Canada, affected governments in countries of transit lack the institutional capacity to address migrant smuggling networks that facilitate irregular migration flows through their territories. Because asylum-seekers who enlist the services of smugglers tend to travel through a range of intermediate countries before departing for their country of destination, in the absence of effective border controls, wealthier destination states contend that multilateral cooperation is necessary to address this constellation of forced displacement—asylum, migrant smuggling and transit migration. However, this attempt to foster cooperation, evident in the objectives of the Global Compact, actually functions to maintain the status quo of international migration—the current "geopolitical consensus among the world's wealthiest countries"— and does little to challenge the orthodoxy of deterrence policy, which seeks to contain displacement to regions in the global South by financing and supporting its management through transnational 'partnerships' with transit countries.[779]

In the aftermath of the migrant/refugee crisis, the main response across the global North has been to link the securitisation of migration and the externalization of border enforcement under the umbrella of global migration management. By linking securitisation and claims about the necessity of border control with claims about the need for multilateral cooperation, wealthier

destination states attempt to overcome the limits of unilateral forms of migration control and regain the illusion of sovereign power in a globalizing world:

> [N]otions such as *cooperation, global governance* or *management* have become popular in scholarly and policy debates: what they have in common is an emphasis on the need for comprehensive policy approaches, based on the recognition that migration is a structural feature of a globalising world… and that international or multilateral cooperation between states is needed to govern such a far-reaching and transnational social phenomenon.[780]

This conventional wisdom of cooperative migration management emerged in response to the current geopolitical context. Today, the classic tools of deterrence policy, initially developed to address asylum-seekers after the end of the Cold War, such as visa controls and carrier sanctions, remain common throughout the world. However, migrant smuggling has called into question the efficacy of such practices. Because of the proliferation of smuggling networks, the "classic tools of non-entrée no longer provide developed states with an effective and legal means to avoid their obligations under refugee law."[781] Since the emergence of deterrence policies across the global North, smugglers have developed innovative methods to frustrate such measures—by procuring counterfeit identity documents and bribing corrupt officials in transit countries. Smugglers, as Crépeau remarks, will always "outpace and outfox" states in their coordinated attempts to prevent irregular migration.[782]

Thus, the focus on transit migration on the part of the international community can be explained by the fact that many asylum-seekers, rather than making a direct journey from their home country, tend to move clandestinely through various transit countries with lax border enforcement, often with assistance from smugglers to facilitate specific stretches of their journey.[783] In a recent study of 500 would-be refugees who crossed the Mediterranean into Europe, Crawley and her colleagues showed that people on the move rarely used smugglers to facilitate their entire journey from their country of origin; rather, most people utilized smugglers to complete

specific *legs* of their journey, for example, to navigate particularly dangerous stretches or to bypass border controls.[784] Other research on transit migration has demonstrated the often fragmented and indirect journeys of asylum-seekers, who make autonomous decisions en route in response to barriers to mobility.[785] The reason for such fragmented routes is because few people in pursuit of protection can afford smuggling by direct air routes, the cost of which has increased dramatically in response to visa restrictions and carrier sanctions. Furthermore, while relatively few can afford the "full package" of smuggling services en route to their final destination, such as the procurement of visas, forged identity and travel documents, accommodation and transportation—which can cost several thousand dollars per person—only well established and sophisticated smuggling networks can offer a "full package" set of services.[786]

In a geopolitical context of a shrinking humanitarian space, in response to the re-spatialization of migration control, desperate asylum-seekers are forced to embark on dangerous transit routes and circuitous journeys through a range of countries, often by sea, land or a combination of methods, in order to evade migration controls and exploit weaknesses in border infrastructure. In this regard, as Collyer explains, changing "spatial configurations of migration control and patterns of undocumented migration are therefore intimately related."[787] Because of the spatial reconfiguration of migration control, as Collyer argues, clandestine migration via transit countries is one of the only viable ways to avoid "increasingly effective" mechanisms of non-entrée—"from the visa section of the relevant embassy to the door of the aircraft."[788] As Hyndman and Mountz argue, the externalization of border enforcement is key to the respatialization of migration control, what they describe as a well-funded "architecture of enmity," a geographic project conducted "in the name of security," but discursively framed through a double-edged lexicon of 'preventive protection'.[789]

In light of the geopolitical and legal limitations of traditional deterrence practices, as Gammeltoft-Hansen and Hathaway note,[790] a next generation of *cooperative* deterrence policies has emerged. While externalization and a commitment to protection in transit and source countries in affected regions are not new,[791] this reformulated approach to deterrence policy is predicated on much more extensive forms of international cooperation, which have placed IOs at the centre of anti-smuggling policy. Anti-smuggling policy is offshored to the jurisdiction of transit countries and outsourced to affected governments and IOs with an institutional mandate to address migrant smuggling. These multi-level and multi-actor initiatives, ostensibly designed to build the capacity of affected governments to disrupt smuggling ventures destined for Canada, exemplify this new generation of cooperative deterrence policy. The official rationale for this approach is spelled out in the passage below, from a confidential memo for Canadian diplomats entitled "Unplanned Encounters with Migrant Smuggling Stakeholders at the UN General Assembly." This set of speaking points designed for impromptu meetings with affected governments in Southeast Asia outlines the official reasoning behind such efforts:

> In our efforts to eliminate this criminal, dangerous and unfair activity, we recognize the necessity for a comprehensive international approach. There are many challenges in identifying individuals involved in organizing these ventures and seeking to disrupt their efforts. There are also several challenges associated with tracking and taking action on the seas to disrupt these ventures.
>
> Canada appreciates that resources and capacity to counter this criminal activity are stretched. Canada would consider favourably providing assistance through the relevant international organisations to counter this type of transnational organized criminal activity and to assist States in meeting the challenges of illegal and irregular migration, in a manner consistent with international law.[792]

From the perspective of the Canadian government, channelling financial resources through various intermediaries offered a politically feasible way to address the perceived challenges posed by migrant smuggling, one that offshored and outsourced anti-smuggling policy. Under the

benevolent guise of building capacity to combat smuggling and protect the most vulnerable, such measures allow the federal government to bypass political constraints to effective control and minimize legal obligations to asylum-seekers by delegating responsibility to IOs with a mandate in anti-smuggling policy, specifically the UNODC and the IOM.

These actors have played a major role in multilateral programming to address migrant smuggling in regions in the global South in recent years. Canada and other wealthier destination states have dedicated significant financial resources to projects delivered by these actors to build the operational capacity of affected governments in transit countries, through the provision of technical assistance, expertise, equipment and training.[793] While the introduction of a "supranational structure" for the coordination of border enforcement may be understood as a "significant evolution, if not a shift of paradigm" in the rationality of migration governance, in practice, it represents an attempt to maintain global configurations of power, in which the effects of forced displacement are largely contained to regions in the South.[794] Indeed, the increasing availability of tailored services, offered by the IOM and other IOs in the field, has functioned both to delegate migration management towards non-state actors and to "spatially shift" migration control beyond territorial borders.[795] These developments make it possible for wealthier destination states to engage in pre-emptive labelling at a distance and remote migration management to prevent the arrival of asylum-seekers. As a consequence, multilateral programming in transit countries disproportionately affected by migrant smuggling enables the Canadian federal government to maintain a public commitment and humanitarian rhetoric toward those in pursuit of protection, while simultaneously working with actors less constrained by legal norms to interdict asylum-seekers. In other words, the externalization of anti-smuggling policy enables the

Canadian government to stymie the arrival of asylum-seekers while voicing support for refugee protection—to "have their cake and eat it too."[796]

As Collyer and other scholars have explained, the deployment of the label transit migration occupies a central role in the re-spatialization of migration control.[797] Anti-smuggling policies are often perceived as part of the broader attempt by wealthier destination states to adapt to the changing spatial geographies of forced displacement. From a critical perspective, however, the offshoring and outsourcing of migration management through anti-smuggling policy is not a self-evident response to autonomous movements of transit migrants. Rather, anti-smuggling policy and attempts to restrict access to asylum bare significant responsibility for the creation of the label of transit migrant and the emergence of the phenomenon of transit migration.[798] In this regard, transit migration is not a pre-existing problem, which, in turn, causes states to devise sophisticated anti-smuggling measures. Rather, transit migration is the product or effect of anti-smuggling policy and other deterrence efforts designed to make asylum-seeking more difficult. Anti-smuggling policy, in this sense, obfuscates the role of deterrence measures in the production of the conditions under which people must embark on dangerous and circuitous journeys in the first place. As Zetter argues, "reducing eligibility to the privileged label 'refugee'" forces would-be refugees underground— "into illegality"—and into the arms of smugglers to assert their human right to seek asylum.[799]

> … it is not the claimants who are transforming the labels, but precisely state policies and practices which effectively criminalize refugees for seeking asylum. This cause–effect cycle generates yet more labels such as 'clandestine' or, worse still, 'illegal' or 'bogus' asylum seekers. But the lack of official documents does not, as the Convention makes clear, constitute grounds for rejecting a claim for refugee status.[800]

From the perspective of the Canadian government, the proliferation of new pejorative sub-categories—designed in theory to account for the heterogeneity of forced migration today—is a

fundamental component of emerging strategies of migration management. Through the creation of novel sub-categories, policymakers attempt to disaggregate the refugee category and "institutionalize and differentiate categories of eligibility and entitlements," which, in effect, delegitimize the claims of asylum-seekers and curtail access to refugee status.[801] Despite the political manipulation of the label of transit migrant, it is not simply an artifice of strategically-oriented and like-minded destination states. Rather, as Frowd explains, the label of transit migration emerges from a "polyvocal" and multi-scalar process, in an interactive dynamic between key IOs on the ground, actors in affected regions and powerful destination states that fund such security interventions.[802]

Pre-emptively labelling asylum-seekers as transit migrants and the countries they traverse under the banner of transit migration is both legally instrumental and politically expedient in this regard. Transit migration, a label that has become a euphemism to stereotype the "anonymous mass" of irregular migrants—usually young men, whose movement is facilitated by smugglers—is attractive to policymakers because it serves the interests of the labelling entity and the labelled entity.[803] In the "unchecked" encounter between asylum-seekers and border enforcement, "state authorities (or their delegates) are free to label those encountered as 'illegal migrants'… or 'asylum-seekers'—all of which produce and institutionalize very different legal entitlements."[804]

Because the transit migrant is literally and figuratively suspended in time and space and thus "conceptually undecided," the legal ambiguity of the category fulfils a critical "labelling function" as a "tool of governance" in the fractioning of the refugee label.[805] The stereotyped and stigmatized identity of the transit migrant engenders a de-linked explanation of forced migration, which omits the role of smugglers in facilitating—and anti-smuggling policy in restricting—access to asylum. The malleability of this formerly social-scientific and now deeply politicized concept

is well documented; it can be used to code "any kind of mobility" as illegal, irregular or illegitimate and thereby stigmatize forced migrants.[806] By discursively linking transit migration with irregular migration and migrant smuggling within new anti-smuggling strategies, wealthier destination states attempt to manipulate the refugee label and justify draconian extraterritorial measures to prevent people caught in situations of forced displacement from accessing asylum and the rights of refugee status. As noted by Zetter, political discourse benefits from conceptual confusion in which a number of "less privileged sub-labels," such as transit migrant, "have become a shorthand for any form of migrant and the vehicle for regulatory reaction" that indiscriminately erodes the rights of people on the move. [807]

Of course, I am not the first to examine the politicisation of the refugee label and strategic demonization of asylum-seekers through the label of transit migration. As various scholars have argued, the label has more to do with a desire for control than a taxonomic concern with accuracy.[808] A small but growing critical literature on transit migration has contributed to the broader discussion in refugee and forced migration studies about the inherent limitations of existing policy categories. This literature has highlighted how the label of transit migration shapes migration outcomes and influences how individuals are identified and treated.[809] This literature has illustrated the range of determinants in the development of transit migration,[810] the geographies of transit migration[811] and the lived realities of transit migrants.[812] However, following Frowd,[813] critical scholarship must pay closer attention to the category of transit migration itself, the conditions of its emergence and its performative effects on the management of migration. This chapter is directed towards this end.

As noted by Zetter, wealthier destination states in the global North are the pre-eminent agency in the reformulation of the refugee label under conditions of globalization.[814] However, the

outsourcing and offshoring of migration management has enrolled a range of IOs and affected governments into the transformation of the refugee label and the pre-emptive labelling of would-be refugees. This new generation of multilateral deterrence policy attempts to strike a delicate political balance. Multilateral initiatives make it possible for wealthier destination states to maintain a duplicitous stance toward refugee protection, which frames migrant smuggling through a security/humanitarian discourse of migration management while at the same time, avoiding the practical obligations of refugee law and enhancing the state's effective capacity for control. By offshoring and outsourcing the management of migration, the Canadian government, in cooperation with IOs, attempts to more effectively prevent the arrival of asylum-seekers and thereby insulate itself from the effects of the refugee label and the corresponding norms that mediate signatory states' legal obligations to asylum-seekers.

4.2 Managing migrant smuggling in a world of "cooperative deterrence": The international dimensions of the Migrant Smuggling Prevention Strategy

Shortly after the *Sun Sea* arrived, Prime Minister Stephen Harper appointed former Canadian Security Intelligence Service (CSIS) director Ward Elcock to the role of the Special Advisor on Human Smuggling and Illegal Migration, who reports to the National Security Advisor in the Prime Minister's Office. A small team housed in the Privy Council Office, the Office of the Special Advisor coordinates Canada's whole-of-government approach to migrant smuggling and oversees the Migrant Smuggling Prevention Strategy.[815] The initiatives spearheaded by the Office of the Special Advisor reveal the emergence of a cooperative approach to anti-smuggling policy. In this externalization of migration control, border enforcement is extended outwards through diplomatic engagement with affected governments, financial incentives and foreign aid to transit countries willing to help deter outward migration.[816]

Because the *Sun Sea* departed from Thailand, the international dimensions of Canada's anti-smuggling policy focused initially on the country, which, according to the UNODC, is considered a transit country for Tamil asylum-seekers from Sri Lanka waiting to be smuggled to Canada over land, by sea or a combination of the two.[817] However, the federal government subsequently expanded the funding envelope to encompass capacity-building measures in Malaysia, Indonesia, Cambodia, Vietnam and other countries in Southeast Asia. In its diplomatic engagement in the region, the Special Advisor participated in various multilateral forums in the region, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and the Association of Southeast Asian Nations, to learn from countries such as Australia and Indonesia and their experience with "combatting irregular marine migration" and to establish diplomatic relations and induce affected governments in transit countries through a combination of diplomatic pressure and foreign aid.[818]

Far from being politically neutral, the label of transit migration is instrumental to Canada's efforts to prevent the arrival of asylum-seekers. Indeed, the instrumentality of the label transit migration in these programs is evident in the federal government's strategic decision to partner with specific transit countries. Diplomatic engagement and capacity-building with affected governments in transit countries allowed the federal government to minimize its obligations to smuggled asylum-seekers. Canada's international partners in the multilateral fight against smuggling—Thailand, Malaysia, Indonesia, Vietnam and so on—are not signatories to the Refugee Convention.[819] The implications of Canada's pre-emptive strategy of cooperation with non-signatory states became clear in the immediate aftermath of the *Sun Sea*'s arrival. Two months after the arrival, in October 2010, Thai authorities raided 17 apartments in Bangkok and arrested over 155 Tamil asylum-seekers from Sri Lanka—some of whom were alleged members of the

LTTE—with assistance from the Harper government.[820] The would-be refugees faced overcrowded and abominable conditions in a Bangkok immigration detention centre, without access to clean drinking water, food, and medical assistance, where they may remain for years, pending the outcome of their refugee claims.[821] Of the group, which included 30 children and 25 women, one of whom was pregnant and chained to a hospital bed, 53 of the detainees have been recognized as refugees by UNHCR and are awaiting resettlement in a third country.[822]

As Toronto refugee lawyer Lorne Waldman stated, "the fact that CSIS agents are aiding and abetting in the detention of Tamil refugee claimants in Thailand, who are summarily being deported back to Sri Lanka without any determination of whether they are genuine refugees, that, in my view, is a clear violation of the Charter of Rights and Freedoms."[823] Many affected transit governments in Southeast Asia are neither bound by law to uphold the basic principles of non-refoulement nor do they have asylum-procedures that regulate and protect the rights of refugees. As Gammeltoft-Hansen and Hathaway argue, the most pernicious forms of new multilateral deterrence policies rely on diplomatic engagement with affected governments in transit countries, some of which can act unconstrained by legal norms designed to protect people in pursuit of protection. Even in states ostensibly obligated to protect refugees by law, "many of the favoured partner states have no national procedure in place to assess refugee status nor the *de facto* capacity to or will to ensure respect for refugee rights."[824] For this reason, they conclude, in practice "refugees trapped under the jurisdiction of these states have little or no ability to claim the rights to which they are in principle entitled by international law."[825]

When I inquired about multilateral cooperation with affected governments in transit countries, a senior official from the Office of the Special Advisor emphasized the political *context* in which these diplomatic efforts occurred. The official described the attempts by the federal

government to prevent another arrival as a response to the failure to prevent the *Sun Sea* from reaching Canadian waters. The official's remarks in the passage below speak to the constitutive force of contextual factors, such as existing policy, legislation and legal norms in the development of anti-smuggling policy. In this sense, while such extraterritorial measures may be disproportionate and draconian, anti-smuggling policy is not concocted in a legal vacuum. Rather, it is framed and rationalized with an eye to circumventing existing political constraints, namely, Canada's obligations to asylum-seekers, in response to which the federal government sought to devise ways to circumvent such perceived barriers to effective control. The Migrant Smuggling Prevention Strategy was developed with a view to what the Harper government perceived as limits on its capacity to prevent 'mass marine migrant arrivals': the Parliamentary process, which, from the perspective of the Harper government, was slow and cumbersome, as well as the role of the judiciary, which must find such measures lawful. The trend toward more restrictive and draconian practices of anti-smuggling policy suggests that a dialectical relation exists between the politics of anti-smuggling policy and norms that structured the federal government's response to the *Sun Sea*. The perceived interests and 'rational' courses of action of the Harper government must be situated within their historical context. Contextual factors, both 'domestic' and 'international', namely, the norms of liberal-democracy and refugee law, shaped, enabled and constrained Canada's response to migrant smuggling:

> You have to think about it in the context of the *Sun Sea* and the *Ocean Lady*. With the *Sun Sea*, there was a huge effort to stop it and we asked international partners to do a bunch of things, but it was unsuccessful. The government set to do a number of things. Legislative things. Some of which have since been thrown out, as you probably know [i.e. *B010 v Canada*]. However, even if you pass legislation it takes some time a) to see if it gets passed and b) to see if the courts support it. That takes time. They [The federal Conservative government] wanted to do something else…

In other words, the Harper government wanted to move quickly to disrupt future arrivals—it wanted, in short, to 'take the gloves off'. It sought to recoup sovereign maneuverability in response to these political constraints through diplomatic engagement and capacity-building programs with affected governments in transit countries who could do the dirty work of anti-smuggling policy and act without regard to such legal barriers to effective control.

> So the government had to make a more consistent effort to see if we can prevent vessels from coming and arriving in Canada, and so it was really an attempt to coordinate the work of a number of Canadian agencies—a whole lot of them— depending on what you needed at a particular point in time, to see if we could not better those efforts, working with international partners and agencies in other countries, to prevent people from being smuggled to Canada.[826]

Diplomatic measures thus formed a core component of the international dimensions of the Migrant Smuggling Prevention Strategy.

> Canada has demarched both source and transit countries in the Southeast Asia region on the issue of migrant smuggling to register our concern about this trend, including the use of Southeast Asian countries as transit points. This dialogue will continue through our missions.
>
> Canada's international engagement has and will continue to encompass both bilateral engagement with source, transit and key partner countries as well as efforts in regional and multi-lateral fora.[827]

The Office of the Special Advisor used diplomatic measures to pressure a number of affected governments on the topic of migrant smuggling, to establish greater multilateral cooperation and register Canada's concerns about the problem.

> Official: It made more sense to work directly with partners and build relationships which allowed you to get some results. At the end of the day, Canada can't go to country X and enforce our law or even their law in that country. All you can do is go to them and say 'Ok, we have some information' having explained what we were working against, the human smugglers and their criminal activities… and work with them to see if you can reach a conclusion that leads to the *disruption* of ventures and *care* for the people who are being abused, in a sense, in the process.
>
> One of the keys for us was engagement, to build relationships with a variety of countries. It's all very well if you have an embassy or diplomatic relationship with

> somebody, but people don't necessarily do anything for you unless you start to engage with them on a deeper level. You've got to engage, go talk to them, ask them for help, learn how they work, so you can work with them, learn what they need and what assistance you can give them.[828]
>
> Author: So, when you met with other senior officials in the region, can you describe the process and purpose, what Canada hoped to achieve?

The official then described the international engagement and diplomatic outreach in terms of framing the issue as a *global problem*, in which the fates of sending, transit and receiving countries were implicated. Through diplomatic outreach, The Office of the Special Advisor attempted to enroll affected governments into the task of anti-smuggling policy, in a process of problematization that adopted the familiar tropes of the criminalisation narrative and the securitised representation of migrant smuggling as a global phenomenon to combat. This constitutive process of politicisation through diplomatic engagement constructed the identities of the states in Southeast Asia as transit states. While the official described the situation in banal terms, diplomatic outreach is critical in the "world of cooperative deterrence,"[829] in which states engage in multilateral forms of anti-smuggling policy:

> The answer is to that is that it's like any other. This probably sounds silly, but it's no different than if you're confronted with a problem, you need to go talk to people, get help, you need to convince them this is a problem, that indeed it's a problem.
>
> Some countries you go to, human smuggling, what's that? Why's that a problem? Sometimes it's as simple as conveying to people what the issues around human smuggling are, conveying to them your concern around smuggling, trying to establish a relationship at an operational and governmental level that will allow you to work with their various agencies to prevent a smuggling venture if you have information that someone in country X is trying to launch one.
>
> I mean, there isn't anything really special about it. It's really just if you don't engage, they don't know you have a problem, they don't know you can help them. You also don't know what you can do to help them—in some cases you'll need to help them. That doesn't necessarily have to be a whole lot before they are prepared to help you.[830]

An internal document from Global Affairs Canada (GAC), entitled "International Engagement Strategy," outlines some of the other perceived international obstacles to the effective governance of migrant smuggling overseas. From the perspective of the federal government, the limited scope of the Anti-smuggling Protocol—a number of affected governments in the region, including Thailand and Malaysia, have not ratified the treaty—prevents greater multilateral cooperation and effective governance.[831] However, according to the federal government, in Southeast Asia, the "effectiveness of the Protocol" is "limited by its lack of universality in the region, and in limitations contained within the Protocol itself" that prevent the federal government from taking more pre-emptive action to disrupt arrivals before they depart for Canada.[832]

As part of its Migrant Smuggling Prevention Strategy, the federal government sought to "improve the universality" of the Anti-smuggling Protocol. Internal documents suggest that where possible, Canadian diplomats encouraged affected governments to adopt the agreement. The federal government used diplomatic outreach with affected governments to register its security and humanitarian concerns about migrant smuggling, by persuading officials with regard to the mutual challenges it poses to destination and transit countries and the necessity of multilateral cooperation. Nonetheless, as officials understood, the possibility that Canadian diplomats could persuade affected governments to adopt an international treaty was remote. For this reason, the federal government adopted a less outwardly political approach to enrolling affected governments, which allowed the Harper administration to fly under the public's radar so as to avoid controversy and judicial contestation. The role of the IOM and other IOs, as Pécoud remarks, in part stems from "the sensitivity of migration-related issues," and the public controversies and moral panics associated with migration.[833] By undertaking an indirect and pragmatic approach less likely to provoke public outcry, these anti-smuggling measures seek to mask the violence of deterrence

policy and avoid public concerns about the externalization of border enforcement. In light of the perceived limitations of the Anti-Smuggling Protocol, the use of aid and technical capacity-building measures, such as the deployment of Canadian officials with relevant expertise to transit states, the provision of equipment, training in criminal investigations and assistance with intelligence gathering on migrant smuggling networks, was critical to the attempt by Canada to bring other countries into the task of disciplining asylum-seekers in countries of transit. After sustained engagement with a number of countries in Southeast Asia through diplomatic outreach and inter-governmental dialogue, the federal government's Migrant Smuggling Prevention Strategy introduced a range of capacity-building practices and programs across the region.

> We did a lot of capacity-building both in Southeast Asia and West Africa. Things like assistance on maritime security issues, training in various places, and in some cases providing equipment and experience so they could in effect deal with human smuggling ventures *on their own*. What we were able to do with them will put them in good standing in a number of areas. We weren't providing them with anything lethal or whatever just simply providing training on how to operate, how to do surveillance—those kinds of things.[834]

Officially rationalized in terms of building the capacity of affected governments to combat migrant smuggling operations destined for Canada in regions of origin— "at the source"[835]—the federal government, led by the Office of the Special Advisor, engaged diplomatically with affected governments to establish transnational partnerships with local authorities. The passage below provides a succinct description of the official rationale of the federal government's multilateral initiatives in transit states. For this reason, it is worth quoting at length. It exemplifies the pre-emptive rationality of anti-smuggling policy and the significance of pre-emptive labelling of "illegal migrants" and "suspected criminals" therein, which works by offshoring and outsourcing migration management—by "pushing the border out."

> Preventing the arrival of future migrant vessels requires staking *proactive* measures to *pre-empt* actions and activities planned by others. This necessitates prior knowledge of

> what is being planned followed by intervention to thwart it. The CSIS mandate is focused predominately on obtaining prior knowledge, i.e. before the fact. The CBSA mandate is focused most closely on interdiction of immigrant offences at the time of commission, and the multiple borders strategy, or "*pushing borders out*." This includes the commission of crimes that may occur overseas many thousands of miles from Canada. Finally, the RCMP is focused predominantly on collecting evidence for persecution, i.e. deterrence by after-the-fact action. Police, however, also have a responsibility to prevent commission whenever possible.
>
> As such, the CBSA regularly interdicts passengers overseas seeking transit to Canada as part of its IRPA enforcement mandate. The RCMP conducts investigations, both domestically and overseas, of suspected criminals, including people smugglers, for prosecution in Canada. Finally, the CSIS collects information both domestically and overseas, on threats to the security of Canada, which can form the basis for actions in support of a Canadian security objective.
>
> To achieve success, this strategy is reliant upon actionable intelligence, secure communications, interagency collaboration, and foreign law enforcement partnerships and *capacity-building*. Thai law enforcement assistance is required to act as a partner in deterring further smuggling. Thailand has been engaged to provide increased information sharing on movements of suspected illegal migrants, additional surveillance and more sweeps of smuggling staging areas. Thai assistance is also needed for the interdiction of potential smuggling vessels and the identification of embarkation points, logistical support channels and supply vessels.[836]

In the CBSA's account, which echoes the PreCrime system in *Minority Report*, migrant smuggling is characterized as a security issue that requires pre-emptive action. In this depiction of Canada's proactive response to so-called 'migrant vessels', which reproduces the criminalisation narrative, the issue of asylum is effectively silenced, as migrant smuggling is addressed under the rubric of transnational organized crime and from the perspective of risk management. As evidence of the mobilization of fear and the securitisation of migration in the aftermath of the *Sun Sea*, the excerpt reveals the ways in which anxiety and governmental unease can be manipulated by political elites to justify exceptional measures, which distract from the state's inability to control irregular migration and other structural features of a global political economy of forced displacement.[837] According to the federal government, this proactive strategy of outsourcing and offshoring migration management through multilateral cooperation with immigration, intelligence and law

enforcement officials in affected governments strengthens relations with transit countries and key IOs with a mandate to address migrant smuggling, trafficking in persons and other illicit activities linked to transnational organized crime.[838]

As part of the Migrant Smuggling Prevention Strategy, the Anti-Crime Capacity-building Program (ACCBP), discussed below, was developed to respond to what the federal government calls the "new global security environment."[839] The federal government's national security agency, CSIS, offers a paradigmatic account of how political officials construct the "global security environment," in which "the elements of national and global security have therefore grown more complex and increasingly interdependent":

> The global security environment, which refers to the various threats to geopolitical, regional and national stability and prosperity, has changed profoundly since the fall of Communism, marking the end of a bipolar world organized around the ambitions of, and military tensions between, the United States and the former USSR. Quickly dispelling the tempting end of history theory of the 1990s, the 2001 terrorist attacks on the United States, as well as subsequent events of a related nature in different countries, have since further affected our understanding of security.
>
> In addition to traditional state-to-state conflict, there now exist a wide array of security challenges that cross national boundaries, involve non-state actors and sometimes even non-human factors. Those range from terrorism, illicit networks and global diseases to energy security, international competition for resources, and the security consequences of a deteriorating natural environment globally. The elements of national and global security have therefore grown more complex and increasingly interdependent.[840]

In this account of the 'global security environment', states operate in a world in which new transboundary risks are always looming on the horizon, in which deepening interdependence poses new challenges. In the social construction of the new global security environment, characterized by the blurring of international and national spheres and a convergence of international and internal security,[841] national borders serve symbolic and practical functions; by essentializing geography, territoriality, and by recalling embedded historical relationships of self/Other, they perform the

power of sovereignty and concretize the authority of the state to exclude in an oppositional process of identity-formation between people on the move and the territorial borders of sovereign states. In this depiction of a brave new world, the permeability of borders serves as a yardstick for the integrity of a country's system of migration management and its capacity to act as a bulwark against external threats. In the pre-emptive appeal to the imagination, a range of risks are projected onto the image of the Other, the asylum-seeker, the smuggler and so forth. As a result, extraordinary practices designed to shield the state from unruly transnational flows take on the veneer of legitimacy; it is only once this social construction of migration as threatening is accepted, as Walters notes, that these measures begin to appear legitimate and commonsensical.[842]

The framing of transit migration, Frowd notes, is closely connected to a securitising discourse of threat, irregular migration and illicit activity, which shapes the sort of 'solution' deemed rational from the perspective of policymakers.[843] The performative effects of the label are evident in the blurring of the distinctions between different phenomena considered to pose various national security risks, such as migrant smuggling, organized crime and terrorism. The ACCBP reflects and reinforces this securitized understanding of migration, which makes certain courses of action appear rational, while predisposing political elites, public servants and security professionals against alternative interpretations. According to internal documents, the ACCBP enables the federal Canadian government to be more "responsive to threats" through the maintenance of a "global scope of operations." The ACCBP shows how transnational cooperation to address migrant smuggling is largely divorced from concerns of refugee protection. Instead, the program is framed within a security grammar of risk management. Using the language of pre-emptive risk governance, anti-smuggling discourse fosters and relies upon an international

migration narrative that actively silences political disagreements through a technocratic vision, in order to privilege a hegemonic worldview of migration policy.[844]

The concept of transit migration is an essential part of the emerging international migration narrative that underpins anti-smuggling discourse. It is deployed as a tool of governance in the ACCBP, which prioritizes affected countries that are, "or are likely to become transit points" for migrant smuggling to Canada.[845] Through the provision of "technical and legal assistance, training and equipment to enhance the capacity of countries to prevent and respond to threats posed by transnational criminal activity," these programs seek to address "threats before they reach Canada's borders."[846] According to federal officials interviewed for this research, such extraterritorial measures were necessary if the federal government was to avoid a futile approach, what they described in terms of a game of whack-a-mole. In this view, only a multilateral approach with a global scope and specific *regional* focus could provide a sustainable 'solution' to migrant smuggling in Southeast Asia. As federal documents state, the inventiveness and resourcefulness of smuggling networks requires a regional approach and increased law enforcement cooperation, "in order to mitigate the risks of only displacing major migrant smuggling routes, hubs and points of embarkation to another country."[847] In this view, the most effective way to address the problem of migrant smuggling was through a pre-emptive and multilateral approach—through the "interdiction of vessels *prior to departure* combined with increased, intelligence-led, investigative efforts that aim at dismantling the criminal networks and prosecuting the key perpetrators that organize and drive such migrant smuggling operations."[848] As I detail in the next section, the emphasis on intelligence-sharing, border enforcement and fostering transnational relations between different national agencies reflects the dominant assumptions about migrant smuggling as a security risk that necessitates pre-emptive action.

