**Constructing Refugees:
A Case Study of the 'Safe Third Country' Agreement**

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fulfillment of the requirements for the Degree of Master of Arts**

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Abstract

This thesis analyses the newly signed 'safe third country' agreement between Canada and the U.S. The implementation of this agreement would mean that refugees who transit through the U.S. before applying for asylum in Canada would be turned back to the U.S. to apply for asylum there first, and vice versa. Both governments suggest that the agreement will enhance the 'burden-sharing' of processing asylum claims. The analysis of this agreement focuses on the construction and categorization of 'the refugee.' It explores the way in which 'the refugee' is categorized by both humanitarian organizations and the Canadian government through this agreement and discusses the implications of this homogenization. Literature on refugee studies, the Canadian asylum system, and 'Canadian identity' is explored and discussed throughout the analysis of this agreement. Interviews with key informants that were conducted for this thesis provide an additional perspective from people who work with refugees and within the Canadian asylum system.

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CHAPTER 1: Introduction

The role of anthropology in the area of refugee studies is of growing importance. As the number of people who are displaced from their country of origin increases it is becoming ever more important to understand the political, historical and social context that refugees encounter through the asylum process. In my thesis I will be focusing on theoretical discussions that problematize the definition of the concept of 'refugee.' In order to understand this system I will analyse the development of the 'safe third country' agreement that was signed between Canada and the United States in December 2002. The signing of this agreement means that refugees who transit through the United States before reaching the Canadian border to request asylum will be sent back to the United States to request asylum there first. The same would be the case if the situation were reversed between the two countries. While this appears to be a very straightforward agreement, differences between Canada's and the United States' asylum systems implies changes to Canada's procedures that will affect refugees. Therefore numerous NGOs including Amnesty International, The Lawyers Committee for Human Rights, The Ontario Council for Agencies Serving Immigrants, and Kairos have voiced opposition to this new agreement. However, both the Canadian and U.S. Government have decided to proceed with this agreement despite the strong opposition.

I will analyse the 'safe third country' agreement focusing on Malkki's discussion of the construction of 'the refugee.' In my discussion I problematize the homogenization of 'the refugee' as a constructed category within the context of the agreement and demonstrate how through it 'the refugee' is constructed, for example, as a victim and as a

security concern. In my discussion I have organized my chapters according to the order in which the development of the agreement took place. Initially the agreement was drafted by both Governments who proceeded to request NGOs and the UNHCR to respond to the draft, following which the Governments developed a final draft text.

In my discussion I will review literature written on this subject and will also include information from key informants who are immigrant and refugee consultants and people from various NGOs that work with refugees. As people who work with refugees and within the Canadian asylum system these key informants provide an important perspective that is useful in my analysis. This agreement has only been recently developed and is not actually implemented yet and, thus, interviewing key informants who will be dealing with this agreement is the closest perspective that I can gain prior to the agreement's implementation and subsequent evaluation. These interviews were semi-structured in order to allow the participant to elaborate on any concepts. The majority of the interviews were tape-recorded and in those where the informant chose not to be recorded I took notes throughout the interview. It is essential to consider how people who work in the area of refugees believe this agreement will affect refugees and what they feel is the motivating force behind the Canadian Government implementing the agreement. I include brief descriptions of the people whom I interviewed and the questions I used to guide the interviews in Appendix 1 and 2.

In addition, since this is a recently developed agreement, much of the debate has taken place through letters and articles that have been posted on the Internet so this has also been an important source of information. Both the Government and the NGOs have

participated in this debate using the Internet to post their concerns and/or responses to concerns.

In Chapter 2 I will discuss the historical background of the Convention definition for ‘the refugee.’ As well, I will draw largely on the theoretical discussions of Malkki (1995a, 1995b, 1996) who suggests that the definition of ‘the refugee’ is constructed such that refugees are removed from the specific historical, social and political situations from which they emerge.

In addition, Chapter 2 will lay out the framework of my analysis. This will include situating Malkki’s discussion within the context of the agreement, a discussion of the role that ‘Canadian identity’ plays in the debate regarding this agreement, and the alternatives that I suggest as a result of my analysis.

In chapter 3 of my thesis I will explore the development of the ‘safe third country’ agreement and discuss the motivation and justification used by both the United States and Canada for implementing it. As well, I will examine the arguments that a number of NGOs have used to oppose this agreement.

The ‘safe third country’ agreement is a part of the Smart Border Declaration’s 30-point Action Plan. “The deal will mean that most refugee claimants who arrive in Canada, through the U.S., will be returned to the U.S. to make their claims there, and vice versa” (OCASI 2002). Both the U.S. and Canada signed this agreement in December 2002 and had various reasons for doing so. For example, both countries have suggested that this will foster cooperation and burden-sharing with regards to refugee claimants (CIC 2002a). As well, Canadian officials, including John Manley and Dennis Coderre have suggested that the ‘safe third country’ agreement will limit ‘asylum shopping’ by

refugees by ‘safely’ returning them to the U.S. (CBC 2002 and CIC 2002b). This discussion of ‘asylum-shopping’ and ‘burden-sharing’ will provide an example in my analysis of the way in which ‘the refugee’ is labeled as ‘the problem’ with which governments must deal.

While both Canada and the U.S. have made arguments for signing this agreement there has been significant opposition regarding it expressed by NGOs that act as advocates on behalf of refugees. In chapter 3 I will discuss the concerns that have been raised by these NGOs in order to understand the debate regarding this agreement. The most distinct problem expressed by these groups is the complications that will arise as a result of the significant differences between these two countries’ asylum systems, especially concerning detention and gender-based claims. These differences will be analysed in chapter 3 as well as other concerns that have been raised by refugee advocates, including the increased use of human smugglers by asylum seekers. In this chapter I will analyse how humanitarian organizations homogenize ‘the refugee’ as a victim. For example, through emphasizing the ‘needs and interests of refugees’ the NGOs assume that refugees, because they are all ‘helpless’ victims, have the same needs and interests.

In chapter 4 the question that I will be addressing is why, despite the opposition expressed by numerous NGOs, have Canada and the U.S. agreed to continue with the implementation of this agreement? I will examine the response that the Canadian Government gave to those NGOs and refugee advocates who opposed this agreement and use this response to further demonstrate the motives behind its continued development. In this response I examine the way in which the Government has constructed ‘the

refugee’ as a security threat and as a person who will abuse the Canadian asylum system if restrictions are not in place. I will also discuss how the Canadian Government maintains a “narrative of innocence” (as discussed by Razack 2000) and the image of ‘doing good’ through ‘protecting refugees’ while at the same time constructing them as a security threat and attempting to reduce the number of asylum claims made in Canada.

In this section of my thesis I will use data that I have collected from my key informants to further analyse the role of the Canadian Government in the development of the ‘safe third country’ agreement and discuss the reasons why these refugee advocates suggest that the Government has decided to move ahead with this agreement. Through this discussion the construction of ‘the refugee’ as a security threat is analysed and it is suggested to be a justification for the reduction of asylum claims made in Canada.

Finally, in chapter 5 I will provide my conclusions and suggest alternatives for Canadian asylum policy. The analysis of the ‘safe third country’ agreement is important in order to understand new directions that the Canadian asylum system should take. Through an analysis of this agreement it becomes apparent that the motive behind the Canadian Government is the exclusion of asylum seekers to Canada. I problematize this motivation by questioning where asylum seekers will go if countries such as Canada continue to restrict their entry. Interdiction measures are not policies that the Canadian Government should be pursuing but, rather, their focus should be on creating a system that is able to deal with refugees with differing political, social and historical narratives.

CHAPTER 2: Historical Review and Theoretical Perspectives

It is largely up to governments to choose whom they will accept as refugees and whom they will not. While there exists international guidelines and regulations through the UNHCR with regards to refugees, these guidelines have little influence on the decisions that are actually made as to who is a 'genuine' refugee. The definition of a 'refugee' provided by the 1951 Convention¹ allows for interpretation on the part of governments that accept refugees. As a result refugees are constructed and categorized through asylum systems. In order to discuss the influences that are involved in asylum decisions in Canada, it is important to discuss the history and theoretical background of the refugee system. In this chapter I will explain the construction of the category of 'the refugee.' I will discuss the impact this has on refugees and inevitably the way in which it influences the Canadian asylum system. The common perception of refugees is that they are people who are seeking protection and/or are being protected from persecution. However, governments, international institutions and humanitarian organizations define and construct refugees as a homogenous group. As a result, refugees are expected to fit into a specific category or definition in order to be deemed a 'genuine' refugee.

