



Discord and Disruption

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Canada as a Frontline State? Populist Discourse, New Population Movements and the Canada-US Border Relationship

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Issue

Increased populist rhetoric combined with overt hostility towards asylum seekers in the United States has complicated the nature of the Canada-US border relationship, necessitating a critical re-evaluation of existing practices and agreements.

Background

Canada and the United States share a productive history of collaboration on border security issues, encompassing strategies ranging from information-sharing for law enforcement to the formalization of joint patrols through Canada-US Shiprider operations. The Safe Third Country Agreement (STCA), signed by Canada and the United States in 2002, arguably represents one of the most controversial components of this ongoing bilateral cooperation. Although criticisms have been levelled against the agreement for years, opposition to the STCA has gained traction in the wake of disruptive policy shifts within the United States and the subsequent impact at Canadian borders.

Under the Trump administration, policy changes and growing hostility towards migration have increasingly pushed foreign nationals and migrants into precarious circumstances. Thousands of individuals must now choose between repatriation to unsafe countries, continued “illegal” residence in the US, or relocation towards perceived safe

havens such as Canada. Many have chosen the latter, overwhelming border personnel and communities in the process.

American Populism and Policy Shifts

While collaborative border practices between Canada and the United States remain firmly in place, the domestic political context within the United States has undergone a dramatic shift. The Trump administration has substantially revised American policy towards migrants and asylum seekers through the introduction of new executive orders and the alteration of existing domestic programs. Three examples are worth examining for the purpose of demonstrating the impact of this shift on Canadian borders.

First, the introduction of the executive order Border Security and Immigration Enforcement Improvements expands the use of expedited removals, a practice in which Homeland Security deports individuals within 24 hours and without allowing time for a full immigration hearing (Harvard Law School 2017a). When asylum seekers are intercepted, they undergo a “credible fear” test to determine whether their claim should proceed to a judge. Asylum seekers are not guaranteed access to legal counsel or translation services during this process. The expansion of expedited removals thus places asylum seekers with genuine protection claims at greater risk of deportation. Section 7 of the order additionally calls for intercepted asylum seekers to be “returned to the territory from which

they came pending a formal removal proceeding” (Exec. Order No. 13767). One example of where this is occurring is in the deportation of asylum-seekers of any nationality to Mexico following their interception. This could qualify as refoulement under the terms of the 1951 Refugee Convention, given the “significant likelihood that Mexico would send those asylum seekers back to their countries of origin” (Harvard Law School 2017a, 7).

Second, the executive order Enhancing Public Safety in the Interior of the United States ramps up the removal of undocumented migrants living in the United States (Exec. Order No. 13768). Although the order was presented as a safety measure targeting immigrants with criminal records, in practice the order’s interpretation of “criminality” is such that migrants with traffic tickets or other administrative offences may also be prioritized for deportation (Harvard Law School 2017a; American Immigration Council 2018). Criticism levelled towards the order has highlighted the risk that vulnerable populations will be pushed “further underground” out of fear (Alboim and Aken 2017).

Third, the United States has announced its intention to rescind Temporary Protected Status (TPS) for Haiti, El Salvador, Liberia, Nepal, Nicaragua, Sudan and Honduras. As of January 2018, 437,000 foreign nationals living in the United States possess TPS status (Wilson 2018, 4). In addition to the countries whose nationals will no longer benefit from TPS renewal, the program also encompasses individuals from Somalia, South Sudan, Syria, and Yemen. Although protection has been renewed for Syrians and South Sudanese, the ongoing wave of TPS cancellations coupled with the overarching hawkish stance of the Trump administration towards migrants and asylum seekers casts doubt on the long-term future of the program. This unpredictability could prompt even TPS holders with fully renewed status to proactively seek alternatives to their residence in the United States.

Immediate Consequences for Canada

A climate of fear has accordingly emerged within communities of migrants and asylum seekers living in the United States. Executive orders targeting undocumented migrants have magnified anti-immigrant sentiment and fuelled fears of deportation, while the cancellation of TPS for multiple nationalities has pushed thousands to leave the country. Increased precarity of status in the United States has prompted migrants and asylum seekers to view relocation to Canada as a viable strategy. The number of

border crossings per month in 2018 remains consistently higher than average, compared to previous years (Government of Canada 2018b). While it was predicted that the combination of warmer weather with a new wave of TPS revocations would push irregular crossing numbers back up, RCMP interceptions of asylum seekers remained consistent with an average of 1622 per month between May and September (ibid.).