4.3 Pre-emptive labelling and the disruption of migrant smuggling in countries of transit: The Anti-Crime Capacity-Building Program

According to the official evaluations, the federal government initially established the ACCBP in 2009 to enhance the institutional capacity of affected governments to address problems related to transnational organized crime.[849] The federal government initially developed the program to address criminal and security concerns in the Americas, due to its geographical proximity and the "strategic importance [of the region] to Canada, and the fact that security concerns in the Americas are linked to crime and security in Canada."[850] Through the implementation of bilateral and multilateral projects with donor governments and IOs in the areas of drug and weapons trafficking, corruption, money laundering and other forms of transnational organized crime, the ACCBP attempts to regulate transnational problems, which, the federal government claims, threaten national security, state sovereignty and the stability of global order. The security rationale for anti-smuggling policy is evident in the strategic demonization of migrant smuggling and its problematization under the broader umbrella of transnational organized crime. Rather than addressing irregular migration and its clandestine facilitation from a human rights perspective, the ACCBP is indicative of anti-smuggling policy's discursive power to muddy issues related to forced displacement and frame controversial policies from the perspective of wealthier destination states, in terms of a self-evident response to a new global security environment of transnational risks.

From the perspective of the federal government, the ACCBP addresses the "capacity-gaps" of affected governments in transit countries, which may lack the "resources" and "expertise" to respond to "criminal and terrorist activities" with implications for Canada's national interests. The appeal to national security interests and its close relationship to the global security environment

demonstrates how the Harper government mobilized fear to justify the pre-emptive governance of migrant smuggling in affected regions.

> While strengthening Canada's domestic response to crime and terrorism remains a priority, Canada's security is inextricably linked to that of other states, which may lack the resources or expertise to prevent and respond to criminal and terrorist activities. When source and transit states for various criminal and terrorist activities are vulnerable, the security of Canadians and Canadian interests, at home and abroad, is threatened.[851]

Through the formation of transnational partnerships with IOs and affected governments in countries of transit, the ACCBP leverages various actors to improve national, regional and—as a result of these actions, or so the federal government argues—the stability of global political order. In this view, which speaks to the securitisation of migration and the formation of a global architecture of enmity between 'us' and 'them' in anti-smuggling discourse,[852] Canada's national interests are intimately tied to the fate of other states, particularly affected governments in transit countries whose institutional capacity to manage threats posed by transnational criminal networks is undermined by a lack of financial resources and institutional infrastructure as well as the absence of good governance. The political connotations of the terminology of transit countries are evident throughout anti-smuggling discourse, where countries in question are defined tautologically from the geopolitical perspective of the destination state, in terms of their proximity, security risks and alleged links to irregular migration and migrant smuggling. As Dimitriadi argues in the European context, the political bias inherent in the term is evident in its pejorative use as a method of categorization in the context of anti-smuggling discourse; transit migration is often associated with specific countries in the geographical periphery of wealthier destination states and the alleged security risks of forced displacement to countries in the global North.[853]

In response to the arrival of the *Ocean Lady* and the *Sun Sea*, the federal government expanded the ACCBP to transit countries throughout Southeast Asia and West Africa and

introduced a separate Human Smuggling Envelope in 2011. Programs under the Human Smuggling Envelope are said to help so-called 'beneficiaries' address migrant smuggling operations and "shortcomings in immigration and border management," by enhancing their institutional capacity and operational awareness to prevent migrant smuggling in accordance with international standards and best-practices.[854] Yet, these programs are not as benevolent as their official description leads one to believe. A critical analysis of the ACCBP provides a window into the perceived national interests of the Harper government. Because the federal government wanted to respond quickly and prevent future 'mass marine migrant arrivals' from departing for Canada, the federal government sought to bypass the politically cumbersome route of Parliament and implement a pre-emptive anti-smuggling policy to prevent future arrivals. As the senior official from the Office of the Special advisor quoted above stated, the Harper government "wanted to do something else." The ethos of this approach aligns with the technocratic rationality of migration management, which was borne out of the desire to take politics out of governance and provide technical solutions "unhindered by excessive debate or public and institutional scrutiny."[855] By offshoring and outsourcing the implementation of anti-smuggling policy to IOs, capacity-building programs enable the federal government to circumvent or minimize legal obligations that constrain state behaviour toward asylum-seekers.

Through the provision of technical assistance, the identification of "capacity-gaps" and the improvement of institutional awareness about migrant smuggling in affected transit countries, programs and projects implemented under the Human Smuggling Envelope seek to "prevent further mass arrivals of migrant vessels" and to "identify and take early action against human smuggling organizers" based in the region.[856] The Human Smuggling Envelope initially focused on Thailand. While the choice of Thailand was legally instrumental, as discussed above, it was

also strategic. Passengers on board the *Sun Sea* transited through the country before departing on their voyage. Additionally, Thailand is considered an important transit country in the smuggling of migrants globally.[857]

To determine how the federal government could proactively disrupt migrant smuggling networks operating in the region, an interdepartmental team composed of members of the Office of the Special Advisor, CBSA, RCMP and GAC conducted a needs assessment mission in Thailand, Indonesia and Malaysia in September 2011. The mission sought to "establish deliverables" prior to Prime Minister Harper's visit to Thailand in November 2011.[858] Subsequently, on a diplomatic visit to Bangkok in March 2012, Prime Minister Harper announced a funding envelope of $12 million to combat migrant smuggling ventures that transit through Southeast Asia. On March 23, 2012, then Minister of Foreign Affairs John Baird and Royal Thai Police Commissioner Priewpan Dhamapong signed a Letter of Understanding to facilitate greater cooperation between the Canadian and Thai governments and their respective national police agencies, border enforcement and immigration authorities. Special Advisor Ward Elcock accompanied Prime Minister Harper to Thailand. Subsequently, the Special Advisor participated in diplomatic envoys throughout Southeast Asia as well as Australia, to learn from their more extensive experience with migrant smuggling. These diplomatic exchanges featured in-depth meetings with the IOM, the UNODC and "domestic law enforcement agencies in the region" with expertise and experience in combatting migrant smuggling.[859]

Internal government documents highlight the perceived 'success' of capacity-building programs and diplomatic engagement in transit countries. Multilateral cooperation, intelligence-sharing and criminal investigations, according to internal accounts, helped to prevent another ship from departing. The *Alicia*, which carried 87 Tamil asylum-seekers from Sri Lanka destined for

Canada, was prevented from departing for Canada from Indonesia.[860] Indonesian authorities intercepted the *Alicia* on July 9, 2011, after the ship developed mechanical difficulties. According to the UNODC's reporting, 87 passengers (76 men, 6 women, and 5 children) refused to leave the ship until they received assurances about access to asylum systems and refugee protection.[861] Though the would-be refugees reportedly waved signs that stated they wanted to enter New Zealand, federal officials from the Harper government stated that intelligence indicated the boat was headed to Canada: "we don't know that for sure . . . but all evidence indicates they were headed here."[862] While the Harper government asserted that such extraterritorial measures to "push the border out"[863] are part of a global battle against unscrupulous smugglers and economically motivated, transit migrants, the composition of passengers onboard the *Alicia*, and their pleas for protection, suggests that the Canadian government and its delegates are knowingly obstructing the movement and the refugee claims of families, women and children under the pretext of disrupting smuggling ventures in transit countries. Instead of continuing their journey, after the disruption of the *Alicia*, the passengers were stuck in limbo in transit countries, where the UNODC reported that some of the passengers endured harsh conditions and abuse while waiting in transit for over a year.[864] While specific details surrounding the *Alicia* and the plight of the passengers on disrupted journeys are sparse and difficult to corroborate, Immigration Minister Jason Kenney stated that Canada's multilateral efforts had prevented "three or four" smuggling ventures from departing for Canada; he asserted that "many would-be customers of smuggling syndicates" who have made down payments are waiting in transit for long periods "for the call to be boarded to come to Canada."[865]

Initially established in 2011 and limited to a two-year funding period, the federal government renewed the Human Smuggling Envelope in 2013 and again in 2015 for another two

years. In total, from 2012-2016, the federal government developed and implemented 55 projects under the Human Smuggling Envelope throughout Southeast Asia, through multilateral programming in "countries that were, or were likely to become, transit points" for migrant smuggling operations destined for Canada.[866] Through capacity-building programs and projects, the federal government aimed to prevent and disrupt migrant smuggling operations *before* they departed for Canada; first, by enrolling affected governments in transit countries into the task of governing; and second, by 'educating' prospective migrants about the risks of migrant smuggling through various campaigns to raise awareness in communities of emigration.[867] In brief, the goal of such precautionary measures is to insulate the Canadian government from legal obligations to asylum-seekers while enhancing its capacity to control irregular migration indirectly through intermediaries. Such 'consensual' containment strategies appeal to the self-interest of affected governments. While much of the literature on transit migration points to the coercive use of the label as a point of diplomatic leverage,[868] by contrast, affected governments under the ACCBP appear to embrace the enhanced legitimacy that their support of cooperative deterrence garners from the Canadian government and other members of the international community.[869]

Migrant smuggling has ascended on the foreign policy agenda of wealthier destination states. Canada is no exception to this trend. Despite the relatively low levels of what federal agencies call 'irregular marine migration,' the Harper government described the prevention of migrant smuggling vessels from "reaching the shores of Canada" as a "top foreign policy priority."[870] The priority granted to migrant smuggling is evidenced by relatively significant financial and institutional resources allocated to address the problem following the *Sun Sea*. In consultation with the Office of the Special Advisor on Human Smuggling and Illegal Migration, the federal government allocated more than $23 million from 2011 to 2015 for capacity-building

projects in Southeast Asia and West Africa, implemented under the aegis of GAC, CBSA, IRCC and the RCMP, and delivered in partnership with the IOM, the UNODC and other relevant IOs.[871] These efforts have intensified under the current federal Liberal government of Prime Minister Justin Trudeau. From 2015-2018, the federal Liberal government invested an additional $45.5 million. These funds supported "coordinated effort across law enforcement, intelligence, border protection and diplomatic spheres to deter and prevent migrant smuggling ventures before they materialize overseas" and combat the "threats associated with migrant smuggling from reaching Canada," such as terrorism and transnational organized crime.[872] During this time, the Office of the Special Advisor maintained its role, coordinated the whole-of-government strategy and engaged with international partners to "promote cooperation," particularly in affected transit countries.[873] Since 2017, the funding envelope was renewed and expanded to cover Nigeria,[874] the Philippines and other countries.[875] Within official pronouncements, visions of these regions as spaces for transit migration and other irregular and illicit flows reinforce the idea that security intervention is necessary to combat a range of transnational threats.

As Zaiotti explains, "the policy 'toolbox' that governments in Europe, North America and elsewhere have developed over the years to manage incoming migration flows contains a wide range of externalizing policy instruments," however, legal-administrative and law enforcement measures are the most common.[876] The programs under the ACCBP support this claim, which prioritize training in surveillance, criminal investigations, border enforcement and so on. Through capacity-building projects and the deployment of personnel and technical expertise, these programs attempt to mould the agency of governments in transit countries and induce certain patterns of behaviour on the part of asylum-seekers who venture through their territories—to discipline their mobility and dispose them towards certain types of conduct deemed appropriate

according to the rationality of migration management. The pre-emptive nature of anti-smuggling programs is critical to the ability of wealthier destination states to bypass the political constraints that regulate the treatment of refugees. As CBSA observes, the overarching objective of such pre-emptive practices is "to identify and disrupt high-risk people and movements as early as possible in the travel continuum in order to prevent inadmissible people from entering Canada"[877] and making an asylum claim.

According to internal documents, capacity-building programs enable the federal government to extend its reach and transform the institutional infrastructure of transit governments through subtle and indirect means—in ways that pressure states to conform to the normative standards and best-practices of migration management. Due to the perceived limitations that affect the universality of the Anti-smuggling Protocol, and because the federal government lacks the institutional capacity, political will and legal authority to engage in extensive global policing abroad, national interests, security and the integrity of Canada's territorial sovereignty depend on the capacity of governments in the region to "address these threats," such as migrant smuggling networks, "on their own."[878] In this regard, the projects implemented under the Human Smuggling Envelope engender a disciplining and normalizing effect by which powerful destination governments seek to transform 'weaker' transit governments into the image of well-governed, territorial state and enroll them into the task of anti-smuggling policy.[879]

Programs and projects implemented under the Human Smuggling Envelope, described in detail below, embody the shift toward a governing rationality of migration management. The federal government developed these programs to enhance the capacity of "transit" countries where criminal and terrorist activities "originate and/or pass through"—countries that tend to lack "the resources to prevent such activities on their territory."[880] The Human Smuggling Envelope created

new multilateral networks of migration management between states and IOs that enabled the federal government to engage in labelling at a distance. According to internal accounts, by outsourcing and offshoring of migration management and cooperating with IOs, this approach served an instrumental purpose; it mitigated the need for an "in-country presence" and lessened the administrative and financial burden placed on federal agencies responsible for project delivery in the region.[881] In addition to these financial considerations, however, these programs, which supplement the other international elements of Canada's anti-smuggling policy, are part of the broader attempt to ensure the commitment by affected transit governments to the pre-emptive containment of asylum-seekers to their territorial jurisdictions in the global South.

Having described the ACCBP and the significance of the label of transit migration therein, the next section analyzes the projects implemented under the Human Smuggling Envelope.

4.4 Bypassing constraints to control and preventing the arrival of would-be refugees: The Human Smuggling Envelope

The ACCBP's Human Smuggling Envelope, in which federal agencies worked with IOs to effectively deliver what they called "capacity-building to beneficiary states," was officially aimed to bolster the ability of affected governments to independently manage challenges related to transnational organized crime.[882] According to the official rationale, the capacity-building programs implemented under the Human Smuggling Envelope enabled the federal government to "better target and address the specific threats to Canada," build relationships with affected transit states in the region and collaborate with IOs with a mandate to address transnational organized crime.[883] In GAC's assessment, this multilateral programming strengthened Canada's image in the region "as a trusted and reliable partner" in the fight against migrant smuggling and related criminal activity, such as money laundering, the procurement of counterfeit identity documents as

well as drugs and arms trafficking.[884] The disruption of migrant smuggling networks in transit states, the federal government explains, supports international efforts to address "trafficking, document fraud, and labour exploitation" and so on.[885]

Following the needs-assessment mission and diplomatic consultations led by Special Advisor Ward Elcock in late 2011, in January 2012, the federal government, in partnership with the UNODC, launched Strengthening Operational Law Enforcement Capacity to Prevent and Combat Maritime Migrant Smuggling in Southeast Asia, an anti-smuggling project with a geographic focus on Thailand, Indonesia and Cambodia.[886] The UNODC managed the program in consultation with Canadian Embassies and High Commissions throughout Southeast Asia and senior federal officials and liaison officers stationed abroad. Experts from the CBSA, RCMP and IRCC delivered training to local authorities with assistance from IO staff with regional knowledge and subject matter expertise.

The overall objective of the project was to disrupt smuggling operations in Southeast Asia through the creation of Port Intelligence Units with the capacity to "collect, evaluate, analyze and disseminate intelligence" about migrant smuggling networks.[887] Through the creation and appropriate training of Port Intelligence Units, the project aimed to establish "effective coordination and communication channels between the relevant national and international actors," with assistance from the UNODC in the region.[888] The program identified three thematic areas: institutional infrastructure, officer training, mentoring and cooperation and coordination.[889] Through this program, the federal government established and equipped three inter-agency Port Intelligence Units with a "mobile operational capacity to prevent human smuggling operations" in Indonesia, Cambodia and Thailand.[890] The geographic reach of Port Intelligence Units, composed of officials from immigration, police, border enforcement and naval forces, extended "well beyond

their immediate location" through the formation of "channels for cooperation and coordination" among relevant parties. This in turn enabled affected governments to respond to "intelligence from international as well as national sources, from border control units, at land, sea and air entry points, and from criminal police."[891] Through the creation of Port Intelligence Units, the federal government sought to augment its capacity to control migrant smuggling through intermediaries by enhancing the ability of transit governments to detect and disrupt migrant smuggling ventures *before* they departed for Canada.

From January 2012 to February 2013, the federal government participated in a "train-the-trainer" project developed under the Human Smuggling Envelope, the Frontline Officers' Awareness Training on People Smuggling for Indonesia (FLOAT). In this program, the CBSA, RCMP and the IOM mentored and trained front-line officers in the Indonesian National Police and the national immigration enforcement agency (Imigrasi) assigned to more remote regions of the country. According to internal documents, the FLOAT project was designed to strengthen frontline officers understanding of migrant smuggling, enhance governmental capacity to effectively manage migrant smuggling "cases, issues and concerns," build the government's institutional capacity to conduct further training on migrant smuggling and strengthen institutional awareness about migrant smuggling.[892] The FLOAT project was devised to establish a "sustainable institutional capacity" and equip Indonesian authorities with the knowledge and materials to train their border enforcement and immigration agencies in criminal investigations, border surveillance, smuggling, trafficking and other aspects of migration management. Specifically, the FLOAT project provided training sessions among the Indonesian National Police that disseminated "standard information, concepts, cooperation and intervention processes to enforcement

operatives/front line officers assigned in remote areas of the country," supplemented by the distribution of materials on migrant smuggling, such as enforcement guidelines.[893]

In April 2012, GAC partnered with the IOM to deliver another project, Strengthening Border Management and Intelligence Capacity of Thai Government Officials. The project consisted of several workshops that targeted frontline and investigative officers in the Royal Thai Police Immigration Bureau. The program was designed to address capacity gaps, such as the collection, analysis and exchange of information and intelligence on migrant smuggling.[894] The goal of this project, an internal proposal explains, was to:

> … facilitate the creation of a well-coordinated and effective system of gathering, analyzing and utilizing intelligence on migrant smuggling in Thailand in order to increase the ability of immigration to investigate and counter smuggling operations in Thailand, increase the capacity of immigration officials to identify cases of smuggling at key land border crossing points, and increase the awareness of potential migrants on the risks and dangers of being smuggled.[895]

Another significant project funded under the Human Smuggling Envelope, Strengthening Border Management and Building Regional Capacity to Prevent Human Smuggling in Southeast Asia included over a dozen activities in seven countries—Thailand, Malaysia, Indonesia, Laos, Cambodia, Vietnam and Myanmar—from May 2013 to March 2015.[896] The federal government partnered with the IOM to develop and implement the project. Internal documents describe the project as a comprehensive regional initiative "to assist with the prevention of human smuggling in transit countries before illegal migrants reach our shores."[897] With financial and technical assistance from the federal government, the IOM provided training on migrant smuggling to nearly 4000 front-line officials in six countries in the region. Internal program assessments explain the intended outcomes of these multilateral programs in the securitized language of pre-emptive risk governance; the federal government, in partnership with IOs, successfully "increased awareness of the threat, enhanced the ability of border officials to identify and prevent human smuggling, and

underlined Canada's commitment to the issue in the region, especially in countries where there is not a regular diplomatic presence such as Cambodia and Laos."[898] As part of this effort to build the capacity in the areas of immigration intelligence and travel document analysis, the federal government and the IOM created the Document Examination Support Centre in Bangkok, Thailand, which provided front-line officers with institutional resources, technology and forensic experts to review suspicious travel and identity documents.[899]

Programs developed under the ACCBP and the Human Smuggling Envelope demonstrate the ways in which anti-smuggling policy operates through pre-emptive labelling at a distance that, in effect, creates new transnational networks of remote control and spaces of border surveillance. The label of transit migration functions to pre-emptively label asylum-seekers, redefine their status and stereotype their motivations in ways that artificially de-link their identities from the core attributes of refugee protection. As part of a systematic respatialisation of migration control and the attempt by wealthier destination states to contain the effects of forced displacement to affected regions of origin, these programs allow the federal government to shield itself from the effects of forced displacement and simultaneously enhance its capacity for effective control by enrolling intermediaries into the task of disciplining irregular flows.

By stranding in transit countries asylum-seekers attempting to seek refuge in Canada, the ACCBP erodes refugee protection and jeopardizes the ability of people to gain access to asylum. While the federal government sought to pre-emptively label and prevent the departure of 'mass marine migrant vessels' for Canada through the externalization of border enforcement, affected governments in transit countries often lacked the capacity to return stranded asylum-seekers after the disruption of smuggling ventures. As part of its attempt to balance its legal commitment to refugees while using intermediaries to prevent their arrival, in response to this situation, the federal

government developed the Global Assistance for Irregular Migrants program with the IOM, examined below. While it was officially developed to address the consequences of anti-smuggling efforts, this AVRR program is a decisive illustration of how deportability is justified and legitimized in terms of humanitarianism and socio-economic development.

4.5 The Global Assistance for Irregular Migrants Program:
A humanitarian "solution" to the plight of irregular migrants stranded in transit

While the use of a security rationale to legitimize anti-smuggling policy is self-evident in the case of the ACCBP, the more insidious and apparently 'humanitarian' aspects of the Migrant Smuggling Prevention Strategy are hidden beneath a claim to protecting the human rights of refugees. As Watson argues, claims to act in the name of humanitarianism and human rights rival security in their capacity to justify the use of exceptional practices toward asylum-seekers.[900] Indeed, a critical assessment of the programs implemented under the international part of the Migrant Smuggling Prevention Strategy shows how anti-smuggling policy employs humanitarianism as a securitising discourse to rationalize the federal government's attempt to prevent the arrival of asylum-seekers through remote control strategies. Specifically, the Global Assistance for Irregular Migrants Program (GAIM) demonstrates how the logics of care and control intersect in anti-smuggling policy and the externalization of border enforcement.

According to a federal official, the GAIM program "came out of the experience we had with trying to disrupt offshore migrant smuggling into Canada."[901] As the passage below suggests, the constitutive force of Canada's obligations to refugees evidently shaped (i.e. enabled and constrained) the federal government's response to migrant smuggling and facilitated the development of new anti-smuggling programs, which are framed as a humanitarian 'solution' to

the plight of asylum-seekers stranded in transit countries after the disrupting of smuggling ventures.

> You can't ignore that at the end of the day they are stuck with foreign nationals in their territory. They can't deal with them all by themselves. It was realized in the federal government that nobody had the right tools to deal with the consequences of successful disruptions. You had a population of people without legal status in a third country who need to be dealt with in a way that respects international law—refugee law—but that also provides them with a solution.
>
> We were trying to figure out what is the right tool kit. The GAIM came out of those conversations where we created regulatory authority to do this, to create a program with terms and conditions, to fund partners, and offer people a solution—but one that had to respect the rights of people to seek asylum, to be protected from refoulement. It allowed us to find third parties to make sure people had immediate material needs met when they are waiting for return, to successfully return and reintegrate if they chose to go back, or if they weren't successful in a refugee claim….the GAIM program is part of the toolkit the federal government has.[902]

In December 2011, Togolese authorities intercepted a smuggling venture of over 200 Sri Lankan Tamil asylum-seekers in transit to Canada through the region.[903] After the disruption of the migrant smuggling venture, Togolese authorities detained the group in a stadium in the capital of Lomé, in poor conditions. In early January 2012, in response to "this urgent situation," GAC established "a temporary program to provide assisted voluntary return and reintegration to Sri Lankan migrants identified in West Africa."[904] The federal government described this multilateral programming as a benevolent gesture in the interests of 'migrants' themselves, a form of humanitarianism that could be conceptualized in terms of the "securitisation of development," [905] which recasts the relations between security and humanitarianism in terms of a neoliberal rationality of migration management and the notion of socio-economic 'development'.

According to IRCC, the stranded asylum-seekers lacked "appropriate food, water and shelter" and other basic necessities. This moment revealed a major "capacity gap" in the Migrant Smuggling Prevention Strategy: the disruption of smuggling operations destined for Canada left

smuggled asylum-seekers stranded in transit countries "vulnerable to human rights abuses in these countries while stranded in transit."[906] Internal assessments conducted by IOM evaluators describe the living conditions of Tamil asylum-seekers stranded in West Africa en route to Canada as "generally unpleasant, at best."

> Most migrants were housed in overcrowded conditions, often under virtual house arrest with inadequate sanitary facilities and insufficient food. Those who dared to complain endured threats. There were also reports of beatings.[907]

Another disrupted smuggling venture highlighted the failure of the Migrant Smuggling Prevention Strategy to address the protection needs of asylum-seekers stranded in countries of transit. In May 2012, the government of Ghana received intelligence information from CSIS about a group of Tamil Sri Lankan asylum-seekers transiting through the country on the way to embark on a smuggling venture.[908] After Canadian intelligence officials tipped off the Ghanaian government, immigration enforcement authorities monitored local ports and subsequently arrested six Sri Lankan men, allegedly crew members. Shortly thereafter, the Ghanaian government arrested 12 additional individuals waiting in transit, who awaited departure at the port of Tema, where smugglers docked the *Ruvuma*, a 30-metre-long fishing vessel. Before the vessel intended to depart for Canada's east coast, the *Ruvuma* was reportedly destined for Togo and Benin, where over 200 additional Sri Lankan Tamil asylum-seekers waited in transit.[909] In response to the disruption of the smuggling venture, then Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, used the event to rationalize interventions throughout the region. He described the event as "another example" that further substantiated why Canadian authorities "must remain vigilant" in the "crackdown" on migrant smuggling networks across the world.[910]

In 2013, the disruption of additional migrant smuggling operations left more Sri Lankan Tamil asylum-seekers stranded throughout West African countries in the course of their journey

to Canada through various transit countries. To address what it described in terms of a technocratic "capacity gap" in Canada's response to migrant smuggling, in coordination with the IOM, the federal government developed the GAIM program. While the program is central to the federal government's broader attempt to relieve itself of obligations to refugees, the GAIM program's stated objective is framed in humanitarian terms: to "protect smuggled migrants stranded in transit countries" following the disruption of smuggling ventures.[911] Apparently neutral claims about 'smuggled migrants in transit countries', found throughout the live archive, are part of the Harper government's effort to rationalize attempts to prevent the arrival of asylum-seekers without naming them as such.

The GAIM program extended the temporary AVRR program mentioned above, which was initially established in 2012 in response to the disruption of a smuggling venture in Togo. According to an internal evaluation, the federal government's ad hoc response brought into sharp relief "the need for a more permanent approach to managing the consequences of disrupting the smuggling of irregular migrants believed to be destined for Canada."[912] "There is an ongoing need for a global voluntary return and reintegration program in order to support Canada's strategy to combat human smuggling," to address "the consequences of interceptions in transit states" and maintain "transit state cooperation," according to an IRCC evaluation.[913] The objectives of the program are twofold: the "managed migration of people to Canada" and the prevention of inadmissible people "at the earliest point possible."[914]

The GAIM program is part of a new multi-actor, multi-level approach to anti-smuggling that uses transnational networks of intelligence-sharing and border enforcement. According to descriptions found in official evaluations, when the Office of the Special Advisor informs IRCC, through a "trigger letter" of a "planned human smuggling event" and requests that IRCC's Deputy

Minister implement the program, the GAIM program issues transfer payments to the IOM for the delivery of basic services—food, medical assessments, translation services and shelter—to support "the return and reintegration of irregular migrants believed to be destined for Canada and stranded in a transit country following the disruption of a human smuggling venture."[915] The GAIM program also provides transfer payments to the IOM for "outreach and awareness activities in order to better manage the consequences of illegal migration."[916] According to an IOM performance report for IRCC, since 2013, the IOM returned Sri Lankan asylum-seekers destined for Canada from 11 West African countries: Togo, Benin, Cameroon, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal and Sierra Leone.[917] The GAIM program is officially designed to, *inter alia*, meet the basic needs of stranded asylum-seekers and assist them in returning and reintegrating to their countries of origin; implement outreach programs and raise awareness around the dangers of migrant smuggling; when appropriate, screen, register, assess and refer "stranded" individuals in transit to refugee status determination systems; through a "joint-assessment" with assistance from the IOM, UNHCR and/or national refugee agencies, to determine "the status, condition and any protection concerns of the stranded migrants;"[918] and if migrants are determined not to be refugees, to assist them through return and reintegration programs.[919] "For all migrants who did not fall under UNHCR's mandate and who expressed their willingness to return to their country of origin, IOM then offered a variety of services designed to address their basic emergency needs (food, medical support, hygiene items and sometimes accommodation) until their departure," according to IRCC.[920] While the IRCC asserts that the GAIM program functions to fulfill Canada's obligations to stranded asylum-seekers, the purpose of these "preventive protection" measures is to "protect people in their home countries and to prevent states from having to bear the legal obligations and costs of asylum," [921] so as to contain the phenomenon of forced

displacement and its political implications to affected regions in the global South. While bureaucratically sterilized in the humanitarian terminology of 'assisted return', such technocratic lip service to refugee protection concerns belie the fact that it may be difficult for asylum-seekers in transit countries claimants to receive an adequate and impartial assessment of their protection needs and entitlements, especially in places which may lack the institutional infrastructure and political will to properly assess refugee claims.[922] Consequently, a sizeable population of would-be refugees are left in limbo in the interstices between states, having fled their country of origin without finding a solution in another.