2.0 THE UNHCR AND DEFINING 'THE REFUGEE'

After World War II the European community attempted to deal with political instability and turmoil that was leading to the development of numerous displaced people who were threatened in their own nation-states. As a result, "it is in the Europe emerging

¹ This definition will be discussed in detail later in the chapter.

from World War II, that certain key techniques for managing mass displacements of people first became standardized and then globalized” (Malkki 1995a: 497). During this period the meaning of ‘refugee’ drastically changed through the formation of various governing institutions that worked to classify refugees and discuss how to deal with them. Consequently, bounded definitions were created in order to determine who would be considered a refugee and who would not.

In 1951, the UNHCR was established. It became the leading authority in the international regulation of refugees. According to the 1951 United Nations Convention relating to the Status of Refugees a refugee is a person who:

owing to a 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 ... is unable or, owing to such fear, is unwilling to return to it (OHCHR 1951).

Canada is one of the many countries that apply this definition of a refugee to their refugee and asylum system. While providing a definition for refugees appears to be helpful, the way in which this definition is implemented in different states can be problematic. For example, Loescher explains that, as an intergovernmental organization and a part of the UN system, the UNHCR “cannot act in a strictly neutral fashion. Thus the UNHCR often walks a tightrope, maintaining a perilous balance between the protection of refugees and the sovereign prerogatives and interests of states” (Loescher 2001: 2). Loescher goes on to explain that throughout the history of the UNHCR there has never been a time when the foreign policies or interests of governments did not affect the stance of the agency (Loescher 2001: 6). The UNHCR receives its funding from the

same states for which they provide regulations (see Figure 3.2). This makes it difficult for the UNHCR to be critical of practices within these states. The international refugee system has been strongly influenced by government policies and politics including those of Canada. Largely run by Western nations, the UNHCR has been most strongly influenced by Western values and politics.

Loescher (2001) explains this situation in the context of the Cold War. He suggests that “[f]rom its founding, the UNHCR was enmeshed in the international politics of the East-West conflict and refugees were perceived as elements of power in the bipolar rivalry” (Loescher 2001: 6). Refugees became a political and moral tool in this conflict by demonstrating the human rights violations that were taking place within the various systems. For example, in the U.S. “policy makers considered refugee issues within the same policy framework as national security and even limited refugees by definition as only those fleeing communism” (Loescher 2001: 7). This trend has continued into the present day. In the U.S. “country of origin is the most important predictor of outcome in asylum applications and one-third of all applications for asylum are approved if the applicant originates from a country hostile to the U.S., compared to only 4% of applicants from ‘non-hostile’ states.” (Valji and De La Hunt 1999: 3). Refugees were used to demonstrate the moral and political superiority of countries such as the U.S. and Canada. Refugeeeness “became a way of relating to and intervening into that which was deemed illiberal and uncivilized” (Lippert 1999: 306-307).

As a result, international cooperation on the treatment of refugees is problematic and political. Bhabha explains that “[a]s numbers of refugees escalate and the post-war international commitment to refugee protection in the West is superseded by a

preoccupation with immigration restriction and border fortification, that focus shifts revealing the ethical limits of the international order” (Bhabha 1996: 3-4). In fact there have been many attempts, particularly since the mid-1990s, in Europe, Canada and the U.S. to curtail the number of refugees making claims or seeking asylum in their country.² Loescher explains that many Northern States believe that “preventing entry of asylum-seekers by imposing visa requirements on the nationals of refugee-producing states,³ fining airlines for bringing refugees into their countries, and forcibly interdicting refugees at frontiers and in international waters [is] the best way to reduce both the numbers and the costs of asylum applications” (Loescher 2001: 316). Canada practices many of these prevention tactics. These interdiction measures demonstrate the limits that the international system and the UNHCR encounter.

2.1 THE CONSTRUCTION OF ‘THE REFUGEE’

The development of a definition for ‘refugees’ demonstrates how common notions of refugees are constructed. “There is no ‘proto-refugee’ of which the modern refugee is a direct descendant, any more than there is a proto-nation of which the contemporary nation form is a logical, inevitable outgrowth” (Malkki 1995a: 497). This is not to say that the issues and situations that cause people to be refugees are trivial or non-existent. However, it is important to emphasize the notion that ‘refugees’ are not an inherent category. “People have always sought refuge and sanctuary. But ‘the refugee’ as a specific social category and legal problem of global dimensions did not exist in its

² The measures taken to reduce refugee claimants, particularly in Canada, will be discussed later in this chapter as well as in chapter 4.

³ ‘Refugee-producing states’ is a political term in and of itself but generally refers to countries that Western states deem to be ‘refugee-producers.’

full modern form before [World War II]" (Malkki 1995a: 497-498). Thus, the common notions and perceptions that refugees are associated with are relatively new constructions.

Anthropology in the past has tended to treat cultures and ethnic groups as isolated and territorial units (see the discussions of Mead 1961 and Evans-Pritchard 1950). Banks (1996) explains that even in much of current anthropological discussions there is an emphasis on boundaries. "It has long come naturally to us, in the theoretical apparatus of anthropology, to study 'indigenous peoples,' 'local contexts,' and 'closed systems,' as opposed to studying the movement and traffic of people" (Malkki 1995a: 508). With increased mobility, development and globalization it is becoming increasingly important for anthropologists to focus more attention on refugees. Refugees are often believed by anthropologists to have lost the context of their culture and ethnicity because they are not in the specific territory with which these identities are associated. Thus, anthropologists have found it difficult to study refugees because of their assumed lack of belonging to a specific culture or ethnicity.

Refugees call into question the anthropological tendency to reduce ethnic groups into isolated and territorial units that can be easily classified and categorized because they are removed from these places. As well, they problematize the imagination of the nation because they do not necessarily 'fit' into the narratives of the nation in which they attain asylum, nor are they considered a part of the narratives of their country of origin because these narratives are associated with the specific territory from which refugees have been removed. As a result, refugees are categorized as a group separate from a specific territory. Malkki explains that "it would seem that the term refugee has analytical usefulness, not as a label for a special, generalizable 'kind' or 'type' of person or

situation, but only as a broad legal or descriptive rubric that includes within it a world of different socioeconomic statuses, personal histories, and psychological or spiritual situations” (Malkki 1995a: 496). That is, she suggests that refugees are categorized together, based on their similar predicament of displacement, and, as a result of this homogenization, their specific historical, political and social situations are ignored.

Malkki explains that “[p]eople who are refugees can also find themselves quite quickly rising to a floating world either beyond or above politics, and beyond or above history – a world in which they are simply ‘victims’” (Malkki 1995a: 518). Refugees are then seen as ‘the problem’ that needs to be dealt with rather than the manifestation of a deeper historical and political conflict or situation. “It is striking how often the abundant literature claiming refugees as its objects of study locates ‘the problem’ not first in the political oppression or violence that produces massive territorial displacements of people, but within the bodies and minds of people classified as refugees” (Malkki 1995b: 8). Thus, governments can easily lump refugees together as potential security threats and justify accepting fewer or only certain people as refugees. In Chapter 4 I will discuss the tendency of Canada and the U.S. to treat refugees as a security threat that may abuse asylum systems in their country.

Malkki explains further that even “humanitarian images of refugees work to obscure their actual sociopolitical circumstances – erasing the specific, historical, local politics of particular refugees, and retreating instead to the depoliticizing, dehistoricizing register of a more abstract and universal suffering” (Malkki 1995b: 13). Treating refugees as the problem further facilitates the denial and ignorance of the situation from which they are coming. Furthermore, “understanding displacement as a human tragedy

and looking no further can mean that one gains no insight at all into the lived meanings that displacement and exile can have for specific people” (Malkki 1995b: 16). Refugees are homogenized and categorized as victims who have been stripped of their identity because they are no longer in the nation they ‘belong to’ and are placed in a foreign world that they cannot understand. In fact, “notions of victimization, disempowerment, and passivity are built into the very definition of refugee in such a way that we are surprised when refugees fail to conform to this popular image” (Uehling 1998: 126). These common perceptions of the way in which refugees are expected to act demonstrates further the complications that are inherent in the definition of ‘the refugee’ itself. Humanitarian images that focus on refugees as victims are another form of categorization that homogenize refugees. For example, the NGOs who oppose the ‘safe third country’ agreement focus on the Canadian Government’s responsibility to protect the needs of refugees. The emphasis of the NGOs appears to be based on the belief that refugees are helpless victims who require outside intervention.