RCMP interceptions of asylum seekers already rose steadily from 1,517 in January to 2,560 in April (ibid.).

Responding to Irregular Migration

Canada has responded to this rise in irregular border crossings in a largely coordinated and humanitarian fashion. However, this influx has created significant challenges for the federal government as it remains tasked with protecting border integrity and upholding the rules-based immigration system while also acting in accordance with international obligations. The government has faced criticism from opposition parties, provincial governments, and Canadian citizens centred on the lack of a clear and coherent plan to address the surge in irregular border crossings. Recent statistics indicate that 48 percent of Canadians believe that the federal government should send irregular border crossers back to the United States, while 46 percent disapprove of the federal government’s handling of the situation (Colledge 2017). These figures are congruent with research that shows a rise in populist sentiments among Canadians (Ekos Politics 2018). In order to formulate an effective response to irregular border crossings that will resonate with the Canadian public, the anxieties and assumptions of citizens must be addressed. While community organizations across Canada are working to quell populist and anti-immigrant sentiments through education and community engagement, a comprehensive government response to this trend is lacking.

Budgetary Implications and Considerations

The federal government allocated \$173.2 million in the 2018 Budget to strengthen border security and accelerate asylum claim processing. The processing of work permits for asylum claimants has already been expedited, and the Immigration and Refugee Board has altered its hearings schedule in order to accommodate the higher numbers of asylum claims. The government has committed to providing new, short-term accommodation facilities

for asylum seekers and is additionally establishing a triage system for asylum claimants seeking to relocate to alternate provinces (Government of Canada 2018c).

While promising initiatives have been proposed, funds allocated within the budget to agencies directed to handle irregular border crossing may be only partially implemented due to imprecise cost estimates. Due to its inherent rigidity, the current funding model may lack the adaptive capacity required to respond to the fluidity of this ongoing issue. An alternative funding model could provide the government with greater financial flexibility in its response to irregular border crossings, thus alleviating some financial pressures that currently burden provincial and municipal governments.

Initiatives on Collaboration

At the domestic level, Public Safety Canada has implemented the Asylum Seeker Influx National Strategic Response Plan in order to construct and coordinate regional response plans across Canada. As a key initiative of this plan, mobile asylum processing units helped to facilitate high volume processing of asylum seekers between November 2017 and February 2018 (Canadian Government 2018a). Two means of bilateral collaboration are currently in place. The first is the Canada-United States Inter-Parliamentary Group, which seeks to find points of convergence in national policies and to facilitate dialogue and the exchange of information. Notably, irregular migration has not been on the agenda at recent meetings (Parliament of Canada 2018). The absence of dialogue on irregular migration within this group represents a lost opportunity for bilateral coordination. The second is the Ad Hoc Intergovernmental Task Force on Irregular Migration, which has enabled the communication of Canadian immigration law and the correction of misinformation through partnerships with US diplomats and community organizations (Government of Canada 2017). The task force has worked closely with Haitian communities in Miami, and recently conducted high-level meetings with Nigerian and US diplomats to address the spike in Nigerian nationals transiting through the United States to claim asylum in Canada.

While these initiatives demonstrate success in their promotion of collaboration, their utility may be diminished as a consequence of their ad hoc nature or inconsistent use. Moreover, existing strategies offer few formalized channels of participation for municipal leaders within Canada to

link up with higher levels of government, despite the fact that municipalities bear many of the immediate responsibilities associated with hosting irregular migrants and asylum seekers. Limiting the inclusion of local voices in the broader dialogue on irregular migration may impede the federal government's ability to effectively direct resources towards impacted areas, and may also increase public disaffection at the community level. Federally organized collaborative initiatives would therefore do well to incorporate stronger and more consistent municipal representation.