Canada's relationship with the IOM has been described as a "marriage of convenience" that benefits the self-interest of both actors.[923] Indeed, the catalogue of services provided by the IOM and other IOs is useful for all states that seek to offshore and outsource border enforcement to source and transit countries. As Geiger argues, the IOM's expanding catalogue of 'remote' migration management services, which enable the externalization of migration management, reveals the IOM's self-interest in its perception of particular "risky" and "beneficiary" populations.[924] This perception, as Geiger observes, is shaped by the vested interests of donors and the need to secure a market for its services, funding for future projects and to position itself strategically as the new UN migration agency.[925]

The official Canada-IOM partnership profile provides a representative formulation of the self-serving narrative of the anti-smuggling discourse of migration management, which uncritically celebrates the longstanding 'partnership' between the federal government and the IOM using the well-established narratives of international migration management. It reaffirms the mantra of migration management that "orderly and humane migration is of benefit to all."[926] Programs like the GAIM program, that bring destination, source and transit governments together

with IOs, constitute a "core activity" of the services and tools the IOM provides to national governments, as part of what the IOM calls a "comprehensive approach to migration management" promoted worldwide.[927] Despite the claims of the IOM and wealthier states of destination, the return of asylum-seekers, conducted under the innocent-sounding moniker of AVRR, do not represent a humanitarian "solution" to the plight of asylum-seekers stranded in countries of transit. Instead, they represent an attempt to repackage the status quo of international migration and make it more palatable to liberal-democratic audiences while absolving donor states of political accountability. The language of "solution" is prominent throughout; however, the GAIM, like the other programs discussed under the ACCBP, does little to address protracted situations of forced displacement and the shared responsibility of wealthier destination states in the creation and maintenance of geopolitical conditions that fuel irregular migration. Instead, in the technocratic rendering of the GAIM program, the IOM asserts, 'assisted return' promotes a "dignified, orderly and humane return of migrants who are unable or unwilling to remain in host countries and wish to return voluntarily to their countries of origin as well as to re-establish them back into the society of their country of origin."[928]

> For migrants who need to return home but lack the means to do so, AVRRs are often the solution to their immediate plight.
>
> The consequences of not returning such migrants in a safe and speedy way can be grave for the migrants, and place heavy socio-economic burdens on destination and transit countries' asylum and social welfare systems.[929]

This excerpt provides an exemplary account of how humanitarianism mobilizes a securitising discourse of anxiety about the socio-economic burdens of asylum-seekers within apparently mundane bureaucratic practices, and not only through political discourse or 'speech acts' of security. As Bigo explains, securitisation operates through everyday bureaucratic practices, which are *continuous*, rather than *exceptional*, and which often do not respond to the

dramatized framing of existential threat; instead, such routine procedures operate through a governmentality of unease.[930] In the bureaucratic struggle to classify events and define threats according to bureaucratic categories, humanitarianism occupies a central position. In this regard, humanitarianism is not diametrically opposed to securitisation. Rather, due to their essential ambiguity, claims of humanitarianism are easily hijacked and therefore susceptible to abuse. As a result, humanitarianism can be understood as a form of securitisation in which the 'human' and human rights have become the referent object of securitising attempts and the primary justification for state interventions.[931] As Bigo argues, discourses concerning the human rights of asylum-seekers are part of the securitisation process because they "play the game of differentiating between genuine asylum-seekers and illegal migrants, helping the first by condemning the second and justifying border controls."[932]

Internal evaluations mobilize the Canadian state, along with the IOM, as providers of protection. According to internal documents, multilateral programming implemented under the ACCBP did not account for the consequences of these actions and their implications for Canada's international obligations. To remedy this gap in the Migrant Smuggling Prevention Strategy, the federal government introduced the GAIM program, which complements the capacity-building programs under the ACCBP in the West African region. It provides "assurance to transit states" where "resources are scare and governance is weak" to "cooperate in the detection and interception of irregular migrants," because "they will not be solely responsible for the cost of assisting stranded migrants."[933] Here, the political interventions associated with capacity-building are rationalized according to the epistemological criteria of migration management; in terms of the socio-economic implications, efficiency and sustainability of such measures for all actors involved.

The GAIM program was allegedly designed to align with IRCC's priorities on "managed migration" and the Migrant Smuggling Prevention Strategy as a whole, "in keeping with the roles and responsibilities of the federal government" as a signatory to international legal frameworks.[934] Thus, the GAIM program aimed to fulfill IRCC's objective of "global migration management."[935] This includes a responsibility to "work with states and IOs" to build capacity and manage migration for "the benefit of all"—destination, transit and sending governments alike—an objective that "continues to be an expression of Canadian foreign policy."[936] For the IOM, AVRR programs form part of a comprehensive approach to migration management. They are supposedly designed to address what the IOM calls the entire "migratory life-cycle." These repatriation programs are rationalized in terms of saving lives and protecting people from the risks of deadly journeys and unscrupulous smugglers. According to the IOM, "proactive measures at the pre-departure phase can minimize many of the abuses that occur later" over the course of being smuggled through transit countries.[937] The GAIM program enacted this comprehensive approach to migration management in which destination states induce certain types of behaviour. It constructed transit migrants, that is, stranded asylum-seekers, as rational actors and entrepreneurial agents of socio-economic development. In this view, irregular migration is not the outcome of global inequality and unequal configurations of power and privilege, but an individual-level problem of decision-making, one caused by the absence of reliable information, which limits the capacity of 'migrants' to make informed decisions.[938]

In its description of the GAIM program, the IOM's de-linked explanation of forced displacement reinforces and reflects what Hyndman and Reynolds call the status quo of protection for refugees and migrants, "whereby migration is encouraged to stay within Global South countries or people are turned away from borders as they approach the Global North."[939] Internal accounts

of the program attempt to buttress such a de-linked explanation, which obscures the refugee protection concerns raised by such 'assisted return' programs while externalizing culpability for the risks of irregular migration to smugglers and asylum-seekers. This humanitarian framing not only absolves wealthier destination states for their role in making asylum-seeking more difficult and dangerous. What is more, it depoliticizes the interception of smuggling networks through the mobilization of claims about refugee protection, in which the Canadian state, along with its delegates, the IOM, are mobilized as benevolent actors, acting in the name of human rights. Internal accounts note how, between January 2012, when the program started and March 2013, the program provided "return and reintegration assistance" to over 600 stranded Tamil asylum-seekers from Sri Lanka in various countries in West Africa.[940] According to the IOM, if 'stranded migrants' were returned to Sri Lanka, they were provided with services during the transit and arrival stages, including return assistance, arrival assistance and reintegration assistance.[941] In providing this service to states, the IOM argues, the GAIM program addresses the 'root causes' of irregular migration and migrant smuggling. These include, *inter alia*, the absence of socio-economic opportunities in source countries.[942] Documents on the GAIM program promulgate the misleading claim that the 'root causes' of irregular migration can be addressed through development projects, rather than through policies that seek to respect the human rights of refugees.[943] By narrating this idealized or "imagined migration world,"[944] internal documents reproduce the perspective of the receiving-state and thus an "internalist explanation" of forced displacement,[945] which views emigration as a problem endemic to the global South, which stems from socio-economic conditions of 'underdevelopment'. Additionally, as part of the GAIM program, the IOM raised awareness about safe migration through a nationwide information campaign.[946] According to the IOM, the safe migration campaign in the GAIM program, enabled

Sri Lankans to make "more informed decisions about any travel and/or solicitation from predatory "'agents'" and helped to raise "awareness on the risks involved in irregular migration in key migrant sending areas in Sri Lanka."[947] Significantly, within the internal evaluations, no mention is made of the potential dangers of returning Tamil asylum-seekers to Sri Lanka, where they could face persecution. "In a securitized policy context," as Nanopoulous, Guild and Weatherhead explain, the humanitarian 'solution' of returning asylum-seekers promotes "a form of unsafe, disorderly, and irregular migration," which makes "the prevention of entry" difficult to distinguish from unlawful return.[948]

The federal government rationalized these programs from the perspective of migration management as a form of humanitarian intervention in the interests of transit migrants themselves.[949] A reformulated conceptual framework of labelling brings the instrumentality, political purpose and effects of the GAIM program into sharp relief. The GAIM program can be analyzed as a discursive and political attempt to separate asylum-seekers from their protection needs, motivations and entitlements by exploiting interpretive controversies that surround the meaning of transit migration; the manipulation of the classificatory struggles of forced migration and the pre-emptive labelling of asylum-seekers as transit migrants functions to justify attempts to prevent the arrival of refugee claimants and circumvent legal obligations to would-be refugees. While the GAIM programming contained explicit references to the principle of non-refoulement, the 'voluntary' return of individuals belonging to the Tamil minority to Sri Lanka could put their lives at risk. As former senior UN official in Sri Lanka, Gordon Weiss explains, despite the formal end of the civil war in 2009, "the future for Sri Lanka's Tamil citizens is bleak," and consequently, the "emigration of Tamils will continue, encouraged by political stagnation, a lack of rights and

rule by fear." [950] Not surprisingly, because of the dire political situation in Sri Lanka for Tamil people, the IRB continues to accept the majority of refugee claims by Sri Lankans.[951]

While the risk of refoulement is self-evident, it is by no means unique to the GAIM program. In practice, interdicted asylum-seekers are often returned without a serious assessment of their protection needs, as demonstrated in various critical studies of AVRR programs, which conceptualize such political actions as part of the global policing of populations.[952] Several studies suggest that although migrants supposedly decide to return, inevitably such a 'choice' is a highly constrained decision, what Andrijasevic and Walters describe as the "regulated choice" of "neoliberal deportation."[953] The development component of these "pay-to-go" schemes of "facilitated self-deportation" mask the coercive violence of deportability in an effort to make forced return both legally ambiguous and more palatable to liberal-democratic audiences. Of course, such 'voluntary' schemes would not be possible without the looming spectre of deportability and forced return weighing on the minds of returnees. As Collyer argues, AVRR programs use development as a justification for deportability. They combine deportability with "development focused reintegration" in ways that depoliticize return and increase the public legitimacy of such schemes, which in many instances appear to contravene norms of refugee protection.[954]

On its face, the GAIM program may appear to promote a humane alternative to irregular migration and migrant smuggling. Indeed, it claims to promote a pragmatic and rights-based approach, which tries to synthesize the protection and development concerns raised by forced displacement. Yet, it would be naïve to endorse the depoliticized understanding of forced migration promoted by AVRR programs and the official accounts of such extraterritorial measures funded by the federal Canadian government, which conceal the objectives and interests behind

their development. AVRR and other programs that utilize the language of humanitarianism and capacity-building, Andrijasevic and Walters argue, embody the rationality of migration management, which seeks to convey an impression of being politically neutral, self-evident and 'above politics'. Through a form of apparently non-coercive, "structured consent," affected governments and populations "learn" about the risks of irregular migration and thereby internalize the norms of migration management in a process of self-disciplining.[955] Train-the-trainer programs, technical assistance, seminars, safe migration and anti-smuggling information campaigns and other measures detailed in this chapter govern indirectly through the deployment of knowledge. In anti-smuggling policy, affected governments and populations are 'empowered' with information, technical assistance and financial inducement to improve their capacity (understood in the neoliberal terms of human capital development). Instead of adopting outwardly violent and coercive practices of forced removal, the GAIM program experiments with different methods of "enlisting the cooperation of migrants in their own expulsion" through the deployment of knowledge and financial assistance.[956]

The ambivalence of anti-smuggling policy reflects the rationality of migration management, which is rooted in an imperative of control that is not explicitly identified as such. The productive power of these multilateral programs is evident in their power to obscure the politics of anti-smuggling policy and deflect criticism away from any sustained consideration of the role of destination states in contributing to the political and socio-economic conditions under which smuggling proliferates and asylum-seekers are forced to enlist the services of smugglers in the absence of legal channels. Obfuscated by the language of voluntary return, the repatriation of smuggled asylum-seekers to their countries of origin is ultimately aimed at the maintenance of the international order and the pre-emptive containment of the world's surplus population to the global

South. Pre-emptive labelling is thus critical to this practice of containment and the politics of anti-smuggling policy. Through the GAIM program, the exceptional figure of the international order[957]—the asylum-seeker—is returned to their country of origin. This act reinforces the centrality of the state-based order and the international frameworks of the state system that benefit wealthier destination states in the global North. Far from being a simple administrative function of the state, deportation, as Nyers explains, is integral to the performance of sovereign power, which is founded on the exclusion of non-citizens and other acts that reaffirm the political trinity of citizenship, sovereignty and the interstate system.[958] Indeed, as Vosko argues, deportation is a condition of possibility for migration management, which depends on the capacity (and the spectre thereof) for removal as a means of direct and indirect control over non-citizen subjects.[959]

Having discussed the instrumental purpose and effects of Canada's anti-smuggling policy, in closing, it is worth reflecting on the implications of these programs, in which the federal government has tried to absolve itself of responsibility for contributing to the erosion of refugee protection and the marginalization of asylum-seekers. Despite the attempt to obfuscate the politics of anti-smuggling policy and its detrimental effects on refugee protection, the humanitarian impact of these programs raises serious concerns. Recently, news reports about Canada's capacity-building programs have raised questions about the international dimensions of the Migrant Smuggling Prevention Strategy. According to a recent investigation by Canadian journalists,[960] the federal government engaged in "distasteful alliances" with various governments in West Africa as part of its capacity-building activities in the region. According to the report, a former federal government employee stated that the federal government partnered in Guinea with Colonel Moussa Tiégboro Camara to disrupt migrant smuggling networks in Guinea. Camara was charged in 2012 for allegedly participating in a massacre in Conakry, Guinea's capital, on September 28,

2009. Over 150 people were killed and hundreds were raped and tortured during a peaceful protest at a stadium, actions identified by a UN inquiry as a crime against humanity.[961] According to this reporting, Camara's name was scrubbed from government reports because of negative optics. While the federal government claims both the domestic and international dimensions of the Migrant Smuggling Prevention Strategy are implemented in accordance with Canada's international obligations to people on the move, the claims of former government officials raise serious questions about Canada's dependence on affected governments to do the dirty work of anti-smuggling policy.

4.6 Conclusion

Through the formation of partnerships with IOs and affected governments, anti-smuggling programs cynically deploy the label of transit migrant to transform the refugee label and obscure the international politics of migration management. As this chapter has demonstrated, the federal government did not impose its anti-smuggling agenda on affected governments in transit countries. Rather, capacity-building operates indirectly through the qualification of sovereignty and "attenuation of state competence," in which affected governments seek to meet internationally defined "standards of behavior and normative expectations," by following the prescriptions of wealthier destination states and UN agencies.[962] As a range of scholars have demonstrated in different contexts, the concept of transit migration helps to legitimize cooperative measures to manage irregular migration. Because of its discursive link to migrant smuggling, irregular migration and mixed flows, the label of transit migration has been politicized and instrumentalized as a "tool of governance"[963] in the offshoring and outsourcing of migration management. Anti-smuggling policy engages with so-called transit migrants, but not necessarily by violently coercing people into staying in their place. Rather, it functions by disciplining their mobility through

indirect practices that, in the depoliticising language of migration management, 'assist' them to make 'informed' choices. In this view, "educating prospective migrants on the risks of smuggling," as the RCMP argues, reduces "the willingness of such migrants to undertake dangerous and illegal journeys."[964]

As this chapter suggests, to paraphrase Aradau in the case of anti-trafficking policy, anti-smuggling policy does not necessarily align with conventional assumptions about the securitisation of migration; it represents a "special case" made possible by a shift toward a rationality of migration management, in which concerns about those who are *at* risk and *a* risk, imperatives of controlling irregular migration and protecting 'genuine refugees', the interests of states and migrants, interact in complex and unpredictable ways.[965] By politicising the ambiguous identity of the transit migrant/smuggled asylum seeker—an undecidable figure caught between "the discourses of securitisation and humanitarianism,"[966] anti-smuggling policy synthesizes humanitarian, security and development logics into a comprehensive style of "humanitarian government,"[967] in a strategy of pre-emptive labelling that combines elements of care and control.[968]

In the context of anti-smuggling policy, the label of transit migrant is conceptually undecided. Transit migrants are more accurately conceptualized as refugee-migrants, that is, people motivated by both protection *and* socio-economic concerns, which cannot be neatly separated in an era of mixed migration. Similar to what Derrida called the "illogical logic" of undecidability,[969] the transit migrant presents policymakers with an aporia that is "simultaneously either/or," one which "disorganizes" the binary oppositions that enable knowledge and governmental action.[970] The transit migrant functions as a stand in for the grey area of forced migration, an unclassifiable and anomalous phenomenon that traverses the discursive space and

legal void between economic migrants and asylum-seekers. Like other concepts of migration management, the conceptual fuzziness of the concept is a source of its discursive power, which in turn contributes to its political flexibility. The conceptual confusion surrounding transit migration might be understood as a kind of epistemological excess that accompanies any attempt to enforce classification and distinguish categorically between apparently discrete phenomena associated with forced migration. However, the undecidability of the label is not necessarily a source of power against the state's attempt to define and make labels stick. Rather, the interpretive controversies and classificatory struggles surrounding the transit migrant mean the label is also susceptible to pre-emptive labelling and political manipulation. In this sense, the label can be aligned with the bureaucratic interests of wealthier destination states.

In this chapter, I showed how the conceptually undecided concept of transit migration/migrant is critical to the attempt by the Canadian state to prevent the arrival of asylum-seekers. Anti-smuggling discourses exploit the ambiguity of the label, which is "conceptually undecided about whether to formulate itself as a security/threat or a development/humanitarian discourse, or both," as Oelgemöller explains in the context of asylum-seekers stranded in transit to the European Union.[971] Because transit migrants are suspended in time and space, they are susceptible to pre-emptive labelling, which assumes people are "would-be asylum-seekers" before they have "even entered the territory of the state passing judgement."[972] Thus, in this sense the label of transit migrant occupies a critical role in *neo*-refoulement and the externalization of asylum.[973]

As Dimitriadi argues, the analysis of transit migration makes it possible for researchers to re-examine the role of labelling in refugee and forced migration studies.[974] As various scholars note, the labels of anti-smuggling policy shape the social reality of forced migration. However,

these categories are often invisible. This is particularly the case with the label transit migration, which is designed as a bureaucratic label to escape public scrutiny. However, as scholars of labelling argue, policy categories may become more visible, especially when they breakdown. In other words, labels tend to become visible when they are contested—when their de-linked explanations are no longer self-evident. While the analysis of transit migration enables us to understand the problem of categorization, this does not mean one must uncritically accept inherited policy categories in the analysis of forced migration. Instead, following Jones, to problematize the constructed nature of policy categories, one must emphasize the inchoate bounding process itself—rather than simply focusing on the inadequacy of categories that appear fixed—in order bring into focus the contingency of exclusionary labels, which "are not as immutable as they often appear."[975] By emphasizing the inchoate nature of the bounding process and the contingency and malleability of categories, the study of migrant smuggling can begin to understand the role of bureaucratic labels in the construction, transformation and politicisation of the refugee label in and through anti-smuggling policy.

Conclusion:
Anti-smuggling policy, the refugee label and the inchoate politics of bounding

There are friends and enemies. And there are *strangers* – Zygmunt Bauman (1990, 143)

5.0 Introduction

This dissertation has examined Canada's anti-smuggling policy devised and implemented in response to the arrival of the *Sun Sea*. I have argued that the legal ambiguity, classificatory struggles and interpretive controversies surrounding the refugee label and its sub-categories allowed the federal government to manage and reject the refugee claims of asylum-seekers that enlist the services of smugglers. Contrary to its stated objectives, for the federal government, the Migrant Smuggling Prevention Strategy was not simply about deterring migrant smuggling. Rather, the fight against migrant smuggling offered a politically expedient and legally instrumental way to restrict smuggled asylum-seekers from accessing refugee status.

Assembling critical scholarship from several fields, I integrated a variety of insights in a conceptual framework of labelling in which I revised, built upon, and reformulated Zetter's thesis to utilize in my analysis of the transformation of the refugee label in Canada's anti-smuggling policy. Using a reformulated conceptual framework of labelling, I adapted critical insights from several fields. Specifically, from IR and security studies, I incorporated a macro-focus on the state and its response to forced migration, which enhanced the understanding of the constitutive role of identities and norms and how they facilitate and constrain the construction of migration as a security threat. From refugee and forced migration studies, I synthesized a micro- and meso-focus on labelling at the individual and institutional level, which highlighted the significance of power, stereotyping, de-linkage and other social mechanisms of labelling, such as problematization, bounding and breakdown. Finally, from critical migration studies, I integrated an historically sensitive and international analysis of the rationality of migration management. By integrating

these insights, this study contributed to existing knowledge on the disjuncture between policy categories and contemporary forms of forced migration, the discriminatory outcomes of deterrence policy as well as the contradictory response by wealthier destination states to asylum-seekers, in which governments employ the rhetoric of refugee protection while devising elaborate deterrence policies to prevent asylum-seekers from exercising such rights in the first place.

Across this study, I demonstrated the power of labelling in anti-smuggling policy and its role in "fractioning" the refugee label and restricting access to asylum. In conducting a critical analysis of the Migrant Smuggling Prevention Strategy, I revealed the close relationship between the pejorative labels of anti-smuggling discourse and access to the rights and procedural protections associated with the refugee category. In so doing, my analysis highlighted the ways in which the proliferation of stigmatizing labels in anti-smuggling discourse frame and rationalize attempts to prevent the irregular arrival of asylum-seekers, also referred to throughout this study by the federal government as 'mass marine migrants', 'irregular arrivals', 'irregular marine migrants', 'smugglers', 'bogus refugees', 'economic migrants', 'illegal migrants', 'transit migrants', and so on—pejorative labels that mediate the relationship between wealthier destination states and smuggled asylum-seekers in the interests of the former.

Through an analysis of the construction and transformation of the refugee category in and through anti-smuggling policy, the foregoing chapters sought to highlight the contingency of the label and the effects of its politicisation in the management of migration. While the legal definition of the refugee category may seem fixed, neutral and unbiased—and in this sense it might appear as an appropriate starting point for empirical research—the apparent objectivity and transhistorical immutability of the refugee category is misleading at best. To be sure, the analytical hold of this convenient image of refugeeness is undeniable. However, in a critical view, the appearance of

universality is the performative effect of power and knowledge. The transformation of the refugee label in Canada's anti-smuggling policy shows how this ostensibly universal category is a highly contingent label that is in a constant state of flux in relation to the shifting objectives of wealthier destination states as well as changes in governmental rationalities and developments in policy and law.

The disjuncture between the refugee label and the complex social reality of migrant smuggling is readily apparent in Canada's response to the *Sun Sea*. Collectively, the findings of my research, particularly those presented in chapters three and four, suggest that the pejorative labels deployed in response to the *Sun Sea*, ostensibly designed to prevent and deter migrant smuggling, not only distort the motivations of smuggled asylum-seekers and discount the humanitarian implications of smuggling. Furthermore, the catalogue of labels of anti-smuggling policy, based on a false binary and artificial distinction between smuggling for-profit and humanitarian acts of assistance, restricts our understanding of the phenomenon and obscures the power of labelling and its constitutive effects. The pejorative labels of anti-smuggling policy perpetuate a series of dichotomizing claims, problematic depictions and outdated assumptions about forced migration and the role of smuggling in facilitating access to asylum. The reproduction and popularization of these accounts in scholarly research legitimize the state's ultimately unfounded authority to define and classify, in order to manage and criminalize certain practices of human mobility.

How should refugee and forced migration studies (along with other fields addressed in this study) approach the politics of anti-smuggling policy? The lack of intellectual engagement with migrant smuggling, both within and beyond refugee and forced migration studies, as well as the absence of theoretical diversity in prevailing research, is a cause for concern. Arguably, as this

study suggested, such a myopic focus is the disciplinary byproduct of the problem-solving approach of prevailing scholarship. To remedy these gaps, critical scholars must divorce the study of migrant smuggling from the political agendas of states and the concern with policy relevance that drives knowledge production in the field of forced migration. Instead, researchers should focus on the construction and translation of the category of migrant smuggling in different contexts, the effects of anti-smuggling discourse and its role in the transformation of the refugee label.

By way of conclusion, I briefly discuss several themes raised in this study of the Migrant Smuggling Prevention Strategy, all of which remain largely underexplored in the academic literature on migrant smuggling, but which nevertheless require scrutiny in future research. First, I reflect on the notion of policy relevance and its significance for understanding the role of categorization in refugee and forced migration studies. Second, I consider the dynamism of labelling and the ways in which existing categories perpetuate a linear, binary and static conceptualization of forced migration, which reflects the biases of wealthier destination states. Finally, I discuss the future of the deterrence paradigm. While the non-entrée regime remains intact, there are also signs suggesting that it may be entering a period of paradigmatic crisis.

5.1 Policy (ir)relevance and labelling

As illustrated throughout the preceding chapters, anti-smuggling policy does not respond to a pre-existing object, independent of our observations. Rather, it actively participates in the construction of its object of opposition and the transformation of the refugee label. Although the stereotypical account of migrant smuggling is reproduced throughout much of the prevailing research on smuggling, the popularity of this problematic depiction is not merely an abstract concern. Rather, it lends critical support to the trend toward more restrictive practices of migration control. In this regard, academic researchers and experts play a significant epistemic role in this

struggle to shape social reality and define the meaning of migrant smuggling. While similar methodological and political problems beset all research in the social and political sciences, in refugee and forced migration studies, the methodological perils of separating social-scientific research from political agendas and state interests are brought into sharp relief. The politicisation of asylum over the past three decades, as Castles explains, sharpens the "dilemma of policy-driven research," particularly studies funded by Western states, think-tanks and UN agencies in the field of migration management.

> Governments have commissioned a large volume of research on these topics… However, government-commissioned work can also mean that research questions, methods and even findings may be shaped by policy interests. Policy-driven research often provides simplistic, short-term remedies to complex, long-term social issues. Much policy-driven research is not only bad social science, it is also a poor guide to successful policy formation, and one reason for the poor record of many governments in the area.[976]

The dilemmas of policy-driven research highlight "the difficulty of separating the social-scientific and the political in understanding migration," where claims to scientific impartiality often mask the biases of receiving countries that normalize the dominant perception of migration as a problem in need of regulation.[977] The intimate relationship between academia and policy practice and thus between analytical and policy categories, as Bakewell notes, have always posed a problem for research in migration, in which scholars seek to balance concerns about rigour, policy-relevance and making a difference.[978] The predicaments of policy-driven research have heightened in the decade since Bakewell and Castles elaborated their concerns, in the aftermath of the 'migrant/refugee crisis' of 2015. The 'crisis' was not only a watershed moment in the history of forced displacement, but also in the study of migration.[979] The 'crisis' has contributed to what Stierl calls a "migration knowledge hype," which has caused academic expertise to become much sought after, a trend that has largely benefitted so-called 'policy-relevant' research.[980] The focus

on evidence-based policy and migration expertise in the analysis of the causes and consequences of the 'crisis' has featured prominently in the public search for 'solutions' and within attempts to connect academia and government.[981] However, the notion of 'policy-relevant' research is based on a host of assumptions derived from a positivist and empiricist vision of social science, including a problematic notion of what constitutes 'evidence,' which is often defined in terms of quantitative and statistical analysis of government data. Proponents of policy-relevant research and evidence-based policymaking, as Bakewell notes, often fail to make clear what they mean by policy relevance, which they often appear to conflate with practical relevance to the existing institutional arrangements and the prevailing status quo.[982] As Baldwin-Edwards, Blitz and Crawley explain in their analysis of initiatives funded in the United Kingdom under the Economic and Social Research Council, the narrow parameters of the "evidence-based" framing of research funded through such agencies often fails to address the political realities within which policymaking occurs, which must endogenize the role of interpretation and human agency to include social context, policy narratives, shared understandings and values in the analysis of how individuals and organisations negotiate competing policy options.[983] Despite the call for sound evidence, knowledge production and reliable data in the response to the 'crisis',[984] politicians and policymakers continue to fail to account for the messy and mixed reality of forced migration. The response to the 'crisis', like the response to the *Sun Sea*, reinforces and reflects the hegemony of existing policy categories, which, as a range of scholarship has demonstrated, rest on a misleading and dualistic account of the distinctions between 'forced' and 'voluntary' migration, and thus 'political' and 'economic' drivers of migration.[985]

As a range of scholars have argued, reflexivity is paramount in refugee and forced migration studies, whose development is closely linked to the market logic of the professionalized

"migration industry" in which the political interests of states, UN agencies, donors and NGOs dominate research agendas and funding opportunities.[986] Instead of conflating policy and analytical categories for the sake of policy-relevance and being legible to policymakers, critical scholars must foreground the conditions of possibility for labelling, their historicity and contingency, in order to challenge the conventional wisdom of policy relevance. For prevailing scholarship in migrant smuggling, the focus on the role of anti-smuggling discourse in the transformation of the refugee label may seem diversionary or irrelevant to 'real world' concerns related to the regulation of smuggling networks. While Bakewell rightly disputes the notion that a critical approach to the analysis of forced migration—a site of tremendous human suffering and exploitation—is difficult to justify in the terms of policy relevance, only by conducting what he calls "policy-irrelevant research" can the study of migrant smuggling move in a new direction.[987] The narrow focus of policy-relevant research not only limits the scope of refugee and forced migration studies, it also places significant limits on the critical function of scholarship and the extent to which research on forced migration may conduct a radical analysis that may bring about progressive change in the lives of those affected.[988] As a small but growing number of scholars contend, by redirecting our analytical energies toward the inchoate politics of bounding and the dynamism of labelling, forced migration and refugee studies can challenge the assumptions of anti-smuggling discourse and offer a meaningful contribution to public debate that questions the securitising discourse of anti-smuggling policy and re-centers the role of migrant smuggling in facilitating access to asylum.