Refugees do not qualify as ‘ordinary’ people but are rather “thought of as an anomaly that requires therapeutic intervention and judicial correctives” (Uehling 1998: 130). The categorization of refugees as apart from the ordinary, an exception to the rest, and an anomalous fleeting people, impacts the way in which they are treated in refugee systems, including that of Canada. Uehling draws on Foucault and describes this categorization as a form of power (Foucault 1983:212, cited in Uehling 1998: 123-124). Through associating refugees with certain characteristics that demonstrate powerlessness and helplessness, refugees are assumed to lack the ability to make decisions with regards to their own lives and, as a result, governments and humanitarian organizations assume

this responsibility for them. I analyse this tendency in the rest of my discussion focusing on the Canadian asylum system and the ‘safe third country’ agreement. The construction of ‘the refugee’ by both the Canadian Government and the NGOs contributes to the de-historicizing, de-politicizing, and de-socializing of the many people who make refugee and asylum claims.

2.2 BACKGROUND INFORMATION: ‘Safe Third Country’ Agreement

‘Safe third country’ agreements are interdiction measures that allow states to remove asylum seekers back to states that they transited through first. “[T]hird country” refers to a state through which an asylum seeker passes en route from her country of nationality to the destination state” (Macklin 2003: 1). European countries have been using ‘safe third country’ agreements since the 1990s (ECRE 1995).⁴ While the Canadian Government has been developing interdiction measures since the 1980s, they have not implemented such an agreement. However, one is expected to be implemented between Canada and the U.S. by 2005.

With increased refugee claims being made in Canada throughout the 1980s, rather than “designing a better determination procedure which would allow the expeditious separation of genuine refugees from the [so-called] abusers, the government proceeded to restrict the entry of all refugee claimants” (Basok 1996: 142). Throughout the 1980s and 1990s Canada continually revised its policies regarding refugees “with the objective of curtailing the numbers of refugee claimants allowed to come and stay in the country” (Basok 1996: 142). “Between 1995 and 1997, Canada tried to persuade the U.S. to enter

⁴ For further discussion of European ‘safe third country’ agreements see: European Council on Refugees and Exiles (ECRE 1995).

into a safe-third country agreement, and ultimately failed” (Macklin 2003: 2). The agreement would mean that more claims are made in the U.S. because asylum seekers are more likely to transit through the U.S. on their way to Canada than vice versa because the U.S. is more accessible (Krikorian 2002 and LCHR 2002b). The U.S. did not agree at this time because of the increased asylum claims that they would have to adjudicate. On the other hand, Canada would have fewer asylum claims to process so the Canadian Government was motivated to strongly pursue such an agreement with the U.S.

After 9/11 new security measures on the Canada-U.S. border provided a new scenario wherein Canada was able to push the ‘safe third country’ agreement as a way of increasing border security. The security context persuaded the U.S. Government to reinstate the implementation of a ‘safe third country’ agreement. The Governments of Canada and the U.S. initially developed a draft text of the ‘safe third country’ agreement and over the summer of 2002 had consultations with NGOs regarding this draft (CIC 2002b). “On August 30, 2002 negotiators from Canada and the United States agreed on and initialed a final draft text of the Agreement” (CIC 2002b).

2.3 ‘THE REFUGEE’: In the Context of the ‘Safe Third Country’ Agreement

While agreements that are made between the U.S. and Canada appear to be of little interest, they are an important place where the critical analysis of broader themes can be discussed. This is my intention through analyzing the ‘safe third country’ agreement between these two countries. Through the development of, and debate regarding, this agreement it is possible to analytically situate the categorization of ‘the

refugee’ as discussed by Malkki within the broader themes of nationalism, humanitarianism, security, and the de-historicizing of ‘the refugee.’

In the discussion of the ‘safe third country’ agreement, ‘the refugee’ is categorized by the Canadian Government as a security issue. Through this categorization, the Government is able to make a politically sellable argument to the public suggesting that ‘refugees,’ who are different than ‘us,’ are illiberal, immoral, and uncivilized and, as a result, pose a threat to those who are liberal, moral and civilized. Thus, the Governments of Canada and the U.S. are able to argue that agreements such as the ‘safe third country’ agreement are necessary measures to ensure the security of the state. If the Canadian Government is able to construct the image of ‘the refugee’ as a security threat Canadians themselves may question the acceptance of refugees.

In fact, the Canadian Government in the Fall of 2003 developed a new department, ‘The Department of Public Safety and Emergency Preparedness’ headed by Deputy Prime Minister, Anne McClelland. This department deals with refugee issues in the context of security. Placing refugee issues within the context of public safety is a further measure that locates security issues within the category of ‘the refugee.’ For example, in Canada’s newly released document titled ‘Securing an Open Society: Canada’s National Security Policy,’ Chapter 7 discusses border security with a particular focus on refugees (Government of Canada: Privy Council Office 2004). The ‘progress’ that the Government describes has been done with regards to security enhancement since 9/11 includes the screening of immigrant and refugee claimants, enhancing “the capacity to detain or remove anyone posing a risk to Canada” (Government of Canada: Privy Council Office 2004), the introduction of the Permanent Resident Card, the placing of

‘migration integrity officers’⁵ to stop refugee claimants from making it to Canada, and the imposition of new visa requirements on 10 countries (Government of Canada: Privy Council Office 2004). Preventing asylum claimants from coming to Canada and increasing the security measures that are imposed on the ones that do arrive creates suspicion and fear towards ‘refugees’ as a whole.

In 2003 the U.S. Government transferred the Immigration and Naturalization Service from the Department of Justice to the Department of Homeland Security (Department of Homeland Security 2004). Both the Canadian and U.S. Governments by moving ‘refugee issues’ to federal departments that are designated to deal with security issues continue the construction and categorization of ‘the refugee’ as a security threat. Constructing such an image allows the Canadian Government to proceed with restricting the number of asylum claimants that come to Canada with limited public resistance. If the Government were to focus on the victimization of ‘the refugee,’ as do a number of the NGOs that I discuss and which in itself is a form of categorization, there could be considerably more public opposition to the restriction of asylum claimants. I am not necessarily arguing here that public perception will simply follow the views that the Government directs them to, but rather am suggesting that the categorization and homogenization of ‘the refugee’ is a form of power and will influence perceptions towards ‘the refugee.’

Refugees are also homogenized as a speechless, helpless group of people through this agreement. The Canadian and U.S. Governments suggest that the ‘safe third country’

⁵ Migration integrity officers (MIO) are located around the world and work with airlines and governments to “prevent passengers without the proper documents from traveling to Canada” (CCR 2004). For a list of the places where MIOs are located see www.cic.gc.ca/english/pub/transporters/Appendix5.html (accessed 2004/07/01).

agreement is necessary in order to eliminate ‘asylum shopping’ on the part of asylum seekers. The argument from both Governments is that if asylum seekers are desperate enough they should apply for asylum in the first ‘safe country’ in which they arrive. This argument removes the asylum seeker’s ability to choose the country in which he/she will apply for asylum. As a result asylum seekers are perceived to be too helpless and speechless to make their own decisions regarding their own lives. Focusing on this perception allows governments to justify making decisions and choices for refugees. In this situation, the Governments of both countries remove from ‘the refugee’ the ability to make his/her own choices, an act that in a liberal democracy is considered a ‘good’ thing and implies the freedom of the individual.

Differences between refugee systems can have a significant impact on those seeking asylum or refugee status. The result “has been the growth of ‘forum shopping’ by asylum seekers, seeking to maximize their chances of a successful claim” (Bhabha 1998: 705). Asylum seekers may apply for protection in a number of states or they may move through other potential countries of refuge in order to apply for asylum in a country where they know they have a better chance of gaining asylum. “Since the difference between states can be a life or death matter to individual applicants risking *refoulement*⁶ to persecuting states, this is a logical development.” (Bhabha 1998: 705). Asylum seekers transiting through the U.S. to Canada have made the choice to apply in the one country over the other based on their own best interest. However, through implying that choosing one country over another suggests that asylum seekers are not desperate, the

⁶ The *non-refoulement* clause in the 1951 Convention “states that no State or party to the Convention shall expel or return a refugee ‘in any manner whatsoever’ to the frontiers of a country where the refugee’s life or freedom would be threatened” (Macklin 2003:1).