Legal Challenges of the STCA

The STCA poses an additional set of challenges for the government to consider in responding to irregular migration while maintaining a strong relationship with the United States. In 2007, the Federal Court of Canada ruled that the US was not a safe third country by reason of non-compliance with its obligations under international law to prevent non-refoulement (Canadian Council for Refugees v. R, 2007). While the decision was overturned on appeal, the case re-opened in May 2017 (Canadian Council of Refugees 2017). In July 2017, three Canadian advocacy organizations launched a second legal challenge, calling for the revocation of the STCA in light of recent developments in the US (Harvard Law School 2017b).

The issue of irregular migration across the border is itself a recipe for politicization against welcoming refugees. Right-wing groups like Storm Alliance and La Meute have used the "illegality" argument to argue against not only accepting more refugees, but also an open immigration system altogether (The Atlantic 2018). In this way, the STCA inadvertently serves as a tool for the promotion of divisive politics on both sides of the border. That being said, policy changes around the STCA must be approached mindfully to avoid damaging Canada-US bilateral relations.

If large-scale irregular migration across the border is a new reality for Canada, policies and practices created today must be designed in a manner that balances border security goals with Canada's tradition of leadership in embracing diversity. This stance is grounded not only in moral considerations, but also in pragmatic objectives of avoiding future litigation while simultaneously maintaining strong domestic support in favour of welcoming refugees and immigrants.

Domestic Recommendations

Allow for increased budget flexibility to respond to the fluidity of the situation. The federal government should increase flexibility in the assignment of funds currently dedicated to irregular migration management. Regular evaluation should be undertaken to identify where funds are most needed, with funds subsequently allocated on the basis of these evaluations. Currently, the Treasury Board's 2015 Expenditure Management framework calls on government departments to regularly measure performance against projected results, anchor spending in the priorities of Canadians, and perform ongoing assessments of their own performance (Government of Canada 2015). This recommendation would make room for increased internal assessments and, when necessary, allow for the redirection of funding to other departments that have demonstrated greater success in the targeted area.

Foster balanced public dialogue and engagement. The Government of Canada should promote more balanced and informed public discussion on migration in order to counteract rising populist sentiments. This dialogue could take shape in town hall meetings and social media campaigns. A recent town hall meeting in Toronto, facilitated by world-renowned political philosopher Michael Sandel, offers a useful template for structuring such discussions (Sandel 2017). We additionally recommend that more consistent opportunities be created for municipal government leaders to engage with federal officials on migration issues, potentially through the Ad Hoc Intergovernmental Task Force on Irregular Migration.

Bilateral Recommendations

Enhance existing partnerships. There should be a continuation and expansion of cooperative strategies such as the Ad Hoc Intergovernmental Task Force on Irregular Migration. More sustained discourse on irregular migration should also be undertaken via the Canadian-US Inter-Parliamentary Group. More broadly, the government should commit to longer-term, proactive approaches as opposed to ad hoc measures.

Suspend the STCA. The government should closely investigate its criteria for designating a country as "safe" and suspend the STCA for 90 days. Suspending the STCA would offer a means to process claims in a more

orderly manner while allowing for a thorough examination of the agreement's utility. During this suspension, Immigration, Refugees and Citizenship Canada should adopt a fluid approach to claims processing, focusing more specifically on individual circumstance as the primary basis for protection. At the end of the 90-day period, the suspension should be lifted or extended based on a combined assessment of border crossing statistics, capacity in border communities, and a clearer articulation of what constitutes a "safe third country."

Multilateral Recommendations

Advocate for and engage in sustained international dialogue on migration. The federal government should leverage existing channels of dialogue with regional cooperative bodies including OAS, CARICOM and MERCOSUR to gather input and develop strategies with the states whose foreign nationals are directly impacted by shifting Canada-US border and migration policies.¹

Showcase positive change in the international arena. While the US administration has demonstrated a strong rejection of multilateralism in recent months, Canada continues to maintain strong representation in multilateral forums, such as the Global Compacts on Refugees and Migration. It should therefore call bordering and migration issues to attention within the international community to mobilize meaningful dialogue and identify best practices on a global scale. In order to be seen as a credible advocate, Canada must strive to exemplify these best practices in the domestic context.

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¹ OAS is the Organization of American States, CARCOM is the Caribbean Community regional integration, MECOSUR is the Southern Common Market a South American Trading Bloc.

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