In conducting a critical analysis of the Migrant Smuggling Prevention Strategy, which focused primarily on the Harper government's political manipulation of the refugee label in anti-smuggling policy, this dissertation may give the impression that the federal government is a

unitary and unified actor. The methodological choice has significant advantages, such as theoretical parsimony and analytical clarity, as well as distinct disadvantages. While methodologically justifiable due to the significant degree of uniformity of opinion across the federal government uncovered in my analysis of the whole-of-government approach, albeit despite silos between federal agencies such as the CBSA and IRCC, future research might want to consider other dimensions of "bureaucracy at the border"[989] and the 'backstage' of anti-smuggling policy, which could provide a more detailed account of the differences within the state apparatus at the micro-level of bureaucratic agents. In future research on the domestic dimensions of anti-smuggling policy, existing studies on the actions of street-level bureaucrats,[990] the micro-politics of specific federal agencies involved in border enforcement and migration management, such as the CBSA,[991] offer illustrative examples of what such critical research might look like. Additionally, historical institutionalist analyses of bureaucracy, critical junctures, policy legacies and path dependency,[992] policy and knowledge-transfer within and across national bureaucracies, offer fruitful areas for future research. To this end, the critical analysis of anti-smuggling policy would benefit from a more ethnographic sensibility. Developing this sensibility might involve closer attention to not only the *how* and *why* of anti-smuggling policy, but to the critical question of "who performs borderwork,"[993] with a deeper analysis of the differences within the federal government, the diversity of voices across bureaucratic departments and the role of citizens and non-citizens in making and unmaking borders.[994] Similarly, researchers concerned with the international dimensions of Canada's anti-smuggling policy should examine the emergence of a transnational field of security across various regions,[995] and the actors engaged in "humanitarian" [996] and "developmental"[997] practices of borderwork on the ground. Whether, and how, this sort of critical work will be

possible in the Canadian context will, of course, depend on the extent to which researchers can broker research access in an environment of increasing secrecy.

5.2 The dynamism of labelling: Shifting between categories in time and space

The "exilic bias"[998] of the refugee label persists in the popular imagination. However, the nature of international migration has changed dramatically since the Cold War era. Forced migrants rarely conform to the narrow definitional criteria established by the global refugee regime. As noted by Zetter, there are more subtle forms of persecution in the contemporary world, "which reflect a less categorical interpretation of the label 'refugee' and the slow onset of forced exile."[999] Thus, many people on the move do not fit the convenient image of the refugee label. Instead, they find themselves in the liminal space between categories, as they migrate as part of mixed flows of migrants whose irregular transit and entry are often aided and abetted by smugglers.

Advocates of refugee studies insist that the study of forced displacement must limit itself to the analysis of people and groups who conform to the refugee category as defined in the Refugee Convention. This sentiment explains, at least in part, why refugee and forced migration studies have rendered the plight of smuggled asylum-seekers largely invisible. Implicitly and explicitly, advocates of a limited scope for refugee studies ultimately privilege some categories of people as more entitled to international protection and academic recognition. Such misguided attempts to maintain disciplinary monopolies reinforce and reproduce the stereotype that people who enlist the services of smugglers are economically motivated individuals, whose voluntary 'choice' to migrate is self-evident and rooted in financial opportunity. While critical scholars in refugee and forced migration studies have criticized the stereotype of refugees as passive victims of conflict, in the attempt to re-centre the agency of refugees, advocates of a legal purist notion of refugee studies contribute to the marginalization of asylum-seekers that do not conform to the label. If I

subscribed to such a view and examined anti-smuggling policy on its own terms, the passengers on the *Sun Sea* would be rendered invisible. Such exercises in disciplinary gatekeeping not only fail to adequately address the complex intersection between asylum, migrant smuggling and irregular migration. What is more, they cannot account for the inchoate politics of bounding that accompany all attempts to categorize, as well as the significance of anti-smuggling policy in the broader attempt by states such as Canada to fraction the refugee label and prevent the arrival of asylum-seekers.

The conceptually undecidable figures of the asylum-seeker/smuggler and the asylum-seeker/transit migrant provide an instructive destabilization of the assumptions that underpin migration management and the highly polarized, static, linear and binary oppositions that drive anti-smuggling policy. These liminal figures that populate the political landscape of forced migration provide a window of understanding into the ways in which research that uncritically adopts existing policy categories cannot account for the dynamism of labelling, or how individuals shift between different categories across time and space. For this reason, research into migrant smuggling must challenge the hegemony of existing categories, based on the pejorative labels and state-centric perspective of the receiving state. Such intellectual exercises in "methodological nationalism"[1000] fail to account for how the profiles, motivations and needs of people on the move shift in time and space: for example, how the smuggled becomes the smuggler, or how asylum-seekers are redefined as transit migrants in search of economic betterment.

Labelling *matters*. The material effects of labels in determining access to the asylum system demonstrate their political significance. The social sorting of 'genuine refugees' from 'bogus refugees' and the deployment of pejorative labels such as 'irregular arrival' and 'transit migrant' are part of a deliberate strategy on behalf of wealthier destination states to exploit the

ambiguity of labels and manipulate conceptual confusion over the experiences of those who shift between categories. The complex stories associated with those in the liminal space between categories short-circuit the binary oppositions of migration management and its de-linked explanations, which make it difficult for bureaucrats to transform such individual narratives into a 'case'. While political authorities appear to express little interest in the plight of the undecidable, liminal figures of forced displacement or how people shift between categories across space and time, the use of pejorative labels to exclude reveals the instrumentality of the categories deployed by politicians and policymakers, who acknowledge the complexity of forced migration when it suits their interests, while simultaneously ignoring the movement of people across categories when it contradicts the deterrence agenda.[1001]

The findings of the case explored in this dissertation join, and indeed reinforce, a growing body of scholarship in refugee and forced migration studies highlighting the disjuncture between international normative frameworks and the messy social reality of forced migration, in which culpability is attributed to those on the move for their failure to conform to the stereotypical idea of refugeeness. They demonstrate the limits of such a de-linked explanation of forced displacement, which externalizes responsibility to smugglers and asylum-seekers, whilst uncritically mobilizing the state as the provider of protection. The plight of asylum-seekers onboard the *Sun Sea*, suggests that, in order to avoid a stereotypical account of migrant smuggling, particularly in the aftermath of civil war and political instability, this complex phenomenon of smuggled asylum-seekers must be situated within a global political economy of forced migration, in which access to asylum is no longer a human right but a commodity to buy for those who can afford it. Such forcibly displaced persons are not simply passive victims responding to threats of individual persecution. Rather, asylum-seekers who exercise agency in the flight to safety defy

such behavioural expectations. As a result, they are treated punitively for exercising their human right to seek asylum and for a supposed failure, in the eyes of bureaucrats and politicians, to conform to the behavioural expectations of the refugee label.

The undecidable figures examined in this study share the hallmarks of the stranger theorized by Bauman, the anomalous figure that paralyzes the binary logic and friend/enemy distinction of state sovereignty. In other words, the undecidability of such individuals calls into question the essence of the modern state: the capacity to label and make labels stick.[1002] While Bakewell advocates for a focus on those rendered 'invisible' by refugee and forced migration studies, an analysis of the state's response to the undecidable figures of forced displacement offers a glimpse into the liminal experiences of people on the move, which bring the disjuncture between international normative frameworks and the social reality of forced migration into sharp relief. While some interpret these undecidable, anomalous figures as the *homo sacer* of the paradigm of exception,[1003] who is beyond the scope of law, I prefer the metaphor of the stranger. The stranger, a "member of the family of the undecidables," occupies the "unclassifiable" grey area of forced migration's classificatory schema, in the space between refugees and migrants, which cannot be located within the binary schema of state sovereignty and the friend/enemy distinction. The "underdetermination" of undecidables, as Bauman puts it, is the source of their power and ability to destabilize the apparent natural (and national) order of things, which exposes the fragility of "the most secure" of binary oppositions.[1004]

> The strangers are not, however, the 'as-yet-undecided'; they are, in principle, undecidables. They are that 'third element' which should not be. The true hybrids…not just unclassified, but unclassifiable. They therefore do not question this one opposition here and now: they question oppositions as such, the very principle of opposition, the plausibility of dichotomy it suggests.[1005]

To mount a critique of the false and binary logic of anti-smuggling policy and its tendency toward pre-emptive labelling, one cannot simply refuse to address the complex reality of mixed migration and instead, make the tempting move to privilege all migrants as refugees. Such a conceptual evasion does little to address the state-centrism of anti-smuggling policy and the dichotomizing reasoning of legal categories. Rather, it simply reinforces its logic of deservedness as well as the legal fetishism of refugee and forced migration studies. Instead, one must address the inchoate politics of bounding and the pernicious processes of labelling through which the identities of such anomalous, hybrid figures—*strangers*—come into existence, are made and remade across space and time.

The undecidable figures of forced displacement, such as the asylum-seeker-cum-smuggler and the asylum-seeker-cum-transit migrant, present a challenge for policymaking under the status quo of the deterrence paradigm. To date such anomalies have been addressed within the existing parameters of the deterrence paradigm through innovative practices, such as the offshoring and outsourcing of migration management. And although anti-smuggling policies continue to proliferate across the globe, there are developments that suggest that the policy paradigm of deterrence may be entering a period of paradigm crisis.

5.3 The future of anti-smuggling policy and the deterrence regime: A crisis of numbers or a paradigm crisis?

A focus on pre-emptive labelling in anti-smuggling policy, and the inchoate politics of bounding, suggests that two seemingly disparate political situations discussed at the outset of this study—the arrival of the *Sun Sea* and the 2015 'migrant/refugee crisis' in Europe—share much in common, despite Canada's relative geopolitical isolation from the most immediate effects of forced displacement. What unites these supposedly distinct cases is not just the images of

desperation, nor the fragmented nature of such dangerous journeys, in which those on the move must navigate dangerous conditions aboard unseaworthy vessels. What is more, in response to both events, politicians and policymakers constructed a crisis narrative and used pejorative labels to stigmatize the arrival of asylum-seekers, whose fragmented journeys across land, sea or a mix of the two are often facilitated by smuggling networks. Like Canada's response to the *Sun Sea*, the political situation in Europe is not a crisis of sheer numbers alone. Rather, it is more symptomatic of a crisis of institutionalized policy responses undertaken thus far to address rising numbers of asylum-seekers.[1006]

As Gammeltoft-Hansen and Tan explain, several factors suggest that the deterrence paradigm has entered a period of crisis. With images of desperate asylum-seekers aboard unseaworthy vessels firmly entrenched in the global hivemind, the negative humanitarian impact of measures to prevent the irregular arrival of asylum-seekers has become undeniable. The causal link between increasingly restrictive deterrence policies and rising death rates among asylum-seekers is not just a hypothesis; it is empirically demonstrable.[1007] The policy paradigm of deterrence is also under significant pressure from other factors, such as legal and political challenges to measures that contravene the obligations of signatory states to the Refugee Convention. Finally, it appears such measures may no longer be effective in the face of rising levels of asylum-seekers across the global North.[1008] In a world of growing inequality between North and South, in which many, if not most asylum-seekers are forced to resort to smugglers to gain access to asylum, increasing criminalisation and cooperation to combat migrant smuggling will likely lead to more dangerous and risky activities on the part of smugglers. As we saw in the case of the *Sun Sea*, smugglers may decide to abandon the ships altogether, leaving vessels and the passengers onboard to navigate their flight to safety themselves.

As more states ostensibly committed to refugee protection engage in cooperative deterrence and attempt to persuade affected governments to adopt the normative standards and best-practices of migration management, in all likelihood the futile game of whack-a-mole between states and smugglers will endure. Asylum-seekers will likely continue to experience pre-emptive labelling without regard to the collateral damage caused by such measures. Yet, as the legal foundations and efficacy of the deterrence paradigm are called into question with increasing frequency, wealthier destination states may not be able to adapt their policies to mounting legal and political constraints. Given the lack of solidarity across the international community—the most recent Global Compact for Safe, Orderly and Regular Migration being a case in point—the future looks bleak. Indeed, the struggle between smugglers and anti-smuggling efforts may contribute to a race to the bottom and the continued erosion of refugee protection among the world's richest nations. Rather than addressing massive disparities in responsibility sharing in any meaningful way, mounting evidence suggests that the governments of wealthier destination states, which propound the rhetoric of refugee protection, will continue to devote their collective energy to devising clever ways to transform the refugee label and evade their presumptive responsibilities to people most in need of humanitarian protection.

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Appendix A
Interviews

1) Senior official, IRCC, February 3, 2016

2) Senior official, IRCC, February 3, 2016.

3) Senior official, IRCC, February 3, 2016.

4) Senior official, IRCC, February 3, 2016.

5) Senior official, IRCC, February 3, 2016.

6) Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration, February 5, 2016.

7) Senior official, IRCC, February 12, 2016.

8) Senior official, GAC, February 12, 2016.

9) Senior official, GAC, February 16, 2016.

10 Former senior official, CBSA, February 16, 2016.

11) Senior official, CBSA, February 19, 2016.

12) Former senior official, CBSA, March 30, 2016.

13) Senior official, IRCC, April 1, 2016.

14) Senior official, IRCC, April 6, 2016.

15) Senior official, Humanitarian and Migration Affairs, Permanent Mission of Canada to the UN in Geneva, April 7, 2016.

16) Senior official, CBSA, April 18, 2016.

17) Senior official, CIC, April 19, 2016.

18) Senior official, IRCC, April 21, 2016.

19) Senior official, CBSA, May 17, 2016.

20) Senior official, CBSA, June 29, 2016.

21) Senior official, CBSA, July 4, 2016.

22) Senior official, CBSA, July 4, 2016.

23) Senior official, IRCC, July 4, 2016.

24) Senior official, CBSA, July 4, 2016.

25) Senior official, CBSA, July 4, 2016.

26 Senior official, CBSA, July 5, 2016.

27) Senior official, CBSA, July 5, 2016.

28) Former senior official, CIC, July 6, 2016.

29) Former senior official, IRCC, July 6, 2016.

30) Senior official, IRCC, July 7, 2016.

31) Senior official, IRCC, July 14, 2016.

32) Former Minister of Citizenship and Immigration Canada, August 16, 2016.

33) Senior official, GAC, August 16, 2016

34) Senior official, Department of Justice, August 16, 2016.

35) Senior official, GAC, August 16, 2016.

36) Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration, August 16, 2016.

37) Senior official, GAC, August 16, 2016.

38) Former senior official, CBSA, October 11, 2016.

39) Senior official, IRCC, April 19, 2017.

40) Senior official, IOM, April 21, 2017.

Appendix B
Access to information requests

Immigration, Refugees and Citizenship Canada

1. IRCC A201532096 (24 pages, paper)

2. IRCC A201521196 (26 pages)

3. IRCC A201535452 (21 pages)

Canada Border Services Agency

4. CBSA A201102325 (699 pages)

5. CBSA A201313161 (199 pages)

6. CBSA A201303410 (36 pages)

7. CBSA A201303486 (30 pages)

8. CBSA A201412371 (42 pages)

9. CBSA A201402270 (36 pages)

10. CBSA A201613695 (83 pages)

Global Affairs Canada

11. GAC A201101931 (315 pages)

12. GAC A201302551 (118 pages)

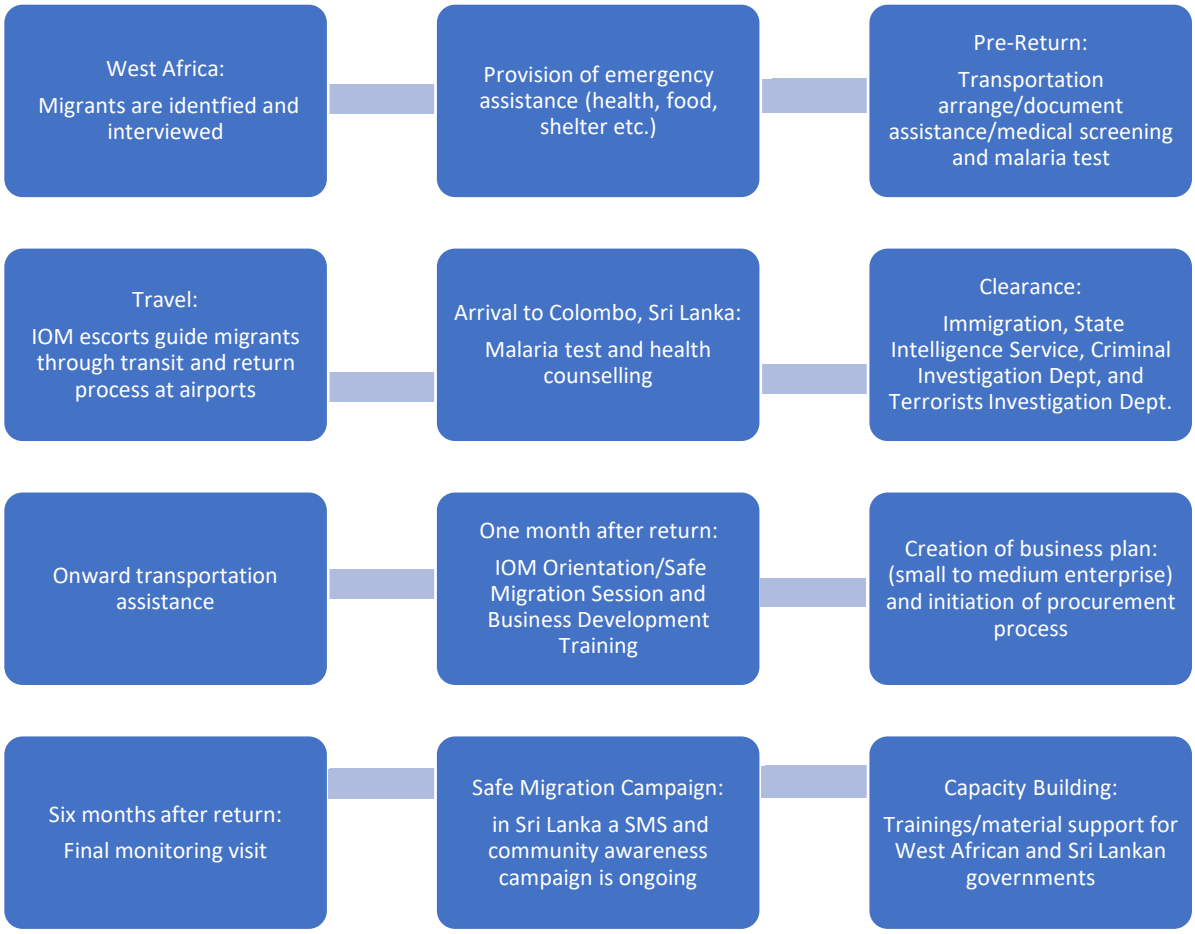
13. GAC A201302709 (24 pages)

Royal Canadian Mounted Police

14. RCMP A201400185 (182 pages)

15. RCMP A201501244 (159 pages)

Appendix C
West Africa Assisted Voluntary Return and Reintegration Flow Chart
("ANNEX 3 West Africa AVRR Flow Chart," reproduced from IRCC A201532096, 21)



Endnotes

[1] Matthew J. Gibney, *The ethics and politics of asylum: Liberal democracy and the response to refugees* (Cambridge: Cambridge University Press, 2004), 10. To be an asylum-seeker, "an individual merely has to claim to be a refugee."

[2] United Nations, The 1951 Convention Relating to the Status of Refugees (hereafter referred to as the Refugee Convention). Under Article 1 (A)(2), the definition of the term "refugee" applies to any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Under international refugee law, refugee status verification is "declaratory," that is, a person is a refugee "as soon as he [sic] fulfils the criteria contained in the definition," which can occur prior to formal determination processes: "[r]ecognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee." UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva: UNHCR, 1992), 28, cited in James C. Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself," *University of Michigan Public Law Research Paper* 429 (2014), 2. According to Hathaway, although states owe "no duty of protection to refugees at large, some basic rights," such as non-refoulement, "arise as a person seeking refugee status… comes under the jurisdiction of a state party," whereas other obligations, such as non-penalization, come into effect once the refugee has physically entered state territory.

[3] IOM, *International Migration Law: Glossary on Migration* (Geneva: IOM, 2004), 34. Irregular migration is defined as movement that occurs "outside the regulatory norms of the sending, transit and receiving countries."

[4] Roger Zetter, "Labelling refugees: Forming and transforming a bureaucratic identity," *Journal of Refugee Studies* 4, no. 1 (1991): 41.

[5] Heaven Crawley, Franck Düvell, Katharine Jones, Simon McMahon, and Nando Sigona, *Unravelling Europe's 'Migration Crisis': Journeys Over Land and Sea* (Bristol: Policy Press, 2018), 2-3.

[6] Thomas Gammeltoft-Hansen and Nikolas F. Tan, "The end of the deterrence paradigm? Future directions for global refugee policy," *Journal on Migration and Human Security* 5, no. 1 (2017): 28-56.

[7] Ċetta Mainwaring, *At Europe's Edge: Migration and Crisis in the Mediterranean* (Oxford: Oxford University Press, 2019).

[8] Heaven Crawley and Dimitris Skleparis, "Refugees, migrants, neither, both: Categorical fetishism and the politics of bounding in Europe's 'migration crisis'," *Journal of Ethnic and Migration Studies* 44, no. 1 (2018): 48-64; Tazreena Sajjad, "What's in a name? 'Refugees', 'migrants' and the politics of labelling," *Race and Class* 60, no. 2 (2018): 40-62; Sarah Kunz, "Expatriate, migrant? The social life of migration categories and the polyvalent mobility of race," *Journal of Ethnic and Migration Studies* 46, no. 11 (2020): 2145-2162; Elizabeth L. Krause, and Ying Li, "Out of place: everyday forms of marginalization, racism, and resistance among Chinese migrants in Italy," *Journal of Ethnic and Migration Studies* (2020): 1-19; Marta Bivand Erdal, and Ceri Oeppen, "Forced to leave? The discursive and analytical significance of describing migration as forced and voluntary," *Journal of Ethnic and Migration Studies* 44, no. 6 (2018): 981-998.

[9] Nicholas Van Hear, Rebecca Brubaker and Thais Bessa, "Managing mobility for human development: the growing salience of mixed migration," *Human Development Research Paper Series* 2009/20. In established terminology, refugees are forced to move across borders because of political persecution, whereas economic migrants have moved voluntarily across borders in search of opportunity.

[10] Leah F. Vosko, Valerie Preston, and Robert Latham, eds. *Liberating temporariness? Migration, work, and citizenship in an age of insecurity* (Montreal: McGill-Queen's University Press, 2014).

[11] As noted in the "Humane mobility: Manifesto for change" (www.humanemobility.net), a call for action signed by some of the world's leading academics in forced migration and refugee studies, the artificial distinction between 'economic migrants' from 'refugees' is reinforced, rather than challenged, in the political distinction and formal separation of the Global Compact for Safe, Orderly and Regular Migration from the Global Compact for Refugees and thus wider issues of forced displacement.

[12] Oliver Bakewell, "Research beyond the categories: The importance of policy irrelevant research into forced migration," *Journal of Refugee Studies* 21, no. 4 (2008): 432-453.

[13] Crawley, Düvell, et al., *Unravelling Europe's 'Migration Crisis'*, 2.

[14] Reg Whitaker, "Refugees: The security dimension," *Citizenship Studies* 2, no. 3 (1998): 314-434.

[15] Roger Zetter, "Labelling refugees: Forming and transforming a bureaucratic identity."

[16] Stephen Castles, Hein de Haas and Mark Miller, *The Age of Migration: International Population Movements in the Modern World, Fifth Edition* (London: Palgrave McMillan, 2014); Jennifer Hyndman, "The geopolitics of migration and mobility," *Geopolitics* 17, no. 2 (2012): 243-255.

[17] Jennifer Hyndman, *Managing displacement: Refugees and the politics of humanitarianism* (Minneapolis: University of Minnesota Press, 2000), 12; Guy S. Goodwin-Gill, "Nonrefoulement and the new asylum seeker," in *The New Asylum-seekers: Refugee Law in the 1980s*, ed. Martin

A. David (Dordrecht: Springer, 1988), 103-121; Khalid Koser and Helma Lutz, "The new migration in Europe: Contexts, constructions and realities," in *The New Migration in Europe: Social constructions and social realities*, eds. Khalid Koser, and Helma Lutz (London: Palgrave Macmillan, 1998), 1-17.

[18] See Stephen Castles, "The migration-asylum nexus and regional approaches," in *New regionalism and asylum-seekers: Challenges Ahead*, eds. Susan Kneebone and Felicity Rawlings-Sanaeil (New York: Berghahn Books, 2007), 25-42. This term, like mixed-migration, suggests that forced displacement occurs as a result of political persecution along with socio-economic factors that affect the decision to emigrate.

[19] Gammeltoft-Hansen and Tan, "The end of the deterrence paradigm?" 34; James C. Hathaway, "The emerging politics of non-entrée," *Refugees* 91, no. 1 (1992): 40-41; Efthymios Papastavridis, "'Recent' 'Non-Entrée' Policies in the Central Mediterranean and Their Legality: A New Form of 'Refoulement'?" *Diritti umani e diritto internazionale* 3 (2018): 493-510; Ruben Zaiotti, "Mapping remote control: The externalization of migration management in the 21st century," in *Externalizing Migration Management: Europe, North America and the spread of 'remote control' practices,* ed. Ruben Zaiotti (London: Routledge, 2016), 13. In this dissertation, I use the term deterrence policy to describe the heterogeneous set of non-arrival and non-admission practices designed to prevent the arrival of asylum-seekers and disincentivize asylum-seeking. These include visa requirements, carrier sanctions, mandatory detention, restrictions on social assistance and access to the labour market, fast-tracked application and adjudication processes, cessation provisions, limits on appeal and removal orders, safe countries of origin lists, safe third country agreements, offshore asylum processing, the criminalisation of irregular migration, smuggling, trafficking and other measures.

Competing definitions of deterrence exist within the academic literature. Some scholars such as Papastavridis make an analytical distinction between deterrence and non-entrée policies, In this view, the former (deterrence) discourage asylum-seeking but do not breach the human right to seek asylum, whereas the latter (non-entrée) do violate such rights because they prevent people from accessing the territory of the destination state and lodging an asylum claim. This being said, others such as Zaiotti use 'remote control' as a general umbrella term to describe both deterrence and non-entrée policies, which, regardless of their legal implications, share the same aim: to discourage and pre-empt the arrival of asylum-seekers.

[20] Crawley and Skleparis, "Refugees, migrants, neither, both."

[21] Ibid, 59.

[22] Under international law, migrant smuggling is defined in contradistinction to trafficking in persons. The Protocol against the Smuggling of Migrants by Land, Sea and Air (hereon referred to as the Anti-Smuggling Protocol) defines migrant smuggling as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national" (Article 3 (a)). Under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Article 3(a)), trafficking in persons is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

[23] Jørgen Carling, Anne T. Gallagher and Christopher M. Horwood, "Beyond definitions: Global migration and the smuggling-trafficking nexus," (Copenhagen: Danish Refugee Council, Regional Mixed Migration Secretariat, 2015), 11; Jennifer Hyndman and Alison Mountz, "Refuge or refusal," in *Violent geographies: Fear, terror, and political violence*, eds. Derek Gregory and Allan Pred (New York: Routledge, 2007): 77-92; Anna Triandafyllidou "Governing migrant smuggling," in *Handbook on Migration and Security*, ed. Philippe Bourbeau (London: Edward Elgar Publishing, 2017), 213.

[24] Violeta Moreno-Lax, *Accessing asylum in Europe: Extraterritorial border controls and refugee rights under EU law* (Oxford: Oxford University Press, 2017).

[25] Guy S. Goodwin-Gill, "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection," *A paper prepared at the request of the Department of International Protection for the UNHCR Global Consultations,* 2001), 11.

[26] Jennifer Hyndman and Alison Mountz, "Another Brick in the Wall? Neo-refoulement and the Externalization of Asylum by Australia and Europe," *Government and Opposition* 43, no. 2 (2008): 258.

[27] Daniel Hiebert, "What's so special about Canada? Understanding the resilience of immigration and multiculturalism," *Migration Policy Institute* (2016): 1-21; Irene Bloemraad, "Understanding 'Canadian exceptionalism' in immigration and pluralism policy," *Migration Policy Institute*, July (2012): 1-23.

[28] CBSA 20151196, 21.

[29] Mainwaring, *At Europe's Edge*, 29.

[30] CBSA 20151196, 18.

[31] Ibid, 7.

[32] Gary Anadasangaree, "We failed the people who fled conflict on the MV Sun Sea," *Toronto Star*, August 13, 2020. Another boy was separated from his father and sent to the Burnaby Youth facility.

[33] Ibid.

[34] Douglas Quan, "He was accused of owning the MV Sun Sea migrant ship that reached Canada. Ten years later, he's speaking publicly for the first time," *Toronto Star,* August 13, 2020.

[35] "Tamil migrants to be investigated: Toews," *CBC News,* August 13, 2010.