Canadian and U.S. Government remove this so-called freedom from asylum seekers and further their speechlessness.

On the other hand, in the context of the 'safe third country' agreement the categorization of 'the refugee' takes place outside of governments under the realm of humanitarianism aimed at refugees. While governments label refugees as security threats, humanitarian organizations label them as pure victims. Malkki explains that this "creates a context in which it is difficult for people in the refugee category to be approached as historical actors rather than as mute victims" (Malkki 1996: 378). The construction of 'the refugee' as a victim by humanitarian organizations contributes to the homogenization of 'the refugee.' As a result "humanitarian practices tend to silence refugees" (Malkki 1996: 378). The silencing of refugees removes their own historical and political authority and homogenizes refugees as a social category outside of history. Malkki describes the image of a 'sea of humanity' that is imagined through humanitarianism but assumes helplessness and speechlessness on the part of 'the refugee' (Malkki 1996: 388). As a result the same type of categorization takes place by humanitarian organizations that treat 'refugees' as mute victims, as does the Canadian Government who constructs 'the refugee' as a security threat.

Lippert (1998) discusses the silencing of refugees through resettlement programmes in Canada. He suggests that as a result of the fear of persecution "refugees are assumed not to have a choice to migrate to Canada and to have no choice but to stay after arriving" (Lippert 1998: 382). The lack of choice perceived by organizations that are in place to 'help' refugees further homogenizes refugees and their experiences. The

same argument can be made with regards to the NGOs who debate the implications of the 'safe third country' agreement.

2.4 THE NARRATIVE OF INNOCENCE

Throughout the discussion of the 'safe third country' agreement certain perceptions of Canada continually emerge. This tendency suggests that the broader theme of Canadian national identity and the imagination of what is 'Canadian' is implicit in the debate regarding this agreement. Razack (2000) discusses the imagined perceptions of Canada as a naïve country that is incapable of violence, particularly when compared to the U.S. In her discussion of Canadian peacekeepers, Razack contends that "Canadian naivete and passivity as a nation constitute a narrative of innocence that blocks accountability for racist violence within Canada" (Razack 2000: 135). Razack (2000) discusses the violence Canadian peacekeepers inflicted in Somalia during peacekeeping activities in 1992. She explains that the perception of Canadians allowed the belief that "[i]f Canada failed in Somalia, it is because of its national naivete coupled with its historical desire to do good. Canada did not fail because Canadians are violent, racist, or both" (Razack 2000: 154). In this situation imagined assumptions of Canadian identity and specifically Canadians as peacekeepers in the international system explained away the violence perpetrated by Canadian peacekeepers in Somalia.

In the discussion of the 'safe third country' agreement I am able to make a similar argument. Razack discusses the Canadian national identity of innocence and the desire to 'do good' which is a common perception with regards to the acceptance of refugees. For example, many Canadians as well as the Canadian Government suggest that Canada's

multicultural system demonstrates the accepting nature of Canadians. Manning explains that “[a]t the basis of the concept of ‘national identity’ lies the idea that Canada (as long as we occlude the native presence) is a ‘nation of immigrants’” (Manning 2003: 61). The fact that there exists a Heritage minister and a Multiculturalism Act that describes “multiculturalism [as] an ethic of Canadian society” (Canadian Heritage: Multiculturalism n.d.)⁷ suggests that Canadians perceive themselves to be accepting of people from other cultures including refugees. Both Edwards (1994) and Bissoondath (1994) question this perception and in so doing suggest its ‘imaginedness.’ Edwards explains that it is “the multicultural symbol [that] appeals, not a reality which might actually alter things” (Edwards 1994: 185). It is the perception that is what matters. Bissoondath (1994) describes this as the ‘cult of multiculturalism.’ In my discussion of the ‘safe third country’ agreement it is clear that it is important for the Canadian Government to maintain the image of accepting ‘others’ and ‘doing good’ through helping people who are fleeing persecution. Although it becomes clear through an analysis of this agreement that the intent of the Government is to reduce the number of asylum seekers that make it to Canada, the Government seeks to maintain the image of protecting ‘genuine refugees.’

2.5 ALTERNATE AND NEW DIRECTIONS

The analysis that I provide within the context of the ‘safe third country’ agreement is important in order to understand how ‘the refugee’ is constructed and homogenized within the Canadian asylum system. In Lippert’s discussion of the

⁷ For further information see http://www.pch.gc.ca/progs/multi/reports/ann2002-2003/message_e.cfm (accessed 2004/06/25).

governance of refugees he suggests that such analyses are important in order “to explore ... discursive and material elements to determine how they become assembled as a historically specific regime in our present. Doing so [reveals] crises, movements, and the refugee object/identity itself as less homogenous and inevitable, and more complex and historical, than previously assumed” (Lippert 1999: 320). The assumptions and categorization of ‘the refugee’ has to be questioned and analysed in order to understand the historical and political situations from which refugees come. Malkki (1996) also explains that the analysis of the dehistoricizing of ‘the refugee’ is relevant because it suggests that changes need to be made. She suggests that “a part (a crucial part) of the improvement is to be found in a radically ‘historicizing humanism’ that insists on acknowledging not only human suffering but also narrative authority, historical agency, and political memory” (Malkki 1996: 398). Through my analysis I contribute to the discussions that criticize the construction of ‘the refugee’ and suggest that refugees can act on their own behalf with their own authority and within their specific political, social and historical contexts. However, I am not suggesting that if people simply acknowledge the history and politics of ‘the refugee’ everything will be fine but, rather, am stressing the importance of analyzing and understanding the Canadian asylum system and the agreements that are developed between Canada and the U.S.

As a result of my analysis of the ‘safe third country’ agreement I suggest alternatives for Canadian refugee policy. Through demonstrating the problems with interdiction measures such as the ‘safe third country’ agreement, it becomes apparent that both the international and Canadian asylum policies are failing and, rather than clinging to them, I suggest that the Canadian Government avoid implementing the ‘safe third

country' agreement. Interdiction measures should be avoided and asylum seekers should be able to choose where they want to apply for asylum. As well, rather than continually trying to fit refugees into the categories that have been created for them, their "narrative authority, historical agency, and political memory" (Malkki 1996: 398) should be taken into consideration and the policies in Canada should reflect these differences.

Following my in-depth analysis of the 'safe third country' agreement within the context of the homogenization of 'the refugee,' these alternatives will illustrate an important new direction for Canadian refugee policy.

CHAPTER 3: The Opposition to the Agreement

In order to analyse the way in which ‘the refugee’ is categorized and constructed I will examine the ‘safe third country’ agreement made between Canada and the U.S.⁸

“The deal will mean that most refugee claimants who arrive in Canada, through the U.S., will be returned to the U.S. to make their claims there, and vice versa” (OCASI 2002).

Both the U.S. and Canadian Governments consider each other to be ‘safe countries’ for asylum claimants and this is the premise of the agreement. “The Agreement is part of the Smart Border Declaration’s 30-Point Action Plan agreed on by Canada and the United States” (CIC 2002a). This is a plan that was developed after 9/11 in attempts to increase border security. According to Citizenship and Immigration Canada (CIC) “the Safe Third Country Agreement will reduce the abuse of our respective asylum systems and improve management of our shared border. The agreement guarantees that every refugee claimant will have access to a refugee hearing in the first safe country they enter” (CIC 2002a). Both the U.S. and Canadian Governments want to avoid what they call ‘asylum-shopping’ where claimants pick and choose where they request asylum. These two Governments label the action of ‘asylum-shopping’ as an abuse on their asylum systems and in so doing construct ‘refugees’ and their actions as a ‘problem’ that needs fixing. As well, labeling ‘asylum shopping’ as abuse assumes that refugees are not free to make choices regarding their own lives. In chapter 2 I explained that the removal of this choice is paradoxical considering that choice is assumed to be a ‘freedom’ within liberal democracies.

⁸ To access the agreement see www.cic.gc.ca/english/policy/safe-third.html (accessed 2003/11/04).