[36] The federal government's statistics do not support their claims that migrant smuggling by sea is a growing or urgent problem. The chart below identifies the number of "irregular marine migrants" by category since 2003. Statistics from internal CBSA documents in late 2010 observe that, with the exception of "the arrival of 492 passengers and crew on the M/V Sun Sea, irregular marine migrants in 2010 were at their lowest level in four years" (CBSA A201613695, 23).

Irregular Marine Migration	2003	2004	2005	2006	2007	2008	2009	10 months of 2010
Total	175	171	134	138	179	212	187	629

(Source: CBSA A201613695, 23).

Internal assessments note that "despite the pull factors, and, in the absence of additional marine arrivals, the number of refugee claimants from Sri Lanka" is likely to remain "at low levels" for the foreseeable future (Ibid, 8).

[37] Roger Zetter, "More labels, fewer refugees: Remaking the refugee label in an era of globalization," *Journal of Refugee Studies* 20, no. 2 (2007): 172-192.

[38] IRCC 2016, "Evaluation of the In-Canada Asylum System Reforms," 8.

[39] Ibid.

[40] GAC A201101931, 295.

[41] For a critical overview of these reforms, see Johanna Reynolds and Jennifer Hyndman, "A turn in Canadian refugee policy and practice," *Whitehead Journal of Diplomacy and International Relations* 16 (2014): 41-55.

[42] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 22.

[43] IRCC A201521196, 15.

[44] John J. Noble, "A secure border? The Canadian view," in *Immigration policy and the terrorist threat in Canada and the United States,* eds. Alex Moens, and Martin Collacott (Vancouver: The Fraser Institute, 2008), 161-182.

[45] CBSA A201313161, 184.

[46] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[47] Ibid.

[48] Gary Anadasangaree, "We failed the people who fled conflict on the MV Sun Sea."

[49] GAC 201101931, 280.

[50] Ibid, 109.

[51] Ibid, 222.

[52] Benjamin Perrin, "Migrant Smuggling: Canada's Response to a Global Criminal Enterprise," *International Journal of Sociology Studies* 1, no. 2 (2013): 139-153.

[53] para 14, B010 v. Canada.

[54] Virginie Guiraudon, and Christian Joppke, eds. *Controlling a new migration world* (London: Routledge, 2001), 13.

[55] Alison Mountz, *Seeking asylum: Human smuggling and bureaucracy at the border*. (Minneapolis: University of Minnesota Press, 2010), 8-9.

[56] Douglas Quan, "Years after two ships brought 568 migrants to Canada, seven acquittals and one conviction," *The National Post,* August 9, 2015.

[57] Sunny Dhillon, "Sun Sea anniversary highlights Canada's treatment of refugees," *The Globe and Mail,* August 9, 2015.

[58] Katie DeRosa, "Monitor: Canadian government is getting tougher on refugee claimants, even if there's danger at home," *Times Colonist,* October 18, 2013.

[59] Canadian Council for Refugees, "Sun Sea: Five years later." Montreal: Canadian Council for Refugees, 2015.

[60] Kim Rygiel, "Governing mobility and rights to movement post 9/11: Managing irregular and refugee migration through detention," *Review of Constitutional Studies* 16, no. 2 (2011): 211-241.

[61] Canadian Council for Refugees, "2010 Refugee Claim Data and IRB Member Grant Rates." Montreal: Canadian Council for Refugees, 2011.

[62] UNHCR, "Eligibility Guidelines for assessing the international protection needs of Refugee claimants from Sri Lanka" (Geneva: UNHCR, 2012), 6.

[63] Ibid.

[64] Ibid, 40-41.

[65] Martin Geiger, "The transformation of migration politics: From Migration Control to Disciplining Mobility," in *Disciplining the transnational mobility of people,* eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2013), 15-40.

[66] UNHCR, *Global Trends in Forced Displacement in 2019* (Geneva: UNHCR, 2020), 2.

[67] Roger Zetter, "More labels, fewer refugees," 184.

[68] Ibid.

[69] Bhupinder S. Chimni, "Globalization, humanitarianism and the erosion of refugee protection," *Journal of Refugee Studies* 13, no. 3 (2000): 243-263; Gil Loescher, "UNHCR and the Erosion of Refugee Protection," *Forced Migration Review* 10 (2001): 28-30.

[70] UNHCR, *Global Trends in Forced Displacement in 2019*, 16, 8. According to UNHCR, the global population of refugees has doubled from approximately 10 million in 2010 to 20.4 million by the end of 2019. In 2019, according to UNHCR, one in every 97 people—or one percent of the world's population—can be classified as forcibly displaced. This figure has increased from one in every 174 people in 2005.

[71] Dominik Hangartner, Elias Dinas, Moritz Marbach, Konstantinos Matakos, and Dimitrios Xefteris, "Does exposure to the refugee crisis make natives more hostile?" *American Political Science Review* 113, no. 2 (2019): 442-455.

[72] Erika Feller, "Asylum, migration and refugee protection: realities, myths and the promise of things to come," *International Journal of Refugee Law* 18, no. 3-4 (2006): 509-536.

[73] Idil Atak, "Safe Country of Origin: Constructing the Irregularity of Asylum Seekers in Canada," *International Migration* 56, no. 6 (2018): 176-190.

[74] Siobhan Mullall, "Accelerated Asylum Determination Procedures: Fair and Efficient?" *Dublin University Law Journal* 23 (2001): 55-70.

[75] Caroline Fleay, and Linda Briskman, "Hidden men: Bearing witness to mandatory detention in Australia," *Refugee Survey Quarterly* 32, no. 3 (2013): 112-129.

[76] Stephen H. Legomsky, "The USA and the Caribbean interdiction program," *International Journal of Refugee Law* 18, no. 3-4 (2006): 677-695.

[77] Sarah Leonard, and Christian Kaunert, "The extra-territorial processing of asylum claims," *Forced Migration Review* 1, no. 52 (2016): 48-50.

[78] Jennifer Hyndman and Alison Mountz, "Another Brick in the Wall?"

[79] Didier Bigo, "Security and immigration: Toward a critique of the governmentality of unease," *Alternatives: Global, Local, Political*, 27, no. 1 (2002): 63-92; Jef Huysmans, *The politics of insecurity: Fear, migration and asylum in the EU* (London: Routledge, 2006); Philippe Bourbeau, *The securitisation of migration: A study of movement and order* (New York: Taylor and Francis, 2011).

[80] In addition to securitisation theory, a range of scholarship in critical border studies and IR and security studies is influenced by the concept of exceptionalism. See for example, Mark B. Salter, "When the exception becomes the rule: borders, sovereignty, and citizenship," *Citizenship studies* 12, no. 4 (2008): 365-380; Peter Nyers, *Rethinking refugees: Beyond states of emergency* (London: Routledge, 2006); Rens Van Munster, *Securitising immigration: The politics of risk in the EU* (Basingstoke: Springer, 2009); Nick Vaughan-Williams, "Carl Schmitt, Giorgio Agamben and the 'Nomos' of Contemporary Political Life," in *The Routledge Handbook of Biopolitics*, eds. Sergei Prozorov and Simona Rentea (London: Routledge, 2016), 140-154.

[81] Kernerman, "Refugee Interdiction Before Heaven's Gate," 233.

[82] Barry Buzan, Ole Wæver and Jaap De Wilde. *Security: A new framework for analysis* (Boulder: Lynne Rienner Publishers, 1998), 23-24; Philippe Bourbeau. "Moving forward together: Logics of the securitisation process," *Millennium* 43, no. 1 (2014): 187-206; Bigo, "Security and immigration: Toward a critique of the governmentality of unease,"; Huysmans, *The politics of insecurity: Fear, migration and asylum in the EU*. According to the Copenhagen School of securitisation theory, a successful securitisation follows three steps: the identification of a threat to a referent object (usually the state), emergency action outside "the normal bounds of political procedure" to respond to the threat and the "effects on interunit relations by breaking free of rules." Security elevates an issue "above politics," bypassing democratic procedure, casting it as a problem to be dealt with outside the "normal political rules of the game." Thus, security is defined as a process of "breaking free of rules' and elevating an issue 'beyond normal politics'. As Bourbeau notes, more recent reformulations of securitisation theory, known as the 'Paris School', has used concepts from Pierre Bourdieu and Michel Foucault to expand the analysis of security beyond the Copenhagen's School focus on "logic of exceptionalism" and discursive practices of the speech-act, to consider the "logic of routine" and field of bureaucratic actors and technical practices that constitute referent objects of security.

[83] Idil Atak, Graham Hudson, and Delphine Nakache, "The securitisation of Canada's refugee system: Reviewing the unintended consequences of the 2012 reform," *Refugee Survey Quarterly* 37, no. 1 (2018): 1-24; Rachel Kronick, and Cécile Rousseau, "Rights, compassion and invisible children: A critical discourse analysis of the parliamentary debates on the mandatory detention of migrant children in Canada," *Journal of Refugee Studies* 28, no. 4 (2015): 544-569; David Moffette and Shaira Vadasaria, "Uninhibited violence: Race and the securitisation of immigration," *Critical Studies on Security* 4, no. 3 (2016): 291-305; Corey Robinson, "Tracing and explaining securitisation: Social mechanisms, process tracing and the securitisation of irregular migration," *Security Dialogue* 48, no. 6 (2017): 505-523; Rygiel, "Governing mobility and rights to movement post 9/11," 211; Elsa Vigneau, "Securitisation theory and the relationship between discourse and context: A study of securitized migration in the Canadian press, 1998-2015," *Revue europeenne des migrations internationales* 35, no. 1 (2019): 191-214.

[84] Buzan, Wæver and De Wilde, *Security: A new framework for analysis*, 24-25.

[85] Ashley Bradimore and Harald Bauder, "Mystery Ships and Risky Boat People: Tamil Refugee Migration in the Newsprint Media," *Canadian Journal of Communication* 36, no. 4 (2011): 638; See also Andrea Lawlor, and Erin Tolley, "Deciding who's legitimate: News media framing of immigrants and refugees," *International Journal of Communication* 11 (2017): 967–991.

[86] Stephanie Silverman, "In the wake of irregular arrivals: changes to the Canadian immigration detention system," *Refuge* 30, no. 2 (2014): 27-35.

[87] Alison Mountz, *Embodied geographies of the nation-state: An ethnography of Canada's response to human smuggling* (PhD Thesis, University of British Columbia, 2003), xi.

[88] Geiger, "The transformation of migration politics: From Migration Control to Disciplining Mobility."

[89] Mountz, *Seeking asylum*, xxxii.

[90] Ibid.

[91] William Walters, "Putting the migration-security complex in its place," in Louise Amoore and Marieke de Goede (eds), *Risk and the War on Terror* (London: Routledge), 160-162. As Walters has explained "studies in the securitisation of migration have privileged our own time" and the "rationalities associated with securitisation." As a result, "the literature has shown little inclination toward undertaking historical reflection and analysis of earlier politicisations of migration."

[92] Julien Jeandesboz, and Polly Pallister-Wilkins, "Crisis, routine, consolidation: The politics of the Mediterranean migration crisis," *Mediterranean Politics* 21, no. 2 (2016): 317.

[93] Olaf Corry, "Securitisation and 'riskification': Second-order security and the politics of climate change," *Millennium* 40, no. 2 (2012): 235-258. The analytical distinction between politicisation, risk and securitisation is part of an extensive debate in the literature on securitisation theory. While I do not adopt the rigid nomenclature of securitisation theory, Corry provides a helpful set of analytical clarifications. For Corry, politicisation can be understood as a 'grammar' of security in which the framing of an issue such as forced migration is characterized by a lower level of intensity than that of 'existential threat', a form of problematization in which distinct political imperatives and performative effects can be observed, where political actors seek to construct an issue as governable, distinct and malleable. Here, political action is driven by a logic of marginal utility and a legitimation strategy of trade-offs between different goods. Whereas securitisation is concerned with the construction of direct existential threat to a referent object (e.g. the state) and the legitimation of exceptional measures, riskification, following Corry, is concerned with managing the conditions of possibility of harm, building the resilience of the referent object and developing long-term, precautionary strategies of risk management.

[94] Geiger, "The transformation of migration politics: From Migration Control to Disciplining Mobility."

[95] Polly Pallister-Wilkins, "Humanitarian Rescue/Sovereign Capture and the Policing of Possible Responses of Violent Borders," *Global Policy* 8, no. 1 (2017): 19.

[96] Corry, "Securitisation and 'riskification', 249.

[97] Didier Bigo, "Protection: Security, territory and population," in *The politics of protection: sites of insecurity and political agency*, eds. Jef Huysmans, Andrew Dobson, and Raia Prokhovnik (New York: Routledge, 2006), 89-90.

[98] Ibid, 90.

[99] Scott D. Watson, *The securitisation of humanitarian migration: Digging moats and sinking boats* (London: Routledge, 2009).

[100] Claudia Aradau, "Trafficking in Women: Human Rights or Human Risks?" *Canadian Woman Studies* 22, nos. 3/4 (2003): 55–59.

[101] Polly Pallister-Wilkins, "The humanitarian politics of European border policing: Frontex and border police in Evros," *International Political Sociology* 9, no. 1 (2015): 54.

[102] Scott D. Watson, "The 'human' as referent object? Humanitarianism as securitisation," *Security Dialogue* 42, no. 1 (2011): 5-6.

[103] Violeta Moreno-Lax, "The EU humanitarian border and the securitisation of human rights: The 'rescue-through-interdiction/rescue-without-protection'paradigm," *Journal of Common Market Studies* 56, no. 1 (2018): 119-140.

[104] Pallister-Wilkins, "Humanitarian Rescue/Sovereign Capture," 19.

[105] Adrian Little, and Nick Vaughan-Williams, "Stopping boats, saving lives, securing subjects: Humanitarian borders in Europe and Australia," *European Journal of International Relations* 23, no. 3 (2017): 533-556; Paolo Cuttitta, "Delocalization, humanitarianism, and human rights: The Mediterranean border between exclusion and inclusion," *Antipode* 50, no. 3 (2018): 783-803.

[106] Roger Zetter, "More labels, fewer refugees," 173.

[107] Nyers, *Rethinking refugees*, 88.

[108] Gibney, *The ethics and politics of asylum*, 2.

[109] Thomas Gammeltoft-Hansen, "International refugee law and refugee policy: the case of deterrence policies," *Journal of Refugee Studies* 27, no. 4 (2014): 581.

[110] Thomas Gammeltoft-Hansen and James C. Hathaway, "Non-Refoulement in a World of Cooperative Deterrence," *Columbia Journal of Transnational Law* 53, no. 2 (2015): 240.

[111] Gammeltoft-Hansen, "International refugee law and refugee policy," 586.

[112] Ibid, 583, 588.

[113] Bethany Hastie, "To Protect and Control: Anti-Trafficking and the Duality of Disciplining Mobility," in *The politics of international migration management*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2013), 126-144.

[114] Gibney, *The ethics and politics of asylum*, 2.

[115] Michael Barnett and Raymond Duvall, "Power in international politics," *International organization* 59, no. 1 (2005): 48-49. According to Barnett and Finnemore, productive power manifests itself in "diffuse constitutive relations" that shape the shared understandings, perceived interests and capacities of social actors. The concept of productive power emphasizes the structural effects of hegemonic meanings, identities and norms. It also recognizes the contribution of human agency and "meaningful practices" in the production, reproduction and transformation of power structures.

[116] Nina Perkowski, "Deaths, Interventions, Humanitarianism and Human Rights in the Mediterranean 'Migration Crisis'," *Mediterranean Politics* 21, no. 2, (2016): 331–335.

[117] Watson, "The 'human' as referent object?"

[118] Natasha Saunders, "Paradigm shift or business as usual? An historical reappraisal of the 'shift' to securitisation of refugee protection," *Refugee Survey Quarterly* 33, no. 3 (2014): 69-92.

[119] Bhupinder S. Chimni, "The birth of a 'discipline': From refugee to forced migration studies," *Journal of Refugee Studies* 22, no. 1 (2009): 22.

[120] Nina Perkowski, "Frontex and the convergence of humanitarianism, human rights and security," *Security Dialogue* 49, no. 6 (2018): 457-475; Beste İşleyen, "Turkey's governance of irregular migration at European Union borders: Emerging geographies of care and control," *Environment and Planning D: Society and Space* 36, no. 5 (2018): 849-866; Nina Sahraoui, "Gendering the care/control nexus of the humanitarian border: Women's bodies and gendered control of mobility in a EUropean borderland," *Environment and Planning D: Society and Space* (2020): 0263775820925487.

[121] Michel Foucault, *Discipline and Punish: The birth of the prison* (New York: Vintage Books, 2012), 218.

[122] Joy Moncrieffe, "Introduction. Labelling, power and accountability: how and why 'our' categories matter," in *The Power of Labelling: How people are categorized and why it matters*, eds. Joy Moncrieffe and Rosalind Eyben (London: Earthscan, 2007), 9.

[123] Michel Foucault, "Discourse and truth: The problematization of parrhesia," Lectures given by Michel Foucault at the University of California at Berkeley, October-November 1983 (1983); Michel Foucault, "Polemics, Politics, and Problemizations: An Interview with Michel Foucault," in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 381-390; Michel Foucault, *The Use of Pleasure: Volume two of the History of Sexuality* (New York: Vintage Books, 1990). Various interlocutors have developed Foucault's insights on problematization, see for example Carol Bacchi, "Why study problematizations? Making politics visible," *Open journal of political science* 2, no. 1 (2012):1-8; Mitchell Dean, *Governmentality: Power and rule in modern society* (London: Sage publications, 2010); Colin Koopman, *Genealogy as critique: Foucault and the problems of modernity* (Bloomington: Indiana University Press, 2013); Nicholas Rose and Peter Miller, "Political power beyond the state: Problematics of government," *British journal of sociology* (1992): 173-205.

[124] Jacques Derrida, *Margins of philosophy* (Chicago: University of Chicago Press, 1982).

[125] Zygmunt Bauman, "Modernity and ambivalence." *Theory, Culture and Society* 7, no. 2-3 (1990): 143-169.

[126] Bauman, "Modernity and ambivalence," 165.

[127] James C. Scott, *Seeing like a state: How certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998).

[128] Bauman, "Modernity and ambivalence."

[129] Ibid.

[130] Ibid, 151.

[131] Ibid, 151; 147.

[132] Ibid, 147.

[133] As I argue in chapter three, the 'smuggled asylum-seeker' or the figure of the 'asylum-seeker-cum-smuggler' provides a decisive illustration or the both/and logic of what Bauman calls the 'undecidable'. In chapter four, I make a similar argument with regard to the 'transit migrant', whose combined humanitarian and economic motivations destabilizes the either/or binary logic of migration management.

[134] Scott D. Watson, "The criminalisation of human and humanitarian smuggling," *Migration, Mobility, and Displacement* 1, no.1 (2015): 39-53.

[135] Zetter, "More labels, fewer refugees," 173.

[136] Zetter, "Labelling refugees: Forming and transforming a bureaucratic identity," 40.

[137] Zetter, "More labels, fewer refugees," 174.

[138] Ibid, 184.

[139] Ibid, 189.

[140] Thomas Gammeltoft-Hansen, *Access to asylum: international refugee law and the globalisation of migration control* (Cambridge: Cambridge University Press, 2011).

[141] Zetter, "More labels, fewer refugees," 183.

[142] Bakewell, "Research beyond the categories."

[143] Ibid.

[144] Ibid, 433.

[145] Josh DeWind, "Response to Hathaway," *Journal of Refugee Studies* 20, no. 3 (2007): 381-385.

[146] Alexander Betts, *Survival migration: Failed governance and the crisis of displacement* (Ithaca: Cornell University Press, 2013).

[147] Erika Feller, "Refugees are not Migrants," *Refugee Survey Quarterly* 24, no. 4 (2005): 27-35; James C. Hathaway, "Forced Migration Studies: Could We Agree Just to 'Date'?" *Journal of Refugee Studies* 20, no. 3 (2007): 349-369.

[148] Claudia Aradau and Martina Tazzioli, "Biopolitics multiple: Migration, extraction, subtraction," *Millennium: Journal of International Studies* 48, no. 2 (2020): 198-220.

[149] Jørgen Carling, "Refugees are also migrants. All migrants matter," *Border Criminologies Blog* 9: (2015).

[150] Karin Scherschel, "Who is a refugee? Reflections on social classifications and individual consequences," *Migration Letters* 8, no. 1 (2011): 67-76.

[151] Reece Jones, "Categories, borders and boundaries." See also Crawley and Skleparis, "Refugees, migrants, neither, both."

[152] Reece Jones, "Categories, borders and boundaries," 175.

[153] Ibid, 180.

[154] Bakewell, "Research beyond the categories: The importance of policy irrelevant research into forced migration."

[155] Mark B. Salter, "Theory of the / : The suture and critical border studies," *Geopolitics* 17, no. 4 (2012): 740.

[156] Saunders, "Paradigm shift or business as usual?"

[157] Michel Foucault, "Truth and Power," in *The Foucault Reader: An Introduction to Foucault's Thought*, ed. Paul Rabinow (London: Penguin, 1991), 73.

[158] Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Vintage Books, 2010).

[159] Richard Lynch, "Discourse," in *The Cambridge Foucault Lexicon*, eds. Leonard Lawlor and John Nale (Cambridge: Cambridge University Press, 2014), 120.

[160] Nicholas Rose, *Powers of Freedom: reforming political thought* (Cambridge, Cambridge University Press, 1999), 57; cited in William Walters, "The political rationality of European integration," in *Global governmentality: Governing international spaces*, eds. Wendy Larner and William Walters (London: Routledge, 2004), 157.

[161] Stuart Hall, "The West and the Rest: Discourse and power," in *Modernity: An introduction to modern societi*es, eds. Stuart Hall, David Held, Dan Hubert, and Kenneth Thompson (Malden: Blackwell, 1996), 201. Discourse, according to Hall can be defined as "a group of statements which provide a language of talking about—i.e. a way of representing—a particular kind of knowledge about a topic. When statements about a topic are made within a particular discourse the discourse makes it possible to construct the topic in a certain way. It also limits other ways in which the topic can be constructed."

[162] Ibid, 203.

[163] Kevin Walby and Mike Larsen, "Getting at the live archive: On access to information research in Canada," *Canadian Journal of Law and Society* 26, no. 3 (2011): 623-633. While I understand the 'archive' in a more Foucaultian sense, I adopt this term from criminologists Walby and Larsen, who coined it to describe their research method of using access-to-information requests in Canada.

[164] After I received approval from York University's Ethics Review Board (Certificate #STU 2015-125).

[165] André Lecours, "Dynamic de/centralization in Canada, 1867–2010," *Publius: The Journal of Federalism* 49, no. 1 (2019): 57-83.

[166] Anna Triandafyllidou, and Thanos Maroukis, *Migrant smuggling: Irregular migration from Asia and Africa to Europe* (London: Springer, 2012); John Salt and Jeremy Stein, "Migration as a business: the case of trafficking," *International Migration* 35, no.4 (1997): 467-494.

[167] Mountz, *Seeking asylum*; Nina Perkowski, and Vicki Squire, "The anti-policy of European anti-smuggling as a site of contestation in the Mediterranean migration 'crisis'," *Journal of Ethnic and Migration Studies* 45, no. 12 (2019): 2167-2184; Cecilia Vergnano, "Why take such a risk? Beyond profit: motivations of border-crossing facilitators between France and Italy," *Social Anthropology* 28, no. 3 (2020): 743–758; Nick Vaughan-Williams, and Maria Pisani, "Migrating borders, bordering lives: everyday geographies of ontological security and insecurity in Malta," *Social and Cultural Geography* 21, no. 5 (2020): 651-673.

[168] Luigi Achilli, and Gabriella Sanchez, "What does it mean to disrupt the business models of people smugglers?" *Migration Policy Centre, Robert Schuman Centre for Advanced Studies Research Paper* 30, no. 9 (2017): 2-8.

[169] Theodore Baird and Ilse van Liempt, "Scrutinising the double disadvantage: knowledge production in the messy field of migrant smuggling," *Journal of Ethnic and Migration Studies* 42, no. 3 (2016): 400. For Baird and van Liempt, the challenges of research access and obtaining empirical evidence on migrant smuggling leads to problematic conceptualizations and explanations. The first disadvantage of research access and data collection leads to the second "conceptual" disadvantage, in which "gaps in data collection are reproduced in explanations and theories of smuggling."

[170] Bakewell, "Research beyond the categories."

[171] Anna Triandafyllidou, "Migrant smuggling: novel insights and implications for migration control policies," *The ANNALS of the American academy of political and social science* 676, no. 1 (2018): 218. Migrant smuggling, irregular migration and asylum seeking are more accurately conceptualized as a Venn diagram, or a series of overlapping circles. See Anna Triandafyllidou, Anna and Thanos Maroukis, *Migrant smuggling: Irregular migration from Asia and Africa to Europe*.

[172] Mountz, *Seeking asylum*; Gabriella Sanchez, "Critical perspectives on clandestine migration facilitation: An overview of migrant smuggling research," *Journal on Migration and Human Security* 5, no.1 (2017): 9-27; Ilse van Liempt, and Jeroen Doomernik, "Migrant's agency in the smuggling process: The perspectives of smuggled migrants in the Netherlands," *International Migration* 44, no. 4 (2006): 165-190; Theodore Baird, "Defining human smuggling in migration research: An appraisal and critique," *Robert Schuman Centre for Advanced Studies Research Paper*, no. 30 (2016): 1-11.

[173] Gabriella Sanchez, "Women's participation in the facilitation of human smuggling: The case of the US southwest," *Geopolitics* 21, no. 2 (2016): 387-406.

[174] Canadian Council for Refugees, "Factum of the intervener, The Canadian Council for Refugees." Montreal: Canadian Council for Refugees, 2011.

[175] James D. Cameron, "Canada's Struggle with Illegal Entry on Its West Coast: The Case of Fred Yoshy and Japanese Migrants before the Second World War," *BC Studies: The British Columbian Quarterly* 146 (2005): 37-62.

[176] David Kyle and Rey Koslowski eds. *Global human smuggling: Comparative perspectives* (Baltimore: John Hopkins University Press, 2001).

[177] UNODC, *Global Study on Smuggling of Migrants* (Vienna: UNODC, 2018).

[178] Jørgen Carling, Anne T. Gallagher and Christopher M. Horwood, "Beyond definitions: Global migration and the smuggling-trafficking nexus."

[179] Triandafyllidou, "Migrant Smuggling: Novel Insights and Implications for Migration Control Policies," 214.

[180] Louis-Philippe Jannard and Francois Crépeau, "The Battle against Migrant Trafficking in Canada: Is the Target Organized Crime or Irregular Immigration?" *Our Diverse Cities* 7 (2010): 118-122.

[181] Sheldon Zhang, and Ko-Lin Chin, "Enter the dragon: Inside Chinese human smuggling organisations," *Criminology* 40, no. 4 (2002): 737-768.

[182] Florianne Charriere, and Marion Fresia, "West Africa as a Migration and Protection area" (New York: UNHCR, 2008).

[183] Henri Courau, "'Tomorrow inch allah, chance!' People smuggler networks in Sangatte," *Immigrants & Minorities* 22, no. 2-3 (2003): 374-387; Nilufer Narli, "Human Trafficking and Smuggling: the Process, the Actors and the Victim Profile," in *Trafficking in Persons in South East Europe: A Threat to Human Security* (Vienna: Austrian Federal Ministry of Defence, 2006), 9-38; Bekir Çınar, "Human Trafficking in Recruiting Terrorists," *Turkish Journal of Politics* 1, no. 1 (2010): 55-69.

[184] Sheldon Zhang, Gabriella Sanchez, and Luigi Achilli, "Crimes of solidarity in mobility: Alternative views of migrant smuggling," *The ANNALS of the American academy of political and social science* 676, no. 1(2018): 6-15.

[185] Efrat Arbel, and Alletta Brenner, "Bordering on Failure: Canada-US Border Policy and the Politics of Refugee Exclusion," (Cambridge: Harvard Immigration and Refugee Law Clinical Program, Harvard Law School, 2013).

[186] Sanchez, "Critical perspectives on clandestine migration facilitation," 9.

[187] Watson, "The criminalisation of human and humanitarian smuggling."

[188] Ibid.

[189] Sanchez, "Critical perspectives on clandestine migration facilitation: An overview of migrant smuggling research," 10.

[190] Peter Tinti and Tuesday Reitano, *Migrant, refugee, smuggler, saviour* (Oxford: Oxford University Press, 2018), 52.

[191] Luigi Achilli, "The 'good' smuggler: The ethics and morals of human smuggling among Syrians," *The ANNALS of the American academy of political and social science* 676, no. 1 (2018): 77-96.

[192] UNODC, "Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications" (Vienna: UNODC, 2011), 6.

[193] See for example the pioneering work of John Salt, who uses the term 'trafficking' to discuss what in retrospect can be defined as migrant smuggling. John Salt, "Trafficking and human smuggling: A European perspective," *International Migration* 38, no. 3 (2000): 31-56.

[194] UN General Assembly, *Convention against Transnational Organized Crime*, 2000, iv.

[195] Kernerman, "Refugee Interdiction Before Heaven's Gate," 232.

[196] Watson, "The criminalisation of human and humanitarian smuggling."

[197] Ibid, 41.

[198] Stephan Scheel, "Autonomy of migration despite its securitisation? Facing the terms and conditions of biometric rebordering," *Millennium: Journal of International Studies* 41, no. 3 (2013): 575-600; Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Durham: Duke University Press, 2013).

[199] UNODC, *Global Study on Smuggling of Migrants*.

[200] Ibid, 5, 9.

[201] IOM, *Missing Migrants Project* (Geneva: IOM, 2019).

[202] Richard Staring, "Smuggling aliens toward the Netherlands: The role of human smugglers and transnational networks," in *Global Organized Crime: Trends and Developments*, eds. Dina Siegel, Henk van de Bunt, and Damián Zaitch (Dordrecht: Kluwe, 2003), 105-116; Johan Leman, and Stef Janssens, "An analysis of some highly-structured networks of human smuggling and trafficking from Albania and Bulgaria to Belgium," *Migracijske i etničke teme* 22, no. 3 (2006): 231-245.