Krikorian, an anti-immigration advocate in the U.S., submitted testimony to the U.S. House Representatives from the Center for Immigration Studies,⁹ explaining that the ‘safe third country’ agreement “sets an important precedent that will defend the integrity of our asylum system, improve our country’s ability to control immigration, and enhance national security” (Krikorian 2002). He suggests that people who are able “to pick and choose among lifeboats” are not necessarily in need of immediate asylum (Krikorian 2002). This is the main justification developed by both the U.S. and Canadian Governments for implementing this agreement. The logic here is that if an asylum seeker transits through what is considered to be a ‘safe country’ they will seek protection in the first place that they can ask for it if they are desperate enough. Krikorian suggests that when this failure to request asylum in a ‘safe country’ takes place, “the curbs on a nation’s sovereignty implicit in asylum can no longer be justified” (Krikorian 2002). He is suggesting that failing to require asylum seekers to apply for asylum in the first safe country that they arrive in allows people to abuse the asylum systems of Canada and the U.S. and are, therefore, a threat to both countries sovereignty. Thus, he suggests, a ‘safe third country’ agreement “is a logically and morally necessary part of any asylum system” (Krikorian 2002).

There is an explicit assumption in Krikorian’s remarks that ‘others’ are a potential threat to the sovereignty of nations. Refugees are ‘the other’ and because they are perceived to be different by Krikorian they threaten his image of what the nation should be and, thus, he suggests that ‘refugees’ should be considered as a security threat. For

⁹ “The Center for Immigration Studies is an independent, non-partisan, non-profit research organization ... devoted exclusively to research and policy analysis ... [of the impact of] immigration on the United States” (CIS n.d.). For further information see www.cis.org/aboutcis.html (accessed 2004/06/09).

example Lippert (1998, 1999) suggests that ‘refugees’ are constructed in international and state refugee systems as illiberal, immoral and uncivilized, whereas Western nations imagine themselves to be liberal, moral and civilized. This ‘us’ verses ‘them’ dichotomy categorizes ‘the refugee’ as ‘the other.’ Refugee claimants are treated here with suspicion and contempt for their potential abuse of asylum systems. There is no discussion that takes place here regarding the individual situations of asylum-seekers.

3.0 CANADIAN MOTIVES FOR SIGNING THE AGREEMENT

While both countries involved in this agreement have agreed to work with it in order to improve security and asylum systems, there are also specific reasons why each respective Government has decided to sign the agreement. Krikorian suggests that since the U.S. is easier to get to for asylum-seekers and Canada has a more accessible asylum¹⁰ system, more refugee claimants pass through the U.S on their way to Canada (Krikorian 2002). More international flights land in the U.S. and some Latin Americans use the U.S. as a land bridge to Canada. As a result, 35% of asylum claims (14,807) made in 2001, according to the Canadian Council for Refugees (CCR), were made at the Canadian border by people who had transited through the U.S. (LCHR 2002b: 1). If the Canadian Government is able to turn a number of these claimants back to the U.S. it will significantly reduce the number of asylum claims made in Canada and the Government perceives this as a benefit to the Canadian asylum system. Government officials, including then Deputy Prime Minister John Manley, insist that the agreement is set up to

¹⁰ NGOs and anti-immigration advocates suggest that Canada has a more accessible asylum system because the policies in Canada have fewer restrictions for gaining asylum, are more willing to accept gender-based claims, practice detention less frequently, and allow refugees to have access to social programs, welfare, and healthcare.

limit asylum shopping by returning claimants to the last safe country in which they arrived (CBC 2002). While the freedom to make choices is often highly valued, in this instance it is labeled as a form of abuse by ‘refugees’ committed on the Canadian asylum system. This labeling and construction allows the Government to suggest to the public that measures such as the ‘safe third country’ agreement protect the asylum system from abuse.

3.1 U.S. MOTIVES FOR SIGNING THE AGREEMENT

The U.S. Government will have to increase their caseload of asylum seekers as a result of the reduction in claims made in Canada if the agreement works the way it is intended to. However, Krikorian justifies this increase for a number of reasons. For example he explains that “this agreement is best seen as a first step in reaching similar deals with other safe countries transited by asylum seekers, notably the member states of the European Union” (Krikorian 2002). If the U.S. is able to sign agreements with these countries their caseload of asylum seekers will eventually be reduced. “Only by first entering into an agreement that would result in an increase, however small, in our own caseload can we credibly approach the Europeans with a proposal that would shift back to them some of the asylum flow they have been sending on to us” (Krikorian 2002). Thus, the U.S. Government believes that this agreement will eventually mean the reduction of claims made there and, as a result, fewer refugees¹¹ that they may have to accept.

Seeking ‘safe third country’ agreements with states in Western Europe, Krikorian

¹¹ In chapter 4 I will discuss the various reasons why governments such as Canada and the U.S. are motivated to reduce the numbers of refugee claims made in their respective countries within the context of their responses to the opposition that the NGOs expressed towards this agreement.

suggests, will reduce the flow of asylum-seekers to the U.S. significantly and “increase the proportion who [have] legitimate claims to asylum, and allow generally for a more efficient and expeditious asylum process for those remaining” (Krikorian 2002).

Krikorian’s comment that ‘legitimate’ claimants are more likely to apply for asylum in the U.S. if there are ‘safe country’ agreements with European states stems from his discussion that asylum shoppers, in their attempts to ‘pick and choose’ among lifeboats, are not desperate enough to be considered ‘genuine’ refugees and therefore will be turned back to other ‘safe countries.’

Krikorian discusses another potential benefit to the U.S. in this agreement through the reduction of terrorist groups that exist within Canada. He explains that “[a]ccording to the Canada Security Intelligence Service, more than 50 terrorist groups have established themselves in Canada, due partly to the laxity of that country’s asylum system” (Krikorian 2002). As a result, “its implementation would contribute to Canada’s own efforts to improve North American security” (Krikorian 2002). Here, refugees are associated with a potential terrorist threat and Krikorian believes that reducing the number of asylum claims made in Canada will reduce the number of terrorists that can gain access to the U.S. easily via Canada. However, there is no indication here that these terrorist groups have been set up by refugees coming to Canada. This appears to be an assumption made by Krikorian and he provides no discussion of people coming to Canada and the U.S. through means other than the refugee system and setting up terrorist groups.

In the development of this agreement refugees are not treated as having specific historical, political, and social situations. They are dealt with as a ‘problem’ that needs to

be fixed. Once the agreement was drafted by both Governments, they requested responses from NGOs. The following sections will discuss these responses and will also provide an example of the way in which humanitarian organizations construct ‘the refugee’ as a victim. I provide technical detail in these sections in order to develop my analysis in the following chapter.

3.2 OPPOSITION TO THIS AGREEMENT

Although both U.S. and Canadian officials appear to agree that the ‘safe third country’ agreement is beneficial, numerous NGOs¹² have expressed opposition to the new direction of these two countries’ asylum systems. Originally, a draft proposal was prepared by Canada and the U.S. early in 2002 and government officials from both countries encouraged responses and suggestions from NGOs and the international community. The majority of these responses were negative and most groups suggested that the agreement be abandoned. This opposition stems from fears that this agreement will have adverse consequences for people seeking refuge from persecution. Much of this opposition was expressed with regards to the differences between the Canadian and U.S. asylum systems, in particular the increased risk of detention for asylum seekers in the U.S. and the decreased likelihood of gender-based claims being accepted in the U.S.

The Lawyers Committee for Human Rights (LCHR), a U.S.-based NGO, suggests that the ‘safe third country’ agreement is “yet another troubling attempt to limit access to

¹² Throughout the rest of my thesis I will be referring to certain NGOs that were involved in the debate regarding the ‘safe third country’ agreement. These NGOs are the Canadian Council for Refugees (CCR), the Lawyers Committee for Human Rights (LCHR), Amnesty International, Kairos, and the Ontario Council of Agencies Serving Immigrants (OCASI). Unless referring to comments made by a specific NGO, I will heretofore be referring to this group as the NGOs.

asylum [and] is unnecessary, inefficient, and inhumane” (LCHR 2002b: 1). As was demonstrated in the discussions regarding the reasons why both Governments decided to create a draft of this agreement, limiting the number of asylum claims is a goal in the implementing of a ‘safe third country’ agreement into asylum systems. The LCHR suggests further that such an agreement will “directly undermine the interests of refugees and appear to be little more than a political concession to Canada” (LCHR 2002b: 3). That is, U.S. government officials are willing to accept the increased number of asylum claims made in their country in return for further Canadian cooperation on the ‘Smart Border’ plan (LCHR 2002a). “It appears that the U.S. is prepared to sacrifice the interests of refugees as a ‘bargaining chip’ in broader U.S.-Canada border discussions” (LCHR 2002a). While the LCHR appears to be advocating for the ‘interests of the refugee,’ this discussion, in and of itself, is an example of the way in which refugees are homogenized as having similar interests. NGOs that are opposing government policies often use the same problematic language that allows refugees to be homogenized. By suggesting that the ‘interests of refugees’ are a collective interest, the LCHR uses the same problematic language that homogenizes refugees. This is the same categorization that governments have used to construct ‘the refugee’ as a security threat.