[203] Basak Bilecen, "Human smuggling networks operating between Middle East and the European Union: Evidence from Iranian, Iraqi and Afghani migrants in the Netherlands," *The Centre on Migration, Citizenship and Development Working Paper Series*, no. 62 (Bielefeld: Centre on Migration, Citizenship and Development, 2009).

[204] William Walters, "Anti-policy and anti-politics: Critical reflections on certain schemes to govern bad things," *European Journal of Cultural Studies* 11, no. 3 (2008): 267-288.

[205] Steven Chase, Marten Yousseff and Rebecca Lindell, "Tamil migrant ship is a test, Toews says, and more boats are on the way," *The Globe and Mail,* August 13, 2010.

[206] Stewart Bell, "Canada on closer watch for 'terrorist travel' since Ocean Lady and Sun Sea human smuggling incidents: declassified report," *National Post*, October 2, 2013; Mark Bonokoski, "Removing Tamil Tigers off terrorist list is naive, foolish thinking," *Toronto Sun*, April 13, 2018.

[207] Several academic 'experts' cited in national media reaffirmed the criminalisation narrative of migrant smuggling in their account of the *Sun Sea*. Such expert interventions arguably skewed the interpretation of the event and served to validate the Harper government's assumptions about the passengers onboard. The expert commentary proffered after the arrival of the *Ocean Lady* and the *Sun Sea* shows how such biased accounts contributed to the pre-emptive labelling of the passengers. Take for example the policy studies by Benjamin Perrin. Perrin is an internationally recognized expert on migrant smuggling, former legal counsel to Prime Minister Stephen Harper, Professor at the University of British Columbia and Senior Fellow at the Macdonald-Laurier Institute for Public Policy. Perrin's work offers a clear example of how policy-driven research uncritically analyzes migrant smuggling and takes for granted the labels of anti-smuggling discourse. In an examination of the reforms enacted in response to the *Sun Sea,* Perrin described how migrant smuggling is a source of revenue for criminal networks, which funds terrorism, "facilitates clandestine terrorist travel," endangers smuggled migrants, undermines border security and challenges the "integrity of immigration systems" (Perrin, "Migrant Smuggling: Canada's Response," 139). As part of his larger expert intervention in the debate about migrant smuggling in Canada, in an op-ed to a national newspaper, Perrin stated that migrant smuggling "cannot be rationalized, justified, or excused" under any circumstances (Benjamin Perrin, "A better plan to stop migrant smuggling," November 14, 2011, *The National Post*). Moreover, the failure to "effectively respond to, and deter, migrant smuggling from both a supply and demand side" risked "emboldening" criminal groups involved in migrant smuggling. Perrin was quoted in news media throughout the ordeal, where he stated bluntly that the *Sun Sea* "was not some humanitarian mission" (UNODC 2013, "Case Law Database: The Sun Sea"). On the contrary, he claimed, it offered a clear illustration of how transnational criminal networks exploit Canada's generous refugee system and the naiveté of Canadian hospitality (Ibid).

[208] Arbel and Brenner, "Bordering on Failure," 11.

[209] Rebecca B. Galemba, "'He used to be a *Pollero*' the securitisation of migration and the smuggler/migrant nexus at the Mexico-Guatemala border," *Journal of Ethnic and Migration Studies* 44, no. 5 (2018): 870-886; Jacqueline Bhabha, "Human smuggling, migration and human rights." Working paper prepared for the International Council on Human Rights Policy Review Meeting, Migration: Human Rights Protection of Smuggled Persons, Geneva 25-26 July 2006.

[210] Francois Crépeau, "The Fight Against Migrant Smuggling: Migration Containment Over Refugee Protection," in *The Refugee Convention at Fifty: A View from Forced Migration*

Studies, eds. Joanne van Selm, Khoti Kamanga, John Morrison, Aninia Nadig, Sanja Spoljar-Vrzina and Loes van Willigen (Lexington: Lexington Books, 2003) 173-185; Roberto Beneduce, "Undocumented bodies, burned identities: refugees, sans papiers, harraga—when things fall apart," *Social Science Information* 47, no. 4 (2008): 505-527.

[211] Minna Viuhko, "Hardened professional criminals, or just friends and relatives? The diversity of offenders in human trafficking," *International Journal of Comparative and Applied Criminal Justice* 42, no. 2-3: 177-193.

[212] Luigi Achilli, "The Smuggler: Hero or Felon?" (Florence: Robert Schuman Centre for Advanced Studies, European University Institute, 2015).

[213] Andreas Schloenhardt, "Organized crime and the business of migrant trafficking," *Crime, Law and Social Change* 32, no. 3 (1999): 203-233.

[214] Sheldon Zhang, *Chinese human smuggling organisations: Families, social networks, and cultural imperatives* (Palo Alto: Stanford University Press, 2003); James K. Chin, "Reducing irregular migration from China," *International migration* 41, no. 3 (2003): 49-72; Patricia Mallia, *Migrant smuggling by sea: combatting a current threat to maritime security through the creation of a cooperative framework* (Brill, 2009).

[215] IOM, *Migrant Smuggling to Canada: An Enquiry into Vulnerability and Irregularity through Migrant Stories* (Geneva: IOM, 2018), 9.

[216] Jørgen Carling, Anne T. Gallagher and Christopher M. Horwood, "Beyond Definitions," 3.

[217] IOM, *Migrant Smuggling to Canada*, 9.

[218] See Khalid Koser, "Why migrant smuggling pays," *International Migration* 46, no. 2 (2008): 3-26; Perrin, "Migrant Smuggling: Canada's Response"; Anne Gallagher and Fiona David, *The international law of migrant smuggling* (Cambridge: Cambridge University Press, 2014).

[219] Ilse van Liempt, *Navigating borders: Inside perspectives on the process of human smuggling into the Netherlands* (Amsterdam: Amsterdam University Press, 2007); Gabriella Sanchez, *Human smuggling and border crossings* (London: Routledge, 2014); Theodore Baird, "Defining human smuggling in migration research: An appraisal and critique,"; Ahmet İçduygu, "Decentring migrant smuggling: reflections on the Eastern Mediterranean route to Europe," *Journal of Ethnic and Migration Studies* (2020): 1-17.

[220] Alexis Aronowitz, "Illegal practices and criminal networks involved in the smuggling of Filipinos to Italy. Executive summary." (Turin: United Nations Interregional Crime and Justice Research Institute, 1999).

[221] James C. Hathaway, *The rights of refugees under international law* (Cambridge: Cambridge University Press, 2005).

[222] William Walters, "Anti-policy and anti-politics."

[223] Anna Pratt, *Securing borders: Detention and deportation in Canada* (Vancouver: University of British Columbia Press, 2005), 1. What Pratt calls immigration penalties, such as detention and deportation, are driven by a neoliberal logic of risk, in which preoccupations about criminality and insecurity intersect with concerns about fraud, identity and the "unknowability" of refugee claimants.

[224] Scott, "Seeing like a state."

[225] Watson, "The criminalisation of human and humanitarian smuggling," 40.

[226] Whitaker, "Refugees: The security dimension," 414.

[227] Roger Zetter, "Refugees–Access and Labelling," *Development and Change* 16, no. 3 (1985): 429.

[228] Crawley, Düvell et al., *Unravelling Europe's 'Migration Crisis'*, 75.

[229] Salt and Stein, "Migration as a business: the case of trafficking"; Andreas Schloenhardt, "Organized crime and migrant smuggling: Australia and the Asia-Pacific," *Research and public policy series*, No. 44 (Canberra: Australian Institute of Criminology, 2002).

[230] Salt and Stein, "Migration as a business," 468.

[231] Veronika Bilger, Martin Hofmann, and Michael Jandl, "Human smuggling as a transnational service industry: Evidence from Austria," *International Migration* 44, no. 4 (2006): 59-93; Emma Herman, "Migration as a family business: The role of personal networks in the mobility phase of migration," *International Migration* 44, no. 4 (2006): 191-230.

[232] Jørgen Carling, "Unauthorized migration from Africa to Spain," *International Migration*, 35 no. 4 (2007): 3-37.

[233] Guido Friebel and Sergei Guriev, "Smuggling humans: a theory of debt-financed migration," *Journal of the European Economic Association* 4, no. 6 (2006): 1085-1111.

[234] Akis Kalaitzidis, "Human Smuggling and Trafficking in the Balkans: Is it Fortress Europe?" *Journal of the Institute of Justice and International Studies* 5 (2005): 1-8.

[235] Hein de Haas, "The myth of invasion: the inconvenient realities of African migration to Europe." *Third World Quarterly* 29, no. 7 (2008):1305-1322; Matthias Neske, "Human Smuggling to and through Germany," *International Migration* 44, no. 4 (2006): 121-163.

[236] Paolo Campana, "Out of Africa: The organization of migrant smuggling across the Mediterranean," *European Journal of Criminology* 15, no. 4 (2018): 481-502; Georgios A.

Antonopoulos and John Winterdyk, "The smuggling of migrants in Greece: An examination of its social organization," *European Journal of Criminology* 3, no. 4 (2006): 439-461.

[237] Alexis A. Aronowitz, "Smuggling and trafficking in human beings: the phenomenon, the markets that drive it and the organisations that promote it," *European Journal on Criminal Policy and Research* 9, no. 2 (2001): 163-195.

[238] Fabrizio Sarrica, "The smuggling of migrants: A flourishing activity of transnational organized crime," *Crossroads* 5, no. 3 (2005): 7-23.

[239] Jørgen Carling, "How Should Migrant Smuggling be Confronted?" *Migration Research Leaders' Syndicate* (Geneva: International Organization for Migration, 2017), 97-103.

[240] Todd Bensman, "The Ultra-Marathoners of Human Smuggling: How to Combat the Dark Networks that Can Move Terrorists over American Land Borders," *Homeland Security Affairs* 12, Essay 2 (2016).

[241] Frank Laczko, "Opening up legal channels for temporary migration: A way to reduce human smuggling?" *Journal of International Migration and Integration* 5, no. 3 (2004): 343-360.

[242] Baird and van Liempt, "Scrutinising the double disadvantage."

[243] Kyle and Koslowski, *Global human smuggling*.

[244] Ferruccio Pastore, Paola Monzini, and Giuseppe Sciortino, "Schengen's soft underbelly? Irregular migration and human smuggling across land and sea borders to Italy," *International Migration* 44, no. 4 (2006): 96.

[245] UNODC, *Global Study on Smuggling of Migrants*, 8.

[246] Michael Collyer, "Cross-border cottage industries and fragmented migration," in *Irregular Migration, Trafficking and smuggling of human beings: Policy Dilemmas in the EU*, eds. Sergio Carrera, and Elspeth Guild (Brussels: Centre for European Policy Studies, 2016), 17-22.

[247] David Kyle, and Marc Scarcelli, "Migrant smuggling and the violence question: Evolving illicit migration markets for Cuban and Haitian refugees,' *Crime, Law and Social Change* 52, no. 3 (2009): 297-311.

[248] Triandafyllidou and Maroukis, *Migrant smuggling*, 11.

[249] Ibid.

[250] See for example, Zhang, and Chin, "Enter the dragon"; Stephanie Maher, "Out of West Africa: Human smuggling as a social enterprise," *The ANNALS of the American Academy of Political and Social Science* 676, no. 1 (2018): 36-56; Bilger, Hofmann, and Jandl, "Human smuggling as a transnational service industry."

[251] Robert W. Cox, "Social forces, states and world orders: Beyond international relations theory," *Millennium: Journal of International Studies* 10, no. 2 (1981): 126-155.

[252] Bakewell, "Research beyond the categories."

[253] Theodore Baird, "Theoretical approaches to human smuggling." *Danish Institute for International Studies Working Paper* no. 10 (2013): 21. Copenhagen: Danish Institute for International Studies.

[254] Baird, "Defining human smuggling in migration research," 7.

[255] For a relevant discussion about whether and how Canadian scholarship is distinct from its counterparts in IR and critical security studies, see Miguel de Larrinaga, and Mark B. Salter, "Cold CASE: a manifesto for Canadian critical security studies," *Critical Studies on Security* 2, no. 1 (2014): 1-19.

[256] Bourbeau, *The securitisation of migration*; Joshua Greenberg, "Opinion discourse and Canadian newspapers: The case of the Chinese 'boat people'," *Canadian journal of communication* 25, no. 4 (2000): 517-537; Ashley Bradimore and Harald Bauder, "Mystery Ships and Risky Boat People: Tamil Refugee Migration in the Newsprint Media,"; Mountz, *Seeking asylum*; Rygiel, "Governing mobility and rights to movement post 9/11"; Scott D. Watson, *The securitisation of humanitarian migration*.

[257] Geiger, "The transformation of migration politics: From Migration Control to Disciplining Mobility."

[258] Gammeltoft-Hansen and Tan, "The end of the deterrence paradigm?"; Mariagiulia Giuffré, and Violeta Moreno-Lax, "The rise of consensual containment: from contactless control to contactless responsibility for migratory flows," in *Research Handbook on International Refugee Law*, ed. Satvinder Singh Juss (Cheltenham: Edward Elgar Publishing, 2019), 82-108.

[259] Moffette and Vadasaria, "Uninhibited violence: race and the securitisation of immigration," 293.

[260] See Bourbeau, "Moving forward together: Logics of the securitisation process." As Bourbeau explains, a narrow focus on either exceptionalism or routine fails to offer a convincing account of continuity and change. "Focusing only on moments and places of exception neglects the numerous ways in which security practices are reproduced consistently across time and space. Unless we accept the proposition that we are living in a permanent state of exception where exception itself is the rule, the [Copenhagen School] model is ill equipped to deal with the idea that mechanisms of security are proliferating and generating a constant sense of insecurity, fear and danger. Conversely, [the Paris School's] exclusive focus on routine practices does not allow room to account for change, critical junctures or the impacts of 'windows of opportunity' on contemporary security affairs. The logic of routine makes a strong case for the enduring characteristics of the social world, but less so for the sources of change and critical junctures."

[261] Elspeth Guild, *Security and Migration in the 21st Century* (Cambridge: Polity, 2009).

[262] Alexander Betts, and Gil Loescher, eds. *Refugees in international relations* (Oxford: Oxford University Press, 2011), 2.

[263] James F. Hollifield, and Tom K. Wong, "The Politics of International Migration: How Can We 'Bring the State Back In'?" in *Migration Theory: Talking Across Disciplines*, eds. Caroline B. Brettell, and James F. Hollifield (London: Routledge, 2014), 227-288.

[264] Michael Barnett, and Martha Finnemore, *Rules for the world: International organisations in global politics* (Ithaca: Cornell University Press, 2004); Gil Loescher, *Beyond charity: International cooperation and the global refugee crisis: A twentieth century fund book* (Oxford: Oxford University Press, 1996); Gill Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present* (New York: the Free Press, 1987); Gil Loescher, and Laila Monahan, eds. *Refugees and international relations* (Oxford: Oxford University Press, 1989); Alexander Betts, "Regime complexity and international organisations: UNHCR as a challenged institution," *Global Governance* (2013): 69-81; Randall Hansen, Jobst Koehler, and Jeannette Money, eds. *Migration, nation states, and international cooperation* (London: Routledge, 2011).

[265] Alexander Betts, *Forced migration and global politics* (Oxford: John Wiley and Sons Ltd., 2009), 2; Alexander Betts, "International relations and forced migration," in *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: Oxford University Press, 2014), 60-73.

[266] Myron Weiner, "Security, stability, and international migration," *International Security* 17, no. 3 (1992): 91-126.

[267] Ole Wæver, "Securitisation and Desecuritisation," in *On Security*, ed. Ronnie Lipschutz, (New York: Columbia University Press, 1995), 46–86.

[268] Jef Huysmans, and Vicki Squire, "Migration and Security," in *The Routledge Handbook of Security Studies*, eds. Victor Mauer and Myriam Dunn Cavelty (London: Routledge, 2011), 169-179.

[269] Stephen Castles, Hein de Haas and Mark Miller, *The Age of Migration: International Population Movements in the Modern World, Fifth Edition* (London: Palgrave McMillan, 2014).

[270] James C. Hathaway, "The Conundrum of Refugee Protection in Canada: From Control to Compliance to Collective Deterrence," *Journal of Policy History* 4, no.1 (1992b): 71-92.

[271] Anna Pratt, and Mariana Valverde, "From deserving victims to 'masters of confusion': Redefining refugees in the 1990s." *Canadian Journal of Sociology* (2002): 135-161; Guy S. Goodwin-Gill, and Jane McAdam, *The refugee in international law* (Oxford: Oxford University Press, 2007).

[272] Pratt, *Securing borders*, 2.

[273] Ibid, 2.

[274] Ibid, 102.

[275] Robyn Lui, "The international government of refugees," in *Global Governmentality: governing international spaces*, eds. Wendy Larner and William Walters (London: Routledge, 2004), 128.

[276] Didier Bigo, "Foreigners to 'Abnormal Aliens'," in *International Migration and Security: Opportunities and Challenges*, eds. Elspeth Guild, and Joanne van Selm (London: Routledge, 2005), 65.

[277] Ibid, 70.

[278] Whitaker, "Refugees: The security dimension," 421.

[279] Guild, *Security and Migration in the 21st Century*. By statist and rationalist I mean this approach claims that states are (a) the principle agents in the international system and in the development and implementation of domestic and foreign policy and (b) states are rational actors whose self-interest is linked to regulating and restricting certain types of migration inflows, but there are domestic (e.g. the judiciary, interest groups and political culture) and international factors (e.g. disasters, conflict and development) that limit effective control.

[280] For a systematic overview of forced migration from the perspective of IR theory, see Betts, *Forced migration and global politics*.

[281] Christopher Rudolph, *National security and immigration: Policy development in the United States and Western Europe since 1945* (Palo Alto: Stanford University Press, 2006).

[282] Susan F. Martin, *International migration: evolving trends from the early twentieth century to the present* (Cambridge: Cambridge University Press, 2014), 184.

[283] Weiner, "Security, stability, and international migration."; Robert D. Kaplan, *The coming anarchy: Shattering the dreams of the post-cold war* (New York: Random House, 2002); Christopher Rudolph, "Security and the political economy of international migration," *American political science review* 97, no. 4 (2003): 603-620; Samuel P. Huntington, "The clash of civilizations?" *Foreign Affairs* 72, no. 3 (1993): 22-49.

[284] See Guild, *Security and Migration in the 21st Century*.

[285] Virginie Guiraudon, and Christian Joppke, eds. *Controlling a new migration world* (New York: Routledge, 2001).

[286] James F. Hollifield, Philip L. Martin, and Pia M. Orrenius, "The dilemmas of immigration control," in *Controlling immigration: A global perspective*, eds. James F. Hollifield, Philip L. Martin, and Pia Orrenius (Palo Alto: Stanford University Press, 2014), 3-34.

[287] Christian Joppke, "Why liberal states accept unwanted immigration," *World politics*, 50 no. 2 (1998): 266-293.

[288] Emanuel Adler, "Seizing the middle ground: Constructivism in world politics," *European Journal of International Relations* 3, no. 3 (1997): 319-363; Jeffrey T. Checkel, "The constructive turn in international relations theory," *World politics* 50, no. 2 (1998): 324-348; Richard Price, and Christian Reus-Smit, "Dangerous liaisons? Critical international theory and constructivism," *European Journal of International Relations* 4, no. 3 (1998): 259-294; Ted Hopf, "The promise of constructivism in international relations theory," *International Security* 23, no. 1 (1998): 171-200; Stefano Guzzini, "A reconstruction of constructivism in international relations," *European Journal of International Relations* 6, no. 2 (2000): 147-182.

[289] Alexander Wendt, and James Fearon, "Rationalism v. Constructivism: a skeptical view," in *The Handbook of international relations*, eds. James Fearon, Alexander Wendt, Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London: SAGE, 2002), 52-72.

[290] Watson, *The securitisation of humanitarian migration*, 34.

[291] Nicholas Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia: University of South Carolina Press, 1989); Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989). Though it did not analyze forced migration, pioneering work in Constructivism focused on the significance of international legal norms and its effects on state behaviour.

[292] Ethan A. Nadelmann, "Global prohibition regimes: The evolution of norms in international society," *International Organization* 44, no. 4 (1990): 479-526; Richard Price, "Reversing the gun sights: transnational civil society targets land mines," *International organization* 52, no. 3 (1998): 613-644; Jochen Prantl, and Ryoko Nakano, "Global norm diffusion in East Asia: How China and Japan implement the responsibility to protect," *International relations* 25, no. 2 (2011): 204-223. Constructivism has developed rich empirical studies that demonstrate the positive effects of international norms. Constructivists have analyzed, *inter alia*, the dissemination of international principles and practices from the global to the national level. Studies have examined the international prohibitions against slavery, the global prohibition against antipersonnel land mines and the spread of the responsibility to protect doctrine.

[293] Ian Hurd, "Breaking and making norms: American revisionism and crises of legitimacy," *International Politics* 44, no. 2-3 (2007): 209; Martha Finnemore, "Are legal norms distinctive," *NYU Journal of International Law and Politics*, no. 32 (1999): 699-701; Christian Reus-Smit, Thomas Biersteker, and Steve Smith, eds. *The politics of international law* (Cambridge: Cambridge University Press, 2004). The distinctiveness of legal norms and the 'relative autonomy' of the law vis-à-vis politics are a matter of debate.

[294] Ian Hurd, "Is humanitarian intervention legal? The rule of law in an incoherent world," *Ethics and International Affairs* 25, no. 3 (2011): 293-313.

[295] Antje Wiener, *The invisible constitution of politics* (Cambridge: Cambridge University Press, 2008), 4.

[296] Samuel J. Barkin, "Realist constructivism," *International Studies Review* 5, no. 3 (2003): 325-342.

[297] Richard K. Ashley, and R.B.J. Walker, "Conclusion: reading dissidence/writing the discipline: crisis and the question of sovereignty in international studies," *International Studies Quarterly* 34, no. 3 (1990): 367-416.

[298] Gammeltoft-Hansen, "International refugee law and refugee policy."

[299] Barry Buzan, and Ole Wæver, "Slippery? contradictory? sociologically untenable? The Copenhagen school replies." *Review of international studies* 23, no. 2 (1997): 241-250; Bill McSweeney, "Identity and security: Buzan and the Copenhagen school." *Review of international studies* 22, no. 1 (1996): 81-93.

[300] Buzan, Wæver and De Wilde 1998, 205, 212; Barry Buzan, and Lene Hansen, *The evolution of international security studies* (Cambridge: Cambridge University Press, 2009); Emmanuel Adler, "Constructivism in international relations: sources, contributions, and debates," in *Handbook of international relations, Second edition*, eds. Walter Carlsnaes, Thomas Risse, Beth A. Simmons (London: Sage Publications Ltd., 2013): 120. In its initial articulation by the Copenhagen School, securitisation theory was perceived as a "bridge-building" exercise between positivist and post-positivist forms of IR theory. According to its original proponents, securitisation theory is "radically constructivist" (Buzan, Wæver and De Wilde 1998, 35) and it offers a "constructivist operational method" for analyzing the social construction of security threats (ibid, vii). While its precise relationship with IR Constructivism remains unclear, it is widely recognized that securitisation theory contains strong affinities with Constructivism.

[301] Bourbeau, *The securitisation of migration*; Watson, *The securitisation of humanitarian migration*.

[302] Watson, *The securitisation of humanitarian migration*.

[303] Ibid, 140.

[304] Ibid, 143.

[305] Didier Bigo, "Protection: Security, territory and population."

[306] On the analytical distinction between existential threat and risk in the study of security, see Andrew W. Neal, "Securitisation and risk at the EU border: The origins of FRONTEX," *Journal*

of Common Market Studies 47, no. 2 (2009): 333-356; Mark B. Salter, "Risk and imagination in the war on terror," in *Risk and the War on Terror*, eds. Louise Amoore, and Marieke de Goede, (London: Routledge 2008), 232-246.

[307] Corry, "Securitisation and 'riskification'."

[308] Ibid.

[309] Claudia Aradau, and Rens van Munster, "Governing terrorism through risk: Taking precautions, (un) knowing the future," *European Journal of International Relations* 13, no. 1 (2007): 89-115.

[310] Neal, "Securitisation and risk at the EU border."

[311] Aradau and van Munster, 98.

[312] Chimni, "The birth of a 'discipline'", 21.

[313] William Walters, "Putting the migration-security complex in its place," in *Risk and the War on Terror*, eds. Louise Amoore and Marieke de Goede (London: Routledge, 2008), 158-177.

[314] Richard Black, "Fifty years of refugee studies: From theory to policy." *International migration review* 35, no. 1 (2001): 58; Roger Zetter, "Refugees and Refugee Studies—A label and an Agenda," *Journal of Refugee Studies*, 1 no. 1 (1988): 1-6.

[315] Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona, "Introduction: Refugee and forced migration studies in transition" (Oxford: Oxford University Press, 2014).

[316] Hathaway, "Forced Migration Studies: Could We Agree Just to 'Date'?" 350.

[317] Ibid, 350.

[318] DeWind, "Response to Hathaway."

[319] Liisa H. Malkki, "Refugees and exile: From 'refugee studies' to the national order of things." *Annual Review of Anthropology* 24, no. 1 (1995): 495-523.

[320] Chimni, "The birth of a 'discipline'."

[321] Zetter, "Labelling refugees."

[322] Bhupinder S. Chimni, "The geopolitics of refugee studies: A view from the South," *Journal of Refugee Studies* 11, no. 4 (1998): 357.

[323] Ibid, 355.

[324] For examples of the positivist tradition in the study of international refugee law, see Atle Grahl-Madsen, "The European tradition of asylum and the development of refugee law," *Journal of Peace Research* 3, no. 3 (1966): 278-2; Guy S. Goodwin-Gill, "International Law and the Detention of Refugees and Asylum-seekers," *International Migration Review* 20, no. 2 (June 1986): 193–219.

[325] Chimni, "The birth of a 'discipline'," 12.

[326] Ibid.

[327] Gammeltoft-Hansen, *Access to asylum*.

[328] Ibid, 16; Chimni, "The geopolitics of refugee studies," 355.

[329] Malkki, "Refugees and exile."

[330] Ibid, 496.

[331] Ibid, 517.

[332] Scherschel, "Who is a refugee?" 67.

[333] Zetter, "Refugees–Access and Labelling."

[334] Zetter, "Refugees and Refugee Studies," 5.

[335] Ibid, 4.

[336] See for example, Jaideep Gupte, and Lyla Mehta, "Disjunctures in labelling refugees and oustees," in *The Power of Labelling*: *How people are categorized and why it matters*, eds. Joy Moncrieffe and Rosalind Eyben (London: Earthscan, 2007): 74-89; Bernadette Ludwig, "'Wiping the refugee dust from my feet': advantages and burdens of refugee status and the refugee label," *International Migration* 54, no. 1 (2016): 5-18.

[337] Zetter, "More labels, fewer refugees," 189. Emphasis mine.

[338] Ibid, 190.

[339] Ibid, 176. Emphasis mine.

[340] Ibid, 175. Emphasis mine.

[341] Whitaker, "Refugees: The security dimension."

[342] Ibid, 413.

[343] Jeff Crisp, "A new asylum paradigm? Globalisation, Migration and the uncertain future of the international refugee regime," *St Antony's International Review* 1, no. 1 (2005): 39-53.

[344] Hyndman, *Managing displacement*, 6.

[345] Chimni, "The birth of a 'discipline'," 22.

[346] For examples of critical migration studies, see Pécoud, "Introduction: disciplining the transnational mobility of people"; Rutvica Andrijasevic, and William Walters,"The International Organization for Migration and the international government of borders." *Environment and Planning D: Society and Space* 28, no. 6 (2010): 977-999; Claudia Aradau, *Rethinking trafficking in women: Politics out of security* (Basingstoke: Springer, 2008), 18.

[347] For a critique of the ahistorical tendencies of refugee and forced migration studies, see Jérôme Elie, "Histories of refugee and forced migration studies," in *The Oxford handbook of refugee and forced migration studies* (Oxford: Oxford University Press, 2014), 23-35.

[348] Chimni, "The geopolitics of refugee studies," 360.

[349] Malkki, "Refugees and exile," 504-505.

[350] Chimni, "The birth of a 'discipline'," 20.

[351] Dean, *Governmentality*, 30-31. According to Dean, a Foucaultian analytics offers a form of critical and genealogical analysis concerned with "the specific conditions under which particular entities emerge, exist and change."

[352] Michel Foucault, "Governmentality," in *The Foucault effect: Studies in governmentality*, eds. Graham Burchell, Colin Gordon and Peter Miller (Chicago: University of Chicago Press, 1991). See also Dean, *Governmentality*, 29-30; Colin Gordon, "Governmental rationality: An introduction," in *The Foucault effect: Studies in governmentality*, 1-51; Olaf Corry, *Constructing a Global Polity*: *Theory, Discourse and Governance* (London: Palgrave MacMillan, 2013). According to Corry (2013), whereas sovereign power is territorial and coercive, governmental power is "dispositional." It operates by defining categories, creating identities and authorizing distinctions, through a form of productive form that both facilitates and limits the field of possible governmental action. The emergence of governmental power, Foucaultian scholars argue, displaced and altered (though did not supplant) the territorial concerns of sovereign power and its traditional practices of law, legislation and parliamentary debate. In this sense, the modern rationality of governance recasts, rather than replaces, disciplinary and sovereign forms of power and its practices of control.

[353] Barry Hindess, "Divide and rule: the international character of modern citizenship." *European Journal of Social Theory* 1, no. 1 (1998): 57-70

[354] Didier Fassin, "Policing borders, producing boundaries: The governmentality of immigration in dark times," *Annual Review of Anthropology* 40 no.1 (2011): 213-226.

[355] Bigo, "Security and immigration"; Lui, "The international government of refugees"; Wendy Larner and William Walters, eds. *Global governmentality: governing international spaces* (London: Routledge, 2004).

[356] Chimni goes so far as to argue that the study of forced migration itself is part of a Western strategy to legitimize a new "imperial world order" ("The birth of a 'discipline'," 13).

[357] Rutvica Andrijasevic, and William Walters, "The International Organization for Migration and the international government of borders," *Environment and Planning D: Society and Space* 28, no. 6 (2010): 995.

[358] Barry Hindess, "Politics as government: Michel Foucault's analysis of political reason," *Alternatives: Global, Local, Political* 30, no. 4 (2005): 389-413; Andrijasevic and Walters, "The International Organization for Migration and the international government of borders," 995.

[359] Barry Hindess, "Neo-liberal citizenship," *Citizenship studies* 6, no. 2 (2002): 127-143.

[360] Martin Geiger, "The transformation of migration politics: From Migration Control to Disciplining Mobility," 20.

[361] See John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000); Mark B. Salter, *Rights of passage: The passport in international relations* (Boulder: Lynne Rienner Publishers, 2003).

[362] John Torpey, "Coming and going: On the state monopolization of the legitimate 'means of movement'," *Sociological theory* 16, no. 3 (1998): 240-247.

[363] Barry Hindess, "The liberal government of unfreedom," *Alternatives: Global, Local, Political* 26, no. 2 (2001): 94.

[364] Ibid, 100.

[365] Torpey, *The Invention of the Passport*.

[366] Hindess, "The liberal government of unfreedom," 92-100.

[367] Andrijasevic and Walters, "The International Organization for Migration and the international government of borders," 983.

[368] Michel Foucault, "Questions of Method," in *Power: Essential Works of Foucault 1954-1984*, ed. J.D. Faubion (New York: The New Press, 2000), 230. In a Foucaultian conceptual vocabulary, rationalities of governance describe the discourse within which the exercise of power is conceptualised and morally justified. What Foucault called 'technologies of governance' are the apparently mundane programs through which authorities "embody and give

effect to governmental ambitions" in practice (Rose and Miller, "Political power beyond the state," 175). Technologies of governance do not exist without a governing rationality which can be analyzed, first, by way of its diagnosis, or how rationalities make it possible to articulate true or false statements about a problem and how it ought to be addressed; and second, in terms of its prescription, according to how practices prescribe rules with regard to governmental action. .

[369] Koopman, *Genealogy as critique*, 101.

[370] Antoine Pécoud, "Introduction: disciplining the transnational mobility of people," in *Disciplining the transnational mobility of people,* eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2013), 8.

[371] Ibid, 7.

[372] Ibid, 7.

[373] Nevzat Soguk, *States and strangers: Refugees and displacements of statecraft* (Minneapolis: University of Minnesota Press, 1999), 50.

[374] Ibid, 17.

[375] Ibid, 32.

[376] Claudia Aradau, *Rethinking trafficking in women: Politics out of security* (Basingstoke: Springer, 2008), 18.

[377] Ibid, 18.

[378] Geiger, "The transformation of migration politics," 32.

[379] Bethany Hastie, "To Protect and Control: Anti-Trafficking and the Duality of Disciplining Mobility," in *The politics of international migration management*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2013): 126-144.

[380] There is a significant literature on pre-emptive governance, also referred to as premediation. See for example, Marieke de Goede, "Beyond risk: Premediation and the post-9/11 security imagination." *Security Dialogue* 39, no. 2-3 (2008): 155-176; Louise Amoore, and Marieke De Goede, eds. *Risk and the War on Terror* (London: Routledge, 2008); Marieke de Goede, Stephanie Simon, and Marijn Hoijtink, "Performing preemption," *Security Dialogue* 45, no. 5 (2014): 411-422; Brian Massumi, "Potential politics and the primacy of preemption," *Theory and Event* 10, no. 2 (2007).

[381] Anne-Marie D'Aoust, "'Take a Chance on Me': Premediation, Technologies of Love and Marriage Migration Management," in *Disciplining the transnational mobility of people*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2013), 108-109.

[382] Pécoud, "Introduction: disciplining the transnational mobility of people," 11.

[383] Michel Foucault, *Security, territory, population: lectures at the Collège de France, 1977-78* (Basingstoke: Springer, 2007), 33.

[384] Pécoud, "Introduction: disciplining the transnational mobility of people," 6.

[385] Geiger, "The transformation of migration politics," 16.

[386] Pécoud, "Introduction: disciplining the transnational mobility of people," 2.

[387] Sara Kalm, "Liberalizing Movements? The Political Rationality of Global Migration Management," in *The Politics of International Migration Management*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2010): 21–44; Hindess, "The liberal government of unfreedom."

[388] Pécoud, "Introduction: disciplining the transnational mobility of people," 6.

[389] Ibid.

[390] Walters, "Anti-policy and anti-politics"; Hastie, "To Protect and Control."

[391] Geiger, "The transformation of migration politics," 27.

[392] Bimal Ghosh, "A snapshot of reflections on migration management: Is migration management a dirty word?" in *The new politics of international mobility: Migration management and its discontents*, eds. Martin Geiger, and Antoine Pécoud (Institut für Migrationsforschung und Interkulturelle Studien, 2012), 25-32; Martin Geiger and Antoine Pécoud, Antoine, "The politics of international migration management," in *The politics of international migration management*, eds. Martin Geiger, and Antoine Pécoud, (London: Palgrave Macmillan, 2010), 2. The concept was initially outlined by Bimal Ghosh an expert commissioned by the UN agencies and Western states to conceptualize a new international framework for the governance of migration, the *New International Regime for Orderly Movements of People*. The *New International Regime for Orderly Movements of People* provided overarching principles to guide the international community in the context of a perceived refugee crisis and increasing levels of irregular migration.

[393] Leah F. Vosko, *Disrupting Deportability: Transnational Workers Organize* (Ithaca: Cornell University Press, 2019).

[394] Pécoud, "Introduction: disciplining the transnational mobility of people."

[395] Fabian Georgi, "For the benefit of some: The international organization for migration and its global migration management," in *The politics of international migration management*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2010), 52; Kathleen Newland, "Governance of International Migration: Mechanisms, Processes, and Institutions," *Global*

Governance: A Review of Multilateralism and International Organisations 16, no. 3 (2010): 331-343.

[396] Martin Geiger, "Policy outsourcing and remote management," in *Externalizing Migration Management: Europe, North America and the spread of 'remote control' practices,* ed. Ruben Zaiotti (London: Routledge, 2016), 261-279.

[397] Walters, "Anti-policy and anti-politics," 283.

[398] Ibid, 270.

[399] Erving Goffman, *Frame analysis: An essay on the organization of experience* (Cambridge: Harvard University Press, 1974).

[400] In particular, works concerned with complex interplay between classificatory systems, social control and human behaviour, such as Canguilhem's interrogation of the distinction between the normal and the pathological, Foucault's analysis of disciplinary power, Hacking's notion of dynamic nominalism and other post-structuralist accounts of categorization.

[401] Wood, "The politics of development policy labelling"; Geof Wood, "Labels, Welfare Regimes and Intermediation: Contesting Formal Power," in *The Power of Labelling: How people are categorized and why it matters,* eds. Joy Moncrieffe and Rosalind Eyben (London: Earthscan, 2007), 17-32. The Foucaultian theses that inform labelling theory are implicit in the initial works of labelling in the mid-1980s, particularly the work by Wood and Zetter, whose research was developed in reaction to the dominance of Marxist state theory. In a later essay, Wood (2007) explicitly recognizes the influence of Foucault and post-structuralists on the development of labelling theory in development studies.

[402] Moncrieffe, "Introduction: Labelling, power and accountability."

[403] Ian Hacking, *Historical Ontology* (Cambridge: Harvard University Press, 2004), 111.

[404] For instance, they espouse a nominalist position that is critical of realist explanations based on a correspondence theory of truth. They are skeptical of positivist social science and policy-oriented research. By contrast, they emphasize the significance of reflexivity and the role of the analyst in the social construction of reality and the production of knowledge. Finally, they are united by a performative understanding of discourse, a social constructivist ontology and an opposition to rationalism and methodological individualism.

[405] Zetter, "More labels, fewer refugees."

[406] Geoffrey C. Bowker, and Susan Leigh Star, *Sorting things out: Classification and its consequences* (Cambridge: MIT Press, 2000).

[407] Wood, "The politics of development policy labelling."

[408] Ibid, 349.

[409] Zetter, "Labelling refugees," 44.

[410] Bowker and Star, *Sorting things out,* 10-11.

[411] For Hacking, social constructivist approaches are united by a thesis against inevitability, which states that "X need not have existed, nor need not be at all as it is. X…is not determined by the nature of things; it is not inevitable." See Ian Hacking, *The Social Construction of What*? (Cambridge: Harvard University Press, 1999), 6.

[412] Ian Hacking, "The looping effects of human kinds," in *Causal Cognition,* eds. James Premack, Ann James Premack, and Dan Sperber (Oxford: Oxford University Press), 351-383.

[413] Wood, "Labels, Welfare Regimes and Intermediation," 20.

[414] Wood, "The politics of development policy labelling," 347.

[415] Ibid, 352.

[416] Doreen Massey, "A Global Sense of Place," *Marxism Today,* June 1991, 26.

[417] Wood, "The politics of development policy labelling," 349.

[418] Wood, "Labels, Welfare Regimes and Intermediation," 19.

[419] Wood, "The politics of development policy labelling."

[420] Zetter, "Labelling refugees"; Wood, "The politics of development policy labelling."

[421] Foucault, Michel. *Discipline and Punish: The birth of the prison* (New York: Vintage Books), 191-192. Wood and Zetter's framework display clear resonances with how Foucault described the disciplinary practice of the examination. The examination classifies and "makes each individual a 'case'," through individualizing mechanisms of hierarchical surveillance, normalizing judgment and "the great disciplinary functions of distribution and classification."

[422] Triandafyllidou, "Migrant smuggling: novel insights and implications," 219. I am not the first to point out that migrant smuggling blurs the categorical distinctions between legal and illegal, between what Triandafyllidou describes as "victims and perpetrators, migrants and their smugglers" that dominate anti-smuggling discourse.

[423] Watson, "The criminalisation of human and humanitarian smuggling," 47.

[424] Zetter, "More labels, fewer refugees," 178.

[425] Wood, "The politics of development policy labelling," 357.

[426] Walters, "Anti-policy and anti-politics," 281.

[427] Pécoud, "Introduction: disciplining the transnational mobility of people," 13.

[428] Watson, "The criminalisation of human and humanitarian smuggling," 42.

[429] Zetter, "Labelling refugees."

[430] Hacking, *Historical Ontology*, 111.

[431] Wood, "Labels, Welfare Regimes and Intermediation," 22-23.

[432] Wood, "The politics of development policy labelling," 349.

[433] Wood, "Labels, Welfare Regimes and Intermediation," 30.

[434] Moncrieffe, "Introduction: Labelling, power and accountability," 1.

[435] Foucault, "Polemics, Politics, and Problemizations," 389.

[436] Wood, "The politics of development policy labelling," 354.

[437] Moncrieffe, "Introduction: Labelling, power and accountability," 2.

[438] Ladelle McWhorter, "Normalization," in *The Cambridge Foucault Lexicon,* eds. Leonard Lawlor and John Nale (Cambridge: Cambridge University Press, 2014), 315-321.

[439] Aradau, *Rethinking trafficking in women*, 18.

[440] Soguk, *States and strangers*, 49.

[441] Peter Nyers, *Irregular citizenship, immigration, and deportation*. London: Routledge, 2018.

[442] Foucault, *The Archaeology of Knowledge*, 234.

[443] Moncrieffe, "Introduction: Labelling, power and accountability," 1.

[444] Wood, "Labels, Welfare Regimes and Intermediation," 21.

[445] Bowker and Star, *Sorting things out,* 15.

[446] Soguk, *States and strangers*, 49.

[447] Wood, "Labels, Welfare Regimes and Intermediation," 21.

[448] Wood, "The politics of development policy labelling," 370.

[449] Ibid.

[450] Ibid.

[451] Bauman, "Modernity and ambivalence," 166.

[452] Mountz, *Seeking asylum*.

[453] Government of Canada, Immigration and Refugee Protection Act, 2001.

[454] Hyndman, *Managing displacement,* 7.

[455] UN 1948.

[456] Joppke, "Why liberal states accept unwanted immigration."

[457] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence."

[458] UN 1967.

[459] While the Protocol removed "the spatial and temporal restrictions" of the Refugee Convention, "it merely created equal access for all member nations to a legal instrument that remained substantively Eurocentric in focus" (Hyndman, *Managing displacement,* 11).

[460] Government of Canada. "Senate Debates, 33rd Parliament, 2nd Session: Vol. 2." Ottawa: 1987, 2728.

[461] Ibid, 2975.

[462] Freda Hawkins. "Immigration and Population: The Canadian Approach," *Canadian Public Policy* 1, no. 3 (1975): 285-295.

[463] Valerie Knowles, *Strangers at our gates: Canadian Immigration and Immigration Policy, 1540-2006, Revised edition* (Toronto: Dundurn Press, 1997), 157.

[464] Government of Canada, Order-in-council PC 1962-86.

[465] Freda Hawkins, *Critical years in immigration: Canada and Australia compared* (Montreal: McGill-Queen's University Press, 1991), 165.

[466] Knowles, *Strangers at our gates,* 187; Ninette Kelley and Michael J. Trebilcock, *The making of the mosaic: A history of Canadian immigration policy* (Toronto: University of Toronto Press, 1998), 332.

[467] Knowles, *Strangers at our gates*, 187-188.

[468] Government of Canada 1966, "White Paper on Immigration." Ottawa: 1966, 22, para. 50.

[469] Ibid, para. 51.

[470] Ibid, 23, para. 54.

[471] Hawkins, *Critical years in immigration*, 166.

[472] Government of Canada 1966, 23, para. 55.

[473] Michael J. Molloy, and Laura Madokoro, "Effecting change: civil servants and refugee policy in 1970s Canada," *Refuge: Canada's Journal on Refugees* 33, no. 1 (2017): 54.

[474] Government of Canada, Order-in Council PC 1967-1616; Harold Troper, "Canada's Immigration Policy since 1945," *International Journal* 48 no. 2 (1993): 269; Kelley and Trebilcock, *The making of the mosaic*, 358.

[475] Kent instructed senior officials to devise the so-called points system, which selects prospective immigrants according to a quantitative matrix based on nine categories: education, skills, age, language fluency in English and French and personal characteristics; those who received 50 points or more out of 100 were granted entry without respect to race, ethnicity and national origin. See Knowles, *Strangers at our gates*, 195; Freda Hawkins, *Canada and immigration: Public policy and public concern* (Montreal: McGill-Queen's University Press, 1988), 404.

[476] Kelley and Trebilcock, *The making of the mosaic*, 348-349.

[477] Ibid, 350.

[478] Knowles, *Strangers at our gates*, 198; Gerald E. Dirks, *Controversy and complexity: Canadian immigration policy during the 1980s* (Montreal: McGill-Queen's University Press, 1995), 78.

[479] Government of Canada. Robinson, Walter Gherardi, "The Refugee Status Determination Process: A Report of the Task Force on Immigration Practices and Procedures," Final report to the Minister Employment and Immigration, Ottawa: 1983, ix.

[480] Freda Hawkins, *Canada and immigration: Public policy and public concern* (Montreal: McGill-Queen's University Press, 1988), 387.

[481] Knowles, *Strangers at our gates*, 198.

[482] Canadian Council for Refugees, 2000.

[483] Knowles, *Strangers at our gates*, 198.

[484] Freda Hawkins, "Immigration and Population: The Canadian Approach"; Hawkins, *Critical years in immigration*, 174.

[485] Government of Canada, "The Green Paper: A Report of the Canadian immigration and population study." Ottawa: 1975.

[486] Louis Parai, "Canada's immigration policy, 1962–74," *International Migration Review* 9, no. 4 (1975): 449.

[487] Dirks, *Controversy and complexity*.

[488] Michael J. Molloy, Peter Duschinsky, Kurt F. Jensen, and Robert J. Shalka, *Running on empty: Canada and the Indochinese refugees, 1975-1980* (Montreal: McGill-Queen's University Press, 2017).

[489] Kelley and Trebilcock, *The making of the mosaic*, 347.

[490] Michael C. Lanphier, "Canada's response to refugees," *International Migration Review*, 15 no. 1-2 (1981): 122.

[491] Ibid, 113-114.

[492] Molloy and Madokoro, "Effecting change."

[493] Dirks, *Controversy and complexity*, 61.

[494] Knowles, *Strangers at our gates*, 129.

[495] Dirks, *Controversy and complexity*, 77.

[496] Kelley and Trebilcock, *The making of the mosaic*, 373.

[497] Interview #28, Former senior official, CIC, July 6, 2016.

[498] Lanphier, "Canada's response to refugees," 113.

[499] Dirks, *Controversy and complexity*, 77.

[500] Ibid, 61.

[501] Laura Madokoro, "Good material: Canada and the Prague spring refugees," *Refuge: Canada's Journal on Refugees* 26, no. 1 (2010): 166.

[502] Knowles, *Strangers at our gates*, 167.

[503] Lanphier, "Canada's response to refugees," 113.

[504] Reg Whitaker, *Double standard: The secret history of Canadian immigration policy*. (Toronto: Lester and Orpen Dennys, 1987).

[505] Hawkins, *Critical years in immigration*, 169.

[506] Whitaker, *Double Standard*, 255; Gerald E. Dirks, "A policy within a policy: The identification and admission of refugees to Canada," *Canadian Journal of Political Science* 17, no. 2 (1984): 279-307; Patricia Landolt, and Luin Goldring, "Political cultures and transnational social fields: Chileans, Colombians and Canadian activists in Toronto," *Global Networks*, 10 (4): 443-466.

[507] Knowles, *Strangers at our gates*, 215.

[508] Dirks, *Controversy and complexity*, 71.

[509] Knowles, *Strangers at our gates*, 217.

[510] Hawkins, *Critical years in immigration*, 174.

[511] Watson, *The securitisation of humanitarian migration*, 55.

[512] Hawkins, *Critical years in immigration*, 176.

[513] Government of Canada, "The Refugee Status Determination Process: A Report of the Task Force on Immigration Practices and Procedures," Final report to the Minister Employment and Immigration. Ottawa: 1983, 1.

[514] Ibid, ix.

[515] Ibid, x-xi.

[516] Ibid, x-xi.

[517] Knowles, *Strangers at our gates*, 221; Kelley and Trebilcock, *The making of the mosaic*, 383; Bourbeau, *The securitisation of migration*, 102; Dirks, *Controversy and complexity*, 83.

[518] Dirks, *Controversy and complexity*, 60.

[519] Ibid, 76-77.

[520] Watson, *The securitisation of humanitarian migration*, 55.

[521] Dirks, *Controversy and complexity*, 78.

[522] Government of Canada, House of Commons Committees, 33rd Parliament, 2nd Session: Legislative Committee on Bill C-84, an Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof, vol. 1, no. 1-9, Ottawa: 1987, 2.

[523] Dirks, *Controversy and complexity*, 84.

[524] Kelley and Trebilcock, *The making of the mosaic*, 385.

[525] Ibid, 414. The Supreme Court of Canada ruled that the rights of Harbhajan Singh, and six other appellants who the Immigration and the Immigration Appeal Board refused refugee status, were protected under Canada's Charter of Rights and Freedoms. The Court ruled that the existing refugee status determination process violated the equality and non-discrimination protections afforded to "everyone" "physically present" under the Charter. In order to respect principles of natural justice and procedural fairness under section seven of the Charter, refugee claimants must receive an oral hearing. Previously, the RSAC adjudicated refugee claims based on a written transcript of an applicants' testimony, which, critics argued, provided a poor basis for evaluating the merits of refugee claims.

[526] Hawkins, *Canada and immigration*, 388.

[527] Government of Canada, Ed Ratushny, "A New Refugee Status Determination Process for Canada, A report to the Honourable John Roberts, Minister of Employment and Immigration," Ottawa: 1984, 30.

[528] Interview #28, Former senior official, CIC, July 6, 2016.

[529] Government of Canada, Gunther Plaut, "Refugee Determination in Canada," Ottawa: 1985.

[530] Interview #23, Former senior official, Refugees Branch, CIC, July 4, 2016.

[531] William B. Wood, "The political geography of asylum: two models and a case study." *Political Geography Quarterly*, 8 no. 2 (1989): 181-196.

[532] Joan Sullivan, "Obituary: Gus Dalton, 87, was the famous fishing boat captain who saved 155 Tamil refugees off Newfoundland," *The Globe and Mail*, February 11, 2018.

[533] "Tamils Smuggled to Canada from West German Port, Authorities Say," *Los Angeles Times*. August 16, 1986.

[534] Amnesty International, *Amnesty International Report 1986*, 256.

[535] Watson, *The securitisation of humanitarian migration*, 55.

[536] Herbert H. Denton, "Canadian officials ponder rescue mystery," *The Washington Post*, August 13, 1986.

[537] David Matas and Ilena Simon, *Closing the doors: the failure of refugee protection* (Toronto: Summerhill Press, 1989).

[538] Wood, "The political geography of asylum," 189.

[539] Interview #28, Former senior official, CIC, July 6, 2016.

[540] Interview #23, Former senior official, Refugees Branch, CIC, July 4, 2016.

[541] Watson, *The securitisation of humanitarian migration*, 55-57.

[542] Ibid.

[543] Ibid, 355-356.

[544] Ibid, 356-357.

[545] Immigration Act 1976, 94.4.

[546] Kelley and Trebilcock, *The making of the mosaic*, 427.

[547] Government of Canada, Ed Ratushny, "A New Refugee Status Determination Process for Canada," 2.

[548] Ibid.

[549] Interview #28, Former senior official, IRCC, July 6, 2016.

[550] Amnesty International, *Amnesty International Report 1987*, 230.

[551] Ibid, 233.

[552] Jeffery Renée, and Ian Hall, "Post-conflict justice in divided democracies: the 1984 anti-Sikh riots in India," *Third World Quarterly* 41, no. 6 (2020): 994-1011.

[553] Pratt, *Securing borders*, 100; Kelley and Trebilcock, *The making of the mosaic*, 417.

[554] James C. Hathaway, "The Conundrum of Refugee Protection in Canada: From Control to Compliance to Collective Deterrence," *Journal of Policy History* 4, no. 1 (1992): 81.

[555] Interview #28, Former senior official, CIC, July 6, 2016.

[556] Government of Canada, "Senate Debates, 33rd Parliament, 2nd Session: Vol. 2," 7.

[557] Kelley and Trebilcock, *The making of the mosaic*, 418.

[558] Sherry J. Aiken, "Manufacturing 'terrorists': Refugees, national security, and Canadian law," *Refuge: Canada's Journal on Refugees* 19, no. 3 (2000): 54-73; Whitaker, "Refugees: The security dimension"; Pratt *Securing borders*, 102.

[559] Interview #23, Former senior official, Refugees Branch, CIC, July 4, 2016.

[560] Ibid.

[561] Pratt, *Securing borders*, 102.

[562] Article 31, UN 1951.

[563] Zetter "More labels, fewer refugees," 181.

[564] Pratt, *Securing borders*, 102.

[565] Government of Canada 1987, s. 2 a-d.

[566] Government of Canada 1987, s. 94.1 and 94.2.

[567] UN 1951, Article 31.

[568] Government of Canada 1987, s. 94.3.

[569] Government of Canada, "Senate Debates, 33rd Parliament, 2nd Session: Vol. 2," 1814.

[570] Ibid.

[571] Government of Canada, "House of Commons Committees, 33rd Parliament, 2nd Session: Legislative Committee on Bill C-84, an Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof," 24.

[572] Government of Canada, "Managing Migration: A framework for the 1990s," Ottawa: 1992, 6.

[573] Ibid, 6-7.

[574] Ibid, 7.

[575] Pratt, *Securing borders*, 108.

[576] Government of Canada, "Managing Migration: A framework for the 1990s," 7.

[577] Ibid.

[578] Ibid, 13.

[579] Ibid, 17.

[580] Ibid, 2.

[581] Ibid 3.

[582] Ibid, 3.

[583] Ibid, 46.

[584] Ibid.

[585] Ibid.

[586] Sean P. Hier, and Joshua L. Greenberg, "Constructing a discursive crisis: Risk, problematization and illegal Chinese in Canada," *Ethnic and Racial Studies* 25, no. 3 (2002): 499.

[587] Greenberg, "Opinion discourse and Canadian newspapers," 518.

[588] Alison Mountz, "Embodying the nation-state: Canada's response to human smuggling," *Political geography* 23, no. 3 (2004): 323-345.

[589] Bourbeau, *The securitisation of migration*.

[590] Jack Knox, "20 years later: Migrants who landed on Vancouver Island risked lives for their families," *Times Colonist*, July 14, 2019.

[591] Interview #23, Former senior official, Refugees Branch, CIC, July 4, 2016.

[592] Ibid.

[593] Greenberg, "Opinion discourse and Canadian newspapers," 523.

[594] Watson, *The securitisation of humanitarian migration.*

[595] Greenberg, "Opinion discourse and Canadian newspapers," 523.

[596] Mountz, *Seeking asylum*, 11.

[597] Government of Canada, House of Commons Standing Committee on Citizenship and Immigration, "Refugee Protection and Border Security: Striking a Balance." Ottawa: 2001.

[598] Immigration and Refugee Protection Act, s. 117.

[599] Ibid, s. 121 (c)).

[600] Ibid, s. 117.

[601] Ibid, s. 117 (1).

[602] Ibid, s. 121(1) (a-d).

[603] Government of Canada, "Legislative Summary, Bill C-11: The Immigration and Refugee Protection Act. Library of Parliament 2002," Ottawa, 2002.

[604] Ibid, 47.

[605] Immigration and Refugee Protection Act, s. 2 (a).

[606] Ibid, s. 2 (b).

[607] Ibid, s. 2 (d).

[608] Ibid, s. 2 (e).

[609] Ibid, s. 2 (c).

[610] Arbel and Brenner, "Bordering on Failure," 23.

[611] Immigration and Refugee Protection Act, s. 117 (4).

[612] Ibid, s. 37 (1) (b).

[613] Corry, "Securitisation and 'riskification'."

[614] GAC A201101931, 228, 243.

[615] UNODC, "Case Law Database: The Sun Sea," New York: UNODC, 2013.

[616] Ibid, 45.

[617] RCMP A201400185, 45.

[618] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[619] Ibid.

[620] Stewart Bell, *Cold terror: How Canada nurtures and exports terrorism around the world*. (Toronto: John Wiley and Sons, 2007).

[621] UNODC, *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenge, Volume 2* (New York: UNODC, 2018), 51.

[622] Interview #26, Senior official, CBSA. July 5, 2016.

[623] Bigo, "Security and Immigration."

[624] Interview #26, Senior official, CBSA. July 5, 2016.

[625] Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself," 3-4.

[626] Canadian Council for Refugees, "2010 Refugee Claim Data and IRB Member Grant Rates."

[627] CBSA A201303486, 16-17.

[628] Christina Oelgemöller, "'Transit' and 'suspension': Migration management or the metamorphosis of asylum-seekers into 'illegal' immigrants," *Journal of Ethnic and Migration Studies* 37, no. 3 (2011): 408.

[629] Massumi, "Potential politics and the primacy of preemption," 3.

[630] Marieke De Goede, "The politics of preemption and the war on terror in Europe," *European Journal of International Relations* 14, no. 1 (2008): 171; Claudia Aradau, and Rens van Munster, "Taming the future: The dispositive of risk in the war on terror," in *Risk and the War on Terror*, Louise Amoore and Marieke de Goede, (eds.) (New York: Routledge, 2008), 39-56.

[631] CBSA A201303410, 18.

[632] Ibid.

[633] Ibid, 23.

[634] Ibid, 4.

[635] Interview #12, Former senior official, CBSA, March 30, 2016. Several federal officials interviewed for this research expressed their disdain for the IRB. In the words of one former CBSA official, the IRB is composed of political appointees who are "not the best trained individuals," who are "much more liberal in their interpretations," most of whom attained their positions "because they know somebody."

[636] Gammeltoft-Hansen, "International refugee law and refugee policy," 588.

[637] CBSA A201303486, 16.

[638] Ibid.

[639] Ibid.

[640] Interview #26, Senior official, CBSA, July 5, 2016.

[641] CBSA A201102325, 16.

[642] Ibid.

[643] Ibid, 625.

[644] IRB, Chairperson Guideline 2, Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act. At footnote 35.

[645] CBSA A201303486, 17.

[646] Immigration and Refugee Protection Act, s. 41 (a) notes, a foreign national is "inadmissible for failing to comply with this Act," if "through an act or omission which contravenes, directly or indirectly, a provision of this Act."

[647] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence."

[648] CBSA A201303486, 17.

[649] Ibid, 18. Emphasis mine.

[650] CBSA A201102325, 16.

[651] CBSA A201303486, 4.

[652] Interview #26, Senior official, CBSA. July 5, 2016.

[653] CBSA A201102325, 302; IRCC A201521196, 7.

[654] Interview #26, Senior official, CBSA. July 5, 2016.

[655] IRCC 2016, "Evaluation of the In-Canada Asylum System Reforms." However, the majority of refugees resettled in Canada are screened and selected from abroad through the Refugee and Humanitarian Resettlement Program, which offers protection to prospective refugees from outside Canada.

[656] CBSA A201102325, 6.

[657] Ibid, 10-11. Emphasis mine.

[658] Ibid, 12-13.

[659] Ibid, 14.

[660] Article 31, UN 1951.

[661] Guy S. Goodwin-Gill, "Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection," *A paper prepared at the request of the Department of International Protection for the UNHCR Global Consultations,* 11.

[662] Interview #26, Senior official, CBSA. July 5, 2016.

[663] Ibid.

[664] CBSA A201303410, 4.

[665] Interview #26, Senior official, CBSA. July 5, 2016.

[666] Ibid.

[667] IRCC A201521196, 18.

[668] Interview #13, Senior official, IRCC, April 1, 2016.

[669] Ibid.

[670] Zetter, "More labels, fewer refugees."

[671] Kernerman, "Refugee Protection Before Heaven's Gate."