There are a number of significant differences between asylum systems in the U.S. and Canada that are a cause for concern regarding the treatment of asylum seekers and whether or not they will receive fair treatment in both countries. The most apparent differences will be discussed in the following sections.

3.2.1 Detention

Some of the main differences between the asylum system in Canada and the U.S. include the practices of expedited removal, detention, and the one-year filing deadline within the U.S. These are practices that were implemented by the Clinton administration in 1996. The expedited removal process “gives INS [Immigration and Naturalization Service]¹³ inspectors at airports and borders – rather than trained immigration judges – the power to order the immediate deportation of a person who arrives in the U.S. without proper travel documents” (Acer 2002: 3). As a result, there is “‘mandatory detention’ of asylum seekers who are subject to the expedited process” (Acer 2002:3). Whereas, the one-year filing deadline “bars asylum claims that are not filed within one year of a refugee’s arrival” (Acer 2002: 3). These new laws have created significant barriers for people making asylum claims in the U.S. Canada has not implemented these strict guidelines and, therefore it is considered by the NGOs to be an easier process to apply for asylum there as opposed to the U.S.

Strong criticism has arisen with regards to these procedures for a number of reasons. For example, the LCHR has explained that “under expedited removal, INS inspectors at U.S. airports and borders are authorized to issue removal orders that can be finalized upon cursory review by a supervisor solely because a person does not have valid travel documents” (Acer 2002: 5). This is a procedure that removes decisions on asylum from immigration judges to that of immigration officers in airports and at the border. In fact, the expedited removal procedure “permits front-line immigration officials to render

¹³ In 2003 this service was transferred from the Department of Justice to the Department of Homeland Security and the asylum program is now referred to as the U.S. Citizenship and Immigration Services (Department of Homeland Security 2004).

an unreviewable decision that a person seeking admission is improperly documented or otherwise attempting to enter (or aid another's entry) through fraud or misrepresentation" (Macklin 2003: 13). Many officials at the border are not trained to deal with immigration matters but have ultimate say in the fate of an asylum seeker. The laws have also led the UNHCR to express "concern that the program violate[s] international legal standards regarding access to asylum, legal representation, the treatment of vulnerable and at-risk populations, and review by an independent body" (Macklin 2003: 14). This is largely the case because "refugee claimants without identity documents are mandatorily detained, often in jails with criminals, without interpretation or access to state-funded legal counsel" (Kairos 2003). The response of the UNHCR in this situation is worth examination because, while they are willing to critique some of the U.S. practices, they are unwilling to suggest that the U.S. asylum system on the whole does not meet international standards and is not a 'safe' country for asylum seekers.

Not only has the risk of detention increased through this procedure but the number of deported individuals has as well. "In fiscal year 1999, the INS deported 89,035 people under expedited removal" (Acer 2002: 5). On the following page I have included a chart detailing the number of people deported under expedited removal from 1997-2001 (see Figure 3.1). This has implications for Canada through the signing of the 'safe third country' agreement with regards to the *non-refoulement* clauses of the Convention. This clause is explained in article 31(1) of the 1951 Convention which "states that no State or party to the Convention shall expel or return a refugee 'in any manner whatsoever' to the frontiers of a country where the refugee's life or freedom

Figure 3.1:
Number of People Deported in the
U.S. Under Expedited Removal

Year	Number of People Deported
1997	23,242
1998	76,078
1999	89,129
2000	85,784
2001	69,730

(Source: USCIS 2001)

would be threatened” (Macklin 2003: 1). Since both Canada and the U.S. are parties to this Convention they are accountable to these guidelines. The preamble of the ‘safe third country’ agreement “acknowledges the specific duty of *non-refoulement* ... and reaffirms that the Agreement should [not] ... lead to indirect breaches of the principle of *refoulment*” (Macklin 2003: 2). However, the concern is that Canada will indirectly be involved in the *refoulement* of asylum seekers by sending them back to the U.S. system where this risk is significantly increased.

For example the LCHR explains that “[w]hile genuine asylum seekers are not supposed to be deported under expedited removal, the process is so hasty and lacking in procedural safeguards that mistakes can and do happen” (Acer 2002: 2). The fear is that through such ‘mistakes’ during the process of expedited removal, asylum seekers may be *refouled* and face persecution or imprisonment in their country of origin. “The United States has provided assurances that refugee claimants returned to the U.S. under the Agreement would not be subject to expedited removal procedure, though this undertaking is not formalized in the Agreement” (Macklin 2003: 14). Both Governments in the preamble of the agreement suggest that they are committed to their international obligations but their respective asylum systems are different and the NGOs argue that Canada should require more than verbal assurances from the U.S. in order to avoid the indirect involvement in the *refoulement* of asylum seekers.

Further complications arise for asylum-seekers and further risk for *refoulement* occurs in this situation with the implementation of the one-year filing deadline. The LCHR explain that “individuals who meet the Convention definition of a ‘refugee’ are sometimes unfairly denied asylum as a result of the U.S. asylum filing deadline” (LCHR

2002b: 7). “Since the filing deadline has been in effect,¹⁴ more than 13,000 asylum seekers have had their claims rejected by the INS based on the filing deadline” (Acer 2002: 14). As well, many asylum-seekers are not made aware of the deadlines and requirements that they have to follow. As a result, “the one-year filing deadline can, does and will arbitrarily disqualify persons who are in need of protection” (Macklin 2003: 15). This rule along with expedited removal and detention have made a significant impact on the U.S. asylum system and it is the complications that they create that cause NGOs to have concerns about the poor treatment of asylum-seekers and the risk of *refoulement*.

Detention is problematic for a number of reasons and is strongly criticized by NGOs. Asylum seekers are detained if they do not have, or have improper, documents. The LCHR suggest that since 2001 there has been increased instances where discriminatory policies with regards to the detention of asylum seekers from Arab or Muslim backgrounds (Acer 2002: 3). Depending on the place where the asylum seeker is detained, it may be difficult to gain access to legal counsel or organizations that help to prepare and present asylum claims (CCR 2002). This is particularly problematic for asylum seekers detained in remote locations.

The detention of under-aged asylum-seekers is widespread in the U.S. “[I]n the year 2001 it was reported some 4000 minor-aged children were in detention, some in juvenile criminal facilities” (Kairos 2003). Also, “[t]here is no limit on the length of time that an asylum seeker may be detained while her claim is pending” (Acer n.d.: 5). According to the NGOs, the detention of children is a serious concern because the U.S. fails to adhere to international and U.S. guidelines regarding the detention of children

¹⁴ This deadline went into effect in 1997.

(Macklin 2003: 8). As well, the NGOs suggest that it is unrealistic to think that all asylum seekers should be able to have proper identity requirements. However, despite the criticism towards it, the U.S. continues to enforce this practice. In fact, since 9/11 the numbers of detained asylum-seekers has increased (Acer n.d.: 3). There is no indication apparent that suggests that the U.S. Government will reverse this trend.

While Canada does detain some asylum-seekers, the percentage is significantly less than that of the U.S. For example, the CCR explain that between November 16, 2002 and January 23, 2003 “an average of 446 people were in immigration detention in Canada” (CCR 2003b). The criteria for detention as suggested by Citizenship and Immigration Canada are either “in cases where the individual is deemed to be a danger to the public, in cases where the individual is unlikely to appear for a hearing or removal, or in cases where it is necessary to establish a person’s identity” (CBSA 2004). Much of the opposition towards the ‘safe third country’ agreement is because the approval of this agreement means that more people will be forced to make asylum claims in the U.S. as opposed to Canada and, therefore, will be at a greater risk of encountering detention. The LCHR describe their experience with asylum seekers who were planning to make a claim in Canada, where they had family and friends, but in the process of transiting through the U.S. were forced to apply for asylum in the U.S. because they were detained (LCHR 2002b: 5). This argument implies that it is this treatment that asylum seekers may be trying to avoid when they attempt to apply for asylum in Canada as opposed to the U.S. “At the end of January 2003, the Canadian Government started directing refugee claimants at the border back to the U.S. to wait for an appointment, even in cases where it is known that the claimant will be jailed by the U.S. and therefore unable to return to

Canada to pursue their claim” (CCR 2003a). The NGOs suggest that the detention of asylum seekers goes against international regulations and Canada should be protecting people from this action but, rather, are aiding the process of detaining asylum seekers by sending them back to the U.S.

The reliance of the NGOs on the international refugee system can be problematized here because it is this system that has contributed to the construction of ‘the refugee.’ The UNHCR has been criticized for the way in which it has been influenced by Western donor states. However, this criticism has not resulted in much change in the definition of ‘the refugee’ or the system that refugees encounter. Foucault describes a similar situation with the prison system: “So successful has the prison system been, that after a century and a half of ‘failures,’ the prison still exists producing the same results and there is the greatest reluctance to dispense with it” (Foucault cited in Lippert 1999: 304). In the same manner, Lippert (1999: 304) explains that the ‘failure’ of international refugee organizations “led not to programs or reforms that foresaw giving up on the international refugee organization and related means as ways of dealing with international refugee crises, but instead to the invention of new programs.” Both the NGOs and the Governments involved in the debate regarding the ‘safe third country’ agreement rely on the UNHCR and international regulations to justify their respective arguments. The reliance on international systems continues throughout the NGOs expressed opposition towards the ‘safe third country’ agreement. In the following section I discuss this opposition with regards to gender-based claims.

3.2.2 Gender-Based Claims

Another significant impact that this agreement is suggested to have on asylum seekers is related to gender-based claims. The systems of both the U.S. and Canada differ in the way in which female asylum seekers are treated. This is particularly the case for women who are seeking asylum as a result of persecution based on their gender. “Around the world women often suffer persecution because they are female, and experience persecution differently because they are women” (Acer 2002: iii). According to the NGOs some examples of the persecution that women experience because of their gender are: female genital mutilation, forced abortions, honour killings, forced sterilization, and rape. The LCHR (2002b) and Kairos (2003) suggest that Canada tends to be more lenient towards these claims; however, these women may be at risk of having their asylum claim rejected if forced to make the claim in the U.S.

For example, a study done by “The Center for Gender and Refugee Studies”¹⁵ concluded that ‘any agreement requiring Canadian-bound asylum seekers to make their claims in the United States has the potential to lead to denials of protection and to the return of women asylum seekers to their persecutors, in violation of international law’” (LCHR 2002b: 7). This is a result of the differences between the U.S. and Canadian asylum system. Kairos, a Canadian ecumenical NGO, explains that “the treatment of gender-based persecution claims in the U.S. has not been consistent, and women who have been victims of violence are more likely to be recognized to be in need of protection in Canada than in the U.S.” (Kairos 2003). As a result, asylum seekers with gender-based claims will attempt to make their claim in Canada as opposed to the U.S. even if

¹⁵ The Center for Gender and Refugee Studies is at the University of California in the Hastings College of Law (LCHR 2002b: 7).

they arrive in the latter first. However, with the implementation of the ‘safe third country’ agreement they will be sent back to the U.S. before being able to make their claim in Canada and if their asylum claim is denied they face deportation.

The need for international guidelines with regard to gender-based claims has been a major issue for humanitarian organizations such as the LCHR in the past few decades and in the 1990s a number of states began to develop protocol for dealing with gender-based claims. In fact, Canada has played a significant role through developing new laws within their own asylum system with regard to gender-based claims. “In March 1993, Canada became the first country to produce a comprehensive set of guidelines on the inclusion of gender as a ‘social group’ under the 1951 Convention” (Valji and De La Hunt 1999: 5). While the U.S. did begin a similar process, they never implemented comprehensive structures, like those in Canada, in order to deal with these claims. The LCHR explain that “the ability of refugee women to gain asylum in the U.S. was significantly undermined by a 1996 immigration law called the ‘Illegal Immigration Reform and Immigrant Responsibility Act of 1996’” (Acer 2002: ii). This was the act that implemented the laws of expedited removal, detention and the one-year filing deadline.

These new laws have affected women particularly for a number of reasons. For example, “[m]any women, who come from cultures where women have few rights, are uncomfortable – or are unable, in some cases – to talk to men about their experiences” (Acer 2002: 4). This is problematic with the expedited removal system because claimants are expected to explain their reasons for requesting asylum to the immigration officers, usually men, right at the border. In fact, “ ‘The Expedited Removal Study’, a

University of California, Hastings College of Law report released in May of 2000, examined data provided by the U.S. Government and concluded that women were more frequently deported under expedited removal (rather than under regular immigration removal proceedings) than men” (Acer 2002: 6).

The LCHR suggests reasons for this discrepancy. They explain that some women are too afraid or suffer from Post-Traumatic Stress Disorder both of which make it difficult to explain to INS inspectors why they have fled (Acer 2002: 6). Women who have fled rape, forced abortions, forced sterilization, honour killings, and so on may feel uncomfortable disclosing the details of their persecution due to the intimate nature of the persecution. As well, “[a]sylum seekers have reported misconduct from INS inspectors including insults, taunting, and abusive language” (Acer 2002:7). This type of intimidation makes it increasingly difficult to discuss personal persecution. “Many asylum seekers have reported that officials at the airport have subjected them to strip-searches and invasive body cavity searches – procedures that can be particularly traumatizing for rape survivors” (Acer 2002: 7). A woman who has survived rape will not be likely to disclose this information to people at the border who have treated her in a similar fashion. Even if they are able to discuss their persecution many female asylum seekers have not had significant access to education and do not know that the persecution that they experienced as a result of their gender can help to qualify them for asylum (Acer 2002: 8). Women are not going to freely disclose information about their personal persecution unless they know that it will help them gain asylum.

The impact that the ‘safe third country’ agreement will have on women fleeing gender-based discrimination is described by the NGOs to be significant and requires

further examination after the agreement is implemented. “[T]he reality of refugee demographics worldwide show that 80% of today’s 27 million refugees and displaced persons are women or children” (Valji and De La Hunt 1999: 3). This number signifies a drastic shift in common perceptions of who is considered a refugee. Most asylum systems and international regulations do not reflect the significance of gender-based claims. The fact that Canada is more willing to accept these claims as compared to the U.S. is a concern, as expressed by the NGOs, when taking into consideration the ‘safe third country’ agreement where many women will be forced to make claims in the U.S. as opposed to Canada. The CCR explains that women “fleeing gender-related persecution stand to suffer on account of the agreement because, as the Canadian Government admits, U.S. treatment of these claims is less sympathetic than the Canadian” (CCR 2003a). The NGOs suggest that this also poses a conflict for Canada’s international obligations as a member of the UN because they cannot indirectly participate in the deportation of a person that is in need of protection under their own guidelines.

There is also particular concern for women refugees who are detained. Both prison-like uniforms and a lack of privacy while detained can be particularly difficult for women who come from cultures where modesty, dresses and/ or head-coverings are required (Acer 2002: 10-11). Female asylum seekers are often accompanied by children, thus, creating further problems with detention. Women are sometimes separated from children and in many cases the “INS has refused to provide some mothers with contact visas, even with young children” (Acer 2002: 12). This increases the likelihood of a woman abandoning her asylum claim and returning to the country in which she was

experiencing persecution. As well, “[s]ince the INS detains children, some women have also faced the impossible choice of either letting their children be detained or letting their children return to a country where their lives may be in danger” (Acer 2002: 13). There are clearly a number of reasons why women would choose to apply for asylum in Canada over the U.S. Canada is much more likely to accept gender-based claims and in Canada expedited removal and detention are rarely used. However, with the ‘safe third country’ agreement Canada will turn women away from the border and back to the U.S.

The focus of the NGOs concern on gender-based claims seems understandable but it is important to examine this emphasis within the context of my discussion. Malkki suggests that “the visual prominence of women and children as embodiments of refugeeness has to do not just with the fact that most refugees are women and children, but with the institutional, international expectation of a certain kind of *helplessness* as a refugee characteristic” (Malkki 1996: 388). In the debate regarding the ‘safe third country’ agreement, the NGOs emphasize the helplessness of women. Malkki explains that the “sentimentalized, composite figure [of women and children] – at once feminine and maternal, childlike and innocent – is an image that we use to cut across cultural and political difference, when our intent is to address the very heart of our humanity” (Malkki 1996: 388). These “helpless victims need protection, need someone to speak for them” (Malkki 1996: 388). As a result, pursuing the image of the plight of ‘the female refugee’ furthers their construction as speechless victims. I am not suggesting that refugee women should not be discussed or that gender-based claims should be ignored but, rather, am explaining that through using refugee women as the *main* example of refugees who will be hurt by this agreement, the NGOs are perpetuating the image of refugees as helpless.

3.2.3 Family and Friends Clause

Another concern expressed by the NGOs regarding the ‘safe third country’ agreement is the definition of a ‘family member’ in the agreement itself. Asylum seekers tend to apply for asylum in countries where they have family, friends, or a community that can help them with the transition into the new country. As a result, in the agreement there are exceptions laid out for asylum seekers who have family in either Canada or the U.S. These exceptions do, however, only apply to refugees who have legal status, which seems arbitrary (Macklin 2003: 7). If an asylum seeker has family that has attained secure legal status in one of the two countries, the agreement will not be applied to their case and they will be able to apply for asylum in the country where their family resides.

However, the concern that has been discussed regarding this exception is directed at the definition of who constitutes family and why close community contacts are not considered. The CCR suggest that “[w]hat constitutes ‘family’ should be broad enough to take account of emotional and/or economic dependency. Applicants may have other relevant links to either country, which should also be taken into consideration” (CCR 2002). These community links are considered to be beneficial to refugees. The LCHR explain that refugees “often turn to the few contacts that they may have, seeking refuge in those countries where they may have relatives or family friends who can help provide urgently needed support while they struggle to reclaim their lives and their safety and that of their children” (LCHR 2002b: 5). As well, it has been well detailed by refugee law experts that these contacts enhance a refugee’s chance of self-sufficiency and decrease economic involvement on the part of the state (LCHR 2002b: 6).

The exclusion of cousins, common law and same-sex partners as family members in the agreement, is a particular concern expressed the NGOs. The LCHR explain that

Refugee families are typically fragmented and torn-apart. More often, it is a less immediate relative, such as a cousin, or a long-time family friend or colleagues from the refugee's political party or religious group. This kind of support system is tremendously important for refugees we have worked with – not only for their physical survival (food and shelter) but also for their ability to re-establish themselves and to ultimately reunite their surviving families (LCHR 2002b: 5).

The notion that refugees need to re-establish themselves contributes to the assumption that a refugee is not a complete person because he/she is not established as belonging to any specific nation. This suggestion contributes to the perception of 'refugees as victims' that humanitarian organizations use to argue their views. However, the focus on the helplessness and speechlessness of 'the refugee' denies "the very particulars that make of people something other than anonymous bodies" (Malkki 1996: 389). Refugees are denied the ability to have authority in their own lives because they are categorized as speechless and helpless.

The LCHR suggest that limiting access to community contacts will be detrimental to refugees, making their transition from one country to the next difficult. Macklin, an immigration lawyer from the University of Toronto, supports this argument and suggests further that excluding cousins from the definition of a family member is "arbitrary, since nieces, nephews, aunts and uncles are listed as members" (Macklin 2003: 7). Further problematic, according to Macklin (2003), is the exclusion of common-law and same-sex partners. This exclusion appears to be counter to recent changes made to the Immigration and Refugee Protection Act that added these qualifications to the definition of family members (Macklin 2003: 7). As a result, steps have been made in one act relating to

immigrants and refugees to include more people in the definition of ‘family member’ while another agreement is created that supercedes these changes. The definition of ‘family’ in the ‘safe third country’ agreement has been described by the NGOs to be problematic in its exclusion of significant familial ties that may assist refugees through a difficult transition.

In her article, Macklin further discusses the definition of ‘family’ in the agreement with regard to a particular exemption that is provided within the agreement. This exemption is for unaccompanied minors and “is the only exception directly linked to a difference between the Canadian and U.S. immigration systems” (Macklin 2003: 7). The main reason for the exemption is related to the U.S. practice of detaining children for immigration-related purposes (Macklin 2003: 8). As was stated previously the U.S. frequently detains children for long periods of time while an asylum claim is pending. Amnesty International explains that unaccompanied children “arriving in the U.S. are not only detained but are often held in facilities that routinely fail to adhere to both international and U.S. standards governing the detention of children” (Amnesty International USA cited in Macklin 2003: 8). As a result, “Canada will permit the entry of unaccompanied minors who would otherwise be required to apply for asylum in the U.S.” (Macklin 2003: 8). In this case it appears the Canadian Government is willing to acknowledge the fact that for some asylum seekers the U.S. is not necessarily a safe place to be. However, where this exclusion becomes unusual is with regard to the definition of ‘family member’ and its exclusion of asylum seekers under the age of 18 (Macklin 2003: 8). That is, if an unaccompanied minor is allowed to apply for asylum in Canada even though they transited through the U.S., while their claim is pending their parents will not

be allowed to apply for asylum in Canada if they come through the U.S. because in their case the ‘safe third country’ agreement will be applied. “The agreement yields such perverse results because the Canadian drafters contemplated that families would try to thwart the Agreement by sending a child ahead as an unaccompanied minor, after which the child could function as the ‘anchor’ (Macklin 2003: 9). Even though some asylum seekers may do this, by applying the agreement to the parents of children in Canada whose claim is still pending, the agreement is contributing to the separation of parents and children. The dominant view of asylum seekers as attempting to abuse the asylum system pervades the agreements that are created.¹⁶

Also of particular relevance to this agreement is linguistic affiliation. The ‘safe third country’ agreement does not consider linguistic affiliation, including Francophones, in any of their exceptions (Macklin 2003: 9). It appears obvious that when entering a new country, refugees are at a significant advantage if they are able to speak an official language, in Canada’s case English or French; however, this agreement fails to recognize this relevance. When fleeing persecution and entering a new country and culture, any familiarity is helpful when applying for refugee status and, once accepted, making the transition into the new culture.

3.2.4 Will the Border be More Secure?

One of the main motivations behind the implementation of the ‘safe third country’ agreement is that of border security. Both Canada and the U.S. suggest that this agreement will improve security measures at the border by reducing the number of

¹⁶ This perception of ‘the refugee’ will be one of the main topics of discussion in chapter 4.

asylum seekers passing through. However, the NGOs have stated that there is a strong possibility that the border will become less secure. The CCR stated that the ‘safe third country’ agreement “will destroy the current orderly process at the border and likely create disorder. Similar agreements in Europe have led to new problems of smuggling” (CCR quoted in LCHR 2002b: 3-4). It is the problem of smuggling that has raised particular concerns. If people are desperate enough to leave their home country they likely will be willing to attempt to cross the Canadian-U.S. border illegally if they believe there is a better chance of gaining asylum there or if they have community support there. In an interview with CBC, Chris Owens, the director of Viva La Casa, a refugee shelter in Buffalo New York, explained that “we’re going to see on the U.S.-Canadian border a situation which we have seen for many years on the U.S.-Mexico border and that is hundreds of people crossing illegally” (CBC 2002). As well, this will also increase the suspicion with which refugees are often treated because they have used illegal measures to come to Canada.

3.2.5 Is the U.S. a ‘Safe Third Country?’

The underlying theme of this debate is the question of whether or not the U.S. is in fact a ‘safe third country’ and should Canada under the current circumstances contemplate entering such an agreement with the U.S. Amnesty International is very explicit when it explains that “U.S. asylum practices fail to adhere to international law and respect internationally agreed-upon procedures used in determining refugee status, and appropriately apply the Convention refugee definition” (Amnesty International cited in OCASI 2002). Kairos also suggests that the main problem with this agreement is that

“the U.S. is not a safe place for refugee claimants. Its asylum law and procedures fall short of international law and do not provide the procedural safeguards to ensure adequate protection” (Kairos 2003). Detention, particularly of children, expedited removal, few or no regulations to deal with gender-based claims, and the one-year filing deadline are all significant differences and reasons why the NGOs believe that the U.S. is not a ‘safe’ country for asylum seekers and suggest that Canada through this agreement is contributing to the unfair treatment of people who are in need of protection and fall under international regulations. Again, the dependence on international regulations by the NGOs to determine whether or not an asylum system is fair or flawed is problematic because it is this same international system that is used by both Governments to justify the ‘safe third country’ agreement.

It seems as though the NGOs, in the process of criticizing the U.S. asylum system, idealize the Canadian asylum system. However, Canada is criticized for being willing to send asylum seekers back to the U.S. Kairos