[672] Audrey Macklin and Sean Rehaag, "Playing Politics with Refugees," *Toronto Star*, December 3, 2010. "[D]esperate people," the authors note, "are denied visitor visas, scrutinized by airline officials, and thwarted from any safe and lawful mode of travel precisely because they might be refugees."

[673] Interview #26, Senior official, CBSA, July 5, 2016.

[674] Immigration and Refugee Protection Act, s. 117 (1).

[675] Ibid, s. 20.1 (1).

[676] Ibid, s. 117 (3) (3.1-3.2).

[677] Ibid, s. 3.1 (a-b).

[678] Ibid, s. 11 (1.1).

[679] Ibid, s. 25 (1.01) (a-c).

[680] Ibid, s. 24 (5) (a-c).

[681] Immigration and Refugee Protection Regulations, s. 174.1 (1).

[682] IRCC A201521196, 8.

[683] GAC A201101931, 111.

[684] Arbel and Brenner, "Bordering on Failure," 2.

[685] Audrey Macklin, "Disappearing refugees: Reflections on the Canada-US safe third country agreement," *Columbia Human Rights Law Review* 36 (2004): 365-426.

[686] Arbel and Brenner, "Bordering on Failure," 10.

[687] Taylor, "Designated Inhospitality."

[688] Janet Cleveland, "Not so short and sweet: immigration detention in Canada," in *Immigration detention: The migration of a policy and its human impact*, eds. Amy Nethery, and Stephanie J. Silverman (New York: Routledge, 2015), 82.

[689] Immigration and Refugee Protection Act, s. 57(1) (1-2).

[690] Janet Cleveland and Cécile Rousseau, "Mental health impact of detention and temporary status for refugee claimants under Bill C-31," *Canadian Medical Association Journal* 184, no. 25 (2012): 1663-1664.

[691] Cleveland, "Not so short and sweet," 81.

[692] Immigration and Refugee Protection Act, s. 58 (1) (c).

[693] Daniel LeBlanc, "Ottawa gets tough with Romanian asylum-seekers," *The Globe and Mail*, December 5, 2012.

[694] Luke Taylor, "Designated Inhospitality: The treatment of asylum-seekers who arrive by boat in Canada and Australia," *McGill Law Journal* 60, no. 2 (2015): 333-379.

[695] Aradau, and van Munster, "Governing terrorism through risk," 106.

[696] Ibid.

[697] IRCC 2016, "Evaluation of the In-Canada Asylum System Reforms," 8.

[698] Ibid, 2.

[699] Ibid, 17.

[700] Brian Platt, "Captain of Tamil migrant ship MV Sun Sea loses first court battle to stop his deportation," *The National Post*, April 11, 2018.

[701] Sunny Dhillon, "Sun Sea anniversary highlights Canada's treatment of refugees," *The Globe and Mail*, August 9, 2015

[702] Brian Massumi, "The political ontology of threat," in *The Affect Theory* Reader, eds. Melissa Gregg, Melissa, Gregory J. Seigworth, and Sara Ahmed (Durham: Duke University Press, 2010), 55.

[703] Ibid, 53-54.

[704] Ibid.

[705] Interview #12, Former senior official, CBSA, March 30, 2016.

[706] Ibid.

[707] Ibid.

[708] Hacking, *Historical Ontology*, 111.

[709] Moncrieffe, "Introduction: Labelling, power and accountability," 2.

[710] B010 v. Canada, 2015 SCC 59.

[711] R. v. Appulonappa, 2015 SCC 58.

[712] Zetter, "More labels, fewer refugees."

[713] UN 1951, Article 31 (1).

[714] UNODC, *Issue Paper: The Concept of 'Financial or Other Material Benefit' in the Smuggling of Migrants Protocol* (New York: UNODC, 2017).

[715] It is important to note that B010 v. Canada addressed the legislative offence of "human smuggling" contained in provisions of the Immigration and Refugee Protection Act that existed prior to the Protecting Canada's System Immigration Act, although the definitions are nearly identical; the new reforms added the additional criterion of "recklessness" to the offence of migrant smuggling under s. 117 (1).

[716] Anne Gallagher, "Whatever Happened to the Migrant Smuggling Protocol?" in *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration,* eds. Marie McAuliffe and Michelle Klein Solomon (Geneva: International Organization for Migration, 2017), 1-6.

[717] B010 v. Canada, para 74.

[718] Dagmar Soennecken, and Christopher G. Anderson, "Taking the Harper Government's Refugee Policy to Court," in *Policy change, courts, and the Canadian constitution*, eds. Emmett Macfarlane (Toronto: University of Toronto Press, 2018), 299.

[719] Interview #26, Senior official, CBSA, July 5, 2016.

[720] Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself," 4.

[721] For a more detailed account of the case law related to migrant smuggling in Canada, see UNODC, *Issue Paper: The Concept of 'Financial or Other Material Benefit*, 28.

[722] Ibid, 29.

[723] UN, Anti-Smuggling Protocol, Article 19,

[724] Gallagher, "Whatever Happened to the Migrant Smuggling Protocol?", 4.

[725] Gallagher and David, *The international law of migrant smuggling*, 167.

[726] Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself," 13.

[727] Crawley and Skleparis, "Refugees, migrants, neither, both," 51.

[728] Ibid.

[729] Ibid.

[730] Zetter, "More labels, fewer refugees," 188.

[731] Canada's obligations to refugees are outlined in s. 3(2) of the Immigration and Refugee Protection Act, in which refugee protection is described as a central objective. On the one hand, the Immigration and Refugee Protection Act reaffirms the principle of state sovereignty in provisions that deny access to those who threaten national security, including refugee claimants "who are security risks or serious criminals." Yet state sovereignty is constrained by constitutional law as well as legislative and international obligations.

[732] Canadian Charter of Rights and Freedoms, s. 15, 1982; Refugee Convention, Article 3; Taylor, "Designated Inhospitality."

[733] Taylor, "Designated Inhospitality."

[734] Watson, *The securitisation of humanitarian migration*, 49.

[735] IRB, Guideline 2: Guideline on Detention, 1.

[736] UN 2013, Committee Against Torture, 6.

[737] Ibid, 3.

[738] UNHCR, "Submission on Bill C-31, Protecting Canada's Immigration System Act" (Ottawa: UNHCR, 2012).

[739] Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself," 11.

[740] Stewart Bell, "Known until now as B-189, the last of 492 MV Sun Sea migrants in custody faces an uncertain fate: this is his story," *National Post.* February 14, 2014.

[741] Ibid.

[742] Ibid.

[743] Ibid.

[744] Immigration and Refugee Protection Act, s. 97 (1) (a-b).

[745] UNHCR, "Submission on Bill C-31, Protecting Canada's Immigration System Act." Ottawa: UNHCR, 2012.

[746] Refugee Convention, Article 3.

[747] Refugee Convention, Article 31(1).

[748] Watson, *The securitisation of humanitarian migration,* 71.

[749] GAC A201101931, 8, 294.

[750] Moncrieffe, "Introduction: Labelling, power and accountability." Moncrieffe uses the term "bureaucratic labelling at a distance," which informs my approach.

[751] Angeliki Dimitriadi, "Transit migration," in *Routledge Handbook of Immigration and Refugee Studies*, ed. Anna Triandafyllidou (New York: Routledge, 2015), 341; Michael Collyer, "In-between places: trans-Saharan transit migrants in Morocco and the fragmented journey to Europe," *Antipode* 39, no. 4 (2007): 670; Michael Collyer, Franck Düvell, and Hein de Haas, "Critical approaches to transit migration," *Population, Space and Place* 18, no. 4 (2012): 411. As a descriptive term, the meaning of transit migration is self-evident. It describes movements of people through various countries on the way until they arrive in a country of destination. According to Dimitriadi, transit migration has been used to categorize three distinct yet related phenomena: "the process itself (transit migration), the political position of states in the migratory journey (transit states vs destinations) and the individual (transit migrant)." In terms of its

political usage, however, the term carries a negative connotation, which reflects the bias of wealthier destination states. The notion of transit migration is closely linked to irregular migration and migrant smuggling on the periphery of destination states. According to Collyer, the phenomenon of transit migration connotes "clandestine migrants" who "deliberately avoid all forms of border control." For Collyer, Düvell and de Haas, the label represents an attempt to categorize and manage "a heterogenous array" of "politically delicate" migration processes through a discursive framing of illegality, risk and the loss of sovereign control.

[752] Zetter, "More labels, fewer refugees," 189.

[753] Hyndman and Mountz, "Another Brick in the Wall?" 250.

[754] Malkki, "Refugees and exile."

[755] Nicholas P. De Genova, "Migrant 'illegality' and deportability in everyday life," *Annual Review of Anthropology* 31, no. 1 (2002): 419-447; Sandro Mezzadra, and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Durham: Duke University Press, 2013); Leah F. Vosko, *Disrupting Deportability: Transnational Workers Organize*; Tanya Basok, Danièle Bélanger, and Eloy Rivas, "Reproducing deportability: Migrant agricultural workers in south-western Ontario," *Journal of Ethnic and Migration Studies* 40, no. 9 (2014): 1394-1413; Ronit Lentin, and Elena Moreo, "Migrant deportability: Israel and Ireland as case studies," *Ethnic and Racial Studies* 38, no. 6 (2015): 894-910. The concept of 'deportability', developed by De Genova and further elaborated in a range of studies, describes not simply the act of deportation. Rather, it describes the heightened state of insecurity for non-citizens who face the looming threat of deportation.

[756] Michael Collyer, "Deportation and the micropolitics of exclusion: The rise of removals from the UK to Sri Lanka," *Geopolitics* 17, no. 2 (2012), 276-292; "Paying to go: deportability as development," in *After Deportation: Ethnographic perspectives*, ed. Shahram Khosravi (New York,: Springer, 2018), 105-125.

[757] Ibid.

[758] UN 2016, 2. According to the New York Declaration for Refugees and Migrants, "'large movements' may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes."

[759] Ibid, para. 7.

[760] Ibid, para. 11.

[761] Ibid, para. 24.

[762] Eva Nanopoulos, Elspeth Guild, and Katharine Weatherhead, "Securitisation of Borders and the UN's Global Compact on Safe, Orderly and Regular Migration," January 11, 2018, Queen Mary School of Law Legal Studies Research Paper No. 270/2018, 1.

[763] James C. Hathaway, "The global cop-out on refugees," *International Journal of Refugee Law* 30, no. 4 (2018): 591-604.

[764] Nanopoulos, Guild, and Weatherhead, "Securitisation of Borders and the UN's Global Compact on Safe, Orderly and Regular Migration," 1.

[765] Government of Canada, "Government response to the Report of the House of Commons Standing Committee on Citizenship and Immigration entitled 'New Tools for the 21st Century—The Global Compact for Safe, Orderly and Regular Migration and the Global Compact for Refugees: An Interim Report. Thirty-third Report, 1st Session, 2nd Parliament, December 2018."

[766] UN 2018, "Global Compact for Safe, Orderly and Regular Migration," para 25.

[767] Antoine Pécoud, "Narrating an ideal migration world? An analysis of the Global Compact for Safe, Orderly and Regular Migration," *Third World Quarterly* (2020): 1-18.

[768] Peter Nyers, "Humanitarian hubris in the global compacts on refugees and migration," *Global Affairs* 5, no. 2 (2019): 172-173.

[769] Pécoud, "Narrating an ideal migration world," 5.

[770] UN 2018, "Global Compact for Safe, Orderly and Regular Migration," para 4.

[771] Vicki Squire, "A milestone missed: the global compact on migration and the limits of solidarity," *Global Affairs* 5, no. 2 (2019): 155-162.

[772] Ibid, 155-156.

[773] UN 2018, "Global Compact on Refugees," para. 5

[774] Hathaway, "The global cop-out on refugees."

[775] Bhupinder S. Chimni, "Global Compact on Refugees: One step forward, two steps back," *International Journal of Refugee Law* 30, no. 4 (2018): 632.

[776] Ibid, 630.

[777] UN 2018, "Global Compact on Refugees," para. 57.

[778] Khalid Koser, "The smuggling of refugees," in *Global human smuggling: Comparative perspectives*, in *Global human smuggling: Comparative perspectives*, eds. David Kyle and Rey Koslowski (Baltimore: John Hopkins University Press, 2001), 256-272.

[779] Jennifer Hyndman and Johanna Reynolds, "Beyond the Global Compacts: Re-imagining Protection," *Refuge* 36, 1 (2020): 68-69.

[780] Antoine Pécoud, "Introduction: The International Organization for Migration as the New 'UN Migration Agency,'" in *The International Organization for Migration: The New 'UN Migration*

Agency' in a Critical Perspective, eds. Martin Geiger and Antoine Pécoud (Cham: Palgrave Macmillan, 2020), 2.

[781] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence," 248.

[782] Francois Crépeau, "Smugglers will always outwit, outpace and outfox the governments," *Sur-International Journal on Human Rights* 13, no. 23 (2016): 77-83.

[783] Crawley, Düvell, et al., *Unravelling Europe's 'Migration Crisis': Journeys Over Land and Sea*, 74.

[784] Ibid, 74-77.

[785] Michael Collyer and Hein De Haas, "Developing dynamic categorisations of transit migration" *Population, Space and Place*, 18 no. 4 (2012): Collyer, "In-between places"; Collyer, Michael, Franck Düvell, and Hein de Haas, "Critical approaches to transit migration."

[786] Tinti and Reitano, *Migrant, refugee, smuggler, saviour*, 44.

[787] Collyer, "In-between places," 668-670.

[788] Ibid, 671.

[789] Hyndman and Mountz, "Another Brick in the Wall?" 252.

[790] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence."

[791] Hyndman, *Managing displacement.*

[792] GAC A201101931, 114-116.

[793] Martin, *International migration: evolving trends*, 205-206.

[794] Violeta Moreno-Lax, "Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law," 153.

[795] Martin Geiger, "Policy outsourcing and remote management," in *Externalizing Migration Management: Europe, North America and the spread of 'remote control' practices,* ed. Ruben Zaiotti (New York: Routledge, 2016), 266.

[796] Gammeltoft-Hansen and Tan, "The end of the deterrence paradigm?" 31.

[797] Michael Collyer and Hein De Haas, "Developing dynamic categorisations of transit migration"; Alison Mountz, and Nancy Hiemstra, "Spatial strategies for rebordering human

migration at sea," in *A Companion to Border Studies*, eds. Thomas M. Wilson and Hastings Donnan (Malden: Wiley Blackwell, 2012), 455-472; John Watkins, "Australia's irregular migration information campaigns: border externalization, spatial imaginaries, and extraterritorial subjugation," *Territory, Politics, Governance* 5, no. 3 (2017): 282-303.

[798] Philippe M. Frowd, "Producing the 'transit' migration state: international security intervention in Niger," *Third World Quarterly* 41, no. 2 (2020): 340-358.

[799] Zetter, "More labels, fewer refugees," 183.

[800] Ibid, 183-184.

[801] Ibid, 178-179.

[802] Frowd, "Producing the 'transit' migration state," 344.

[803] Sabine Hess, "The Invention of 'Transit Migration': Theoretical and Methodological Considerations on Illegal Migration in Europe's Southeastern Border Region," *Ethnologia Balkanica* 14 (2010): 129-146.

[804] Gammeltoft-Hansen, *Access to asylum*, 229.

[805] Oelgemöller, "'Transit' and 'suspension'," 415.

[806] Dimitriadi, "Transit migration," 341.

[807] Zetter, "More labels, fewer refugees," 186.

[808] Pécoud, "Introduction: disciplining the transnational mobility of people."

[809] Ahmet İçduygu and Deniz Yükseker,"Rethinking transit migration in Turkey: reality and re-presentation in the creation of a migratory phenomenon," *Population, Space and Place* 18, no. 4 (2012): 441-456; Michael Collyer and Hein de Haas, "Developing dynamic categorisations of transit migration."; Kate Coddington, "Producing Thailand as a transit country: borders, advocacy, and destitution," *Mobilities* (2020): 1-16.

[810] Collyer, "In-between places."

[811] Mark-Anthony Falzon, "Immigration, rituals and transitoriness in the Mediterranean Island of Malta," *Journal of Ethnic and Migration Studies* 38, no. 10 (2012): 1661-1680.

[812] Robyn C. Sampson, Sandra M. Gifford, and Savitri Taylor, "The myth of transit: The making of a life by asylum-seekers and refugees in Indonesia," *Journal of Ethnic and Migration Studies* 42, no. 7 (2016): 1135-1152.

[813] Frowd, "Producing the 'transit' migration state."

[814] Zetter, "More labels, fewer refugees," 174.

[815] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 3.

[816] Frowd, "Producing the 'transit' migration state."

[817] UNODC, *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment* (New York: UNODC, 2013).

[818] GAC A201101931, 4.

[819] UNHCR, "State Parties to the 1951 Refugee Convention and its 1967 Protocol" (Geneva: UNHCR, 2015).

[820] Colin Freeze, "Canada aids in Thai arrest of Tamil migrants," *The Globe and Mail*, October 11, 2010.

[821] Stewart Bell, "On the smugglers' trail: The unlucky ones," *The National Post*, March 29, 2011.

[822] Ibid.

[823] "Canada's role in Thailand arrests queried," *CBC News*, October 12, 2010.

[824] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence," 256.

[825] Ibid, 257.

[826] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[827] GAC A201101931, 294.

[828] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[829] Gammeltoft-Hansen and Hathaway, "Non-Refoulement in a World of Cooperative Deterrence."

[830] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[831] According to the federal government, if more states in the region adopted the Anti-Smuggling Protocol, it could have helped prevent the arrival of the *Sun Sea*. See Article 8, para 2, the Anti-Smuggling Protocol. "Measures against the smuggling of migrants by sea," explains that state

parties to the Anti-smuggling Protocol that have reasonable grounds to suspect that a vessel is engaged in migrant smuggling by sea can request another state party to render assistance in "suppressing the use of the vessel for that purpose"

[832] GAC A201101931, 268.

[833] Antoine Pécoud, "Introduction: The International Organization for Migration as the New 'UN Migration Agency'," 7.

[834] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration. February 5, 2016.

[835] CBSA A201313161, 21.

[836] CBSA A201303410, 35, emphasis mine.

[837] Zaiotti, "Mapping remote control," 11.

[838] CBSA A201303410, 35.

[839] Canadian Security Intelligence Service, *World Watch: Expert Notes* (2011).

[840] Ibid.

[841] Didier Bigo, and R.B.J. Walker, "Political Sociology and the Problem of the International," *Millennium* 35, no. 3 (2007): 725-739.

[842] Walters, "Putting the migration-security complex in its place," 218.

[843] Frowd, "Producing the 'transit' migration state," 344.

[844] Antoine Pécoud, "Narrating an ideal migration world? An analysis of the Global Compact for Safe, Orderly and Regular Migration," *Third World Quarterly* (2020): 2.

[845] IRCC A201521196, 17.

[846] Ibid.

[847] GAC A201302551, 107.

[848] Ibid. Emphasis mine.

[849] GAC 2012, "Formative evaluation of the Anti-crime Capacity-Building Program," 4.

[850] GAC 2016, "Evaluation of the Anti-crime Capacity-Building Program and Counter-terrorism Capacity-Building program," 7.

[851] Ibid, 8.

[852] Hyndman and Mountz, "Another Brick in the Wall?" 252.

[853] Dimitriadi, "Transit migration," 342.

[854] CBSA A201313161, 15.

[855] Martin Geiger, "Policy outsourcing and remote management," 265.

[856] According to the CBSA, "[s]ince the early 1990s, Thailand has been used as an important transit point for smuggling migrants to other parts of Asia, Europe, North America and Australia. Smuggled migrants transiting through Thailand include irregular migrants from Bangladesh, Cambodia, China, India, Lao PDR, Myanmar, Nepal, Pakistan and Sri Lanka. Some smuggled migrants enter Thailand legally on tourist visas before beginning their journey onwards while many others enter irregularly by boat or land from neighbouring countries. The smuggling of migrants *from* Thailand occurs primarily via air transport or long boat journeys and is facilitated by the use of fraudulent documents" (RCMP A201501244, 120).

[857] RCMP A201501244, 120.

[858] CBSA A201313161, 14.

[859] Ibid.

[860] Brigette Bureau and Sylvie Robillard, "'Distasteful alliances': The secret story of Canada's fight against migrants," *CBC News*, May 21, 2019.

[861] UNODC, *Transnational Organized Crime in East Asia and the Pacific*, 45.

[862] Althia Raj, "Tamil boat potentially bound for Canada held in Indonesia," *National Post*, July 12, 2011.

[863] Ibid.

[864] UNODC, *Transnational Organized Crime in East Asia and the Pacific*, 45.

[865] "Authorities bust human smuggling ops bound for Canada: Kenney," *Toronto Star*, August 5, 2011.

[866] GAC 2016, "Evaluation of the Anti-crime Capacity-Building program and Counter-terrorism Capacity-Building program," 12, 18.

[867] CBSA A201102325, 15.

[868] Gerasimos Tsourapas, "Migration diplomacy in the Global South: cooperation, coercion and issue linkage in Gaddafi's Libya," *Third World Quarterly* 38, no. 10 (2017): 2367-2385; Ahmet İçduygu, and Damla B. Aksel "Two-to-tango in migration diplomacy: Negotiating readmission agreement between the EU and Turkey," *European journal of migration and law* 16, no. 3 (2014): 337-363.

[869] Interview #6, Senior official, Office of the Special Advisor on Human Smuggling and Illegal Migration, February 5, 2016.

[870] GAC A20130279, 16.

[871] IRCC A201521196, 15-16.

[872] Ibid, 15-17.

[873] Ibid, 17.

[874] Government of Canada, "Canada and Nigeria working to combat migrant smuggling, human trafficking and irregular migration," 2020.

[875] Government of Canada, "New Canadian assistance in Southeast Asia," 2017.

[876] Zaiotti, "Mapping remote control," 12.

[877] CBSA A201102325, 13.

[878] GAC 2012, "Formative evaluation of the Anti-crime Capacity-Building Program," 6.

[879] William Walters, "Imagined migration world: The European Union's anti-illegal immigration discourse," in *The politics of international migration management,* eds. Martin Geiger, and Antoine Pécoud (London: Palgrave Macmillan, 2010), 73-95.

[880] Ibid, 8.

[881] CBSA A201313161, 15.

[882] GAC 2016, "Evaluation of the Anti-crime Capacity-Building program and Counter-terrorism Capacity-Building program," 8.

[883] Ibid, 26.

[884] Ibid.

[885] RCMP A201501244, 121.

[886] GAC A201302709, 6.

[887] GAC A201302551, 88.

[888] Ibid, 88.

[889] Ibid, 82.

[890] GAC A201302709, 6.

[891] GAC A201302551, 81.

[892] In total, at the national level, the FLOAT project provided 50 police at the national level with train-the-trainer sessions; through 27 local level "socialization sessions," the project trained approximately 2025 frontline police and equipped them with knowledge about managing migrant smuggling cases, issues and concerns and distributed pocketbook versions of a migrant smuggling manual for easy reference while on active duty. According to internal documents, the expected short-term outcomes of the FLOAT project were enhanced awareness, skills and capacities among Indonesian police and border enforcement agencies to effectively detect and disrupt migrant smuggling, as demonstrated in greater coordination between national agencies and local front-line officers in remote regions exploited by migrant smuggling networks, greater operationalization of established protocols and procedures at the policy and operational level, enhanced investigative skills as well as increased "government's interest in participating in intra-regional and international discourse and processes" (RCMP A201501244, 95-96).

[893] Ibid, A201501244, 98.

[894] RCMP A201501244, 33.

[895] Ibid, 122.

[896] GAC A201302709, 9.

[897] Ibid.

[898] Ibid.

[899] IOM, *Building Better Futures: Canada and IOM Partnerships in Action* (Geneva: IOM, 2015), 28.

[900] Watson, "The 'human' as referent object? Humanitarianism as securitisation."

[901] Interview #18, Senior official, IRCC. April 21, 2016.

[902] Ibid.

[903] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 22.

[904] Ibid, 1.

[905] Jennifer Hyndman, "The Securitisation of Sri Lankan Tourism in the Absence of Peace," *Stability: International Journal of Security and Development* 4, no. 1 (2015): 14.

[906] IOM, *Migrant Smuggling to Canada*, 2.

[907] IRCC A201532096, 5.

[908] Ghana Web 2012.

[909] Adrian Humphreys, "CSIS tip led to bust of alleged human smuggling ring," *The National Post*, May 25, 2012.

[910] Ibid.

[911] IOM, *Migrant Smuggling to Canada*, 52.

[912] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 1.

[913] Ibid, 7, 22.

[914] Ibid, 23.

[915] Ibid, iii.

[916] Ibid.

[917] IRCC A201532096, 20.

[918] Ibid, 3.

[919] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," iii-iv.

[920] IRCC A201532096, 5.

[921] Hyndman, *Managing displacement*, xxv.

[922] Gammeltoft-Hansen and Hathaway, "A world of cooperative deterrence."

[923] Martin Geiger, "Ideal partnership or marriage of convenience? Canada's ambivalent relationship with the International Organization for Migration," *Journal of Ethnic and Migration Studies* 44, no. 10 (2018): 1639-1655.

[924] Martin Geiger, "Policy outsourcing and remote management," in Ruben Zaiotti (ed.), *Externalizing Migration Management: Europe, North America and the spread of 'remote control' practices* (London: Routledge, 2016), 268.

[925] Ibid.

[926] IOM, *Building Better Futures: Canada and IOM Partnerships in Action*, 24.

[927] IOM Ghana, *Global Assistance for Irregular Migrants* (Geneva: IOM, 2013); Corey Robinson, "Measuring 'well-governed migration': The International Organization for Migration's Migration Governance Indicators," in *The International Organization for Migration: The New 'UN Migration Agency' in a Critical Perspective*, eds. Martin Geiger and Antoine Pécoud (London: Palgrave Macmillan, 2020), 123-143.

[928] IOM Ghana, *Global Assistance for Irregular Migrants*.

[929] Ibid.

[930] Bigo, "Security and immigration," 73.

[931] Watson, "The 'human' as referent object? Humanitarianism as securitisation."

[932] Bigo, "Security and immigration," 79.

[933] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 7.

[934] IRCC 2015, "Evaluation of the Global Assistance for Irregular Migrants Program," 21.

[935] IRCC A201535452, 2.

[936] Ibid, 8.

[937] IOM 2008, "Irregular Migration and Mixed Flows: IOM's Approach," 2.

[938] IOM, *Building Better Futures: Canada and IOM Partnerships in Action.*

> In today's complex migration landscape, decision-making about migration takes place not only at the beginning of a journey, but also along the way to a final destination. In some cases, migrants may realize during the journey that they wish to return home, but that they may not have the means to do so, or fear social stigma of returning without a job or additional resources.
>
> IOM, with support from Immigration, Refugees and Citizenship Canada, is addressing this phenomenon through the implementation of a programme to help Sri Lankan migrants who become stranded in West Africa to return home in a safe and dignified manner. These irregular migrants had intended to reach Canada, but ended up stranded in a very precarious situation in West Africa, often at the hands of smugglers who had deceived them. Since 2012, the programme has supported 618 of these very vulnerable Sri Lankan nationals to return home with livelihood support to start a small business. The

results of the programme are positive, with over 90 per cent of returnees reporting that they are satisfied with their businesses and are optimistic about their future.

[939] Hyndman and Reynolds, "Beyond the Global Compacts: Re-imagining Protection," 67.

[940] IRCC 201532096, 3.

[941] Under the GAIM program, one month after migrants returned to Sri Lanka, IOM staff provided a three-day orientation and business development training which emphasized "safe and legal migration practices" and the "risks and realities of irregular migration," such as migrant smuggling and trafficking in persons. The IOM orientation was followed by "Business Development Training," which provided returnees with assistance to develop a small to medium business plan. IOM staff spent at least one hour with each returnee to review the proposed business plan and once the proposal received final IOM approval, he or she received $3,300 USD to purchase materials, receive on-the-job training or enroll in educational programs (Ibid, 6).

[942] Ibid, 7.

[943] Heaven Crawley, and Brad K. Blitz, "Common agenda or Europe's agenda? International protection, human rights and migration from the Horn of Africa," *Journal of Ethnic and Migration Studies* 45, no. 12 (2019): 2263.

[944] Walters, "Imagined migration world."

[945] Chimni, "The geopolitics of refugee studies," 360.

[946] The campaign delivered more than 4 million text messages to approximately 37 million people throughout Sri Lanka, and placed 7,400 calls.[946] The IOM held "sensitization training" in various parts of the country, in "major migrant communities," to 5,399 persons; provided career guidance and safe migration training sessions for youth (1357 persons); theatre forum sessions on safe migration (5074 persons); the distribution of safe migration materials and t-shirts as part of outreach to schools and colleges, along with career guidance and a "train-the-trainers" program on safe migration for community leaders and government officials; community awareness sessions; targeted information outreach for fishermen and sensitization training for boat owners (Ibid, 7-9).

[947] Ibid, 18, 2.

[948] Nanopoulos, Guild, and Weatherhead, Katharine, "Securitisation of Borders and the UN's Global Compact on Safe, Orderly and Regular Migration," 7-8.

[949] Internal evaluations include a "Migrant Success Story." The passage below details the experience of a young returnee, which provides a clear example of the IOM's depoliticising account of deportability-as-development.

> At 21, she left Colombo with her brother on the false promise of an opportunity to study in Canada. However, after being left stranded in West Africa in a dire situation, she returned home through the GAIM program.
>
> She is currently enrolled at a higher education institution in Colombo, studying for a degree in Information Technology specializing in graphic design and accounting as there is currently a great demand for these skills in the Sri Lankan job market. IOM's reintegration assistance included enrolment support and a basic office package. She attended IOM's business development training and says she gained sufficient knowledge in business start-up, how to use capital, how to plan a business, bookkeeping, etc. She is very grateful to IOM for helping her restart her education, and says she is currently searching for a job opportunity to utilise her new skills (IRCC 201532096, 24).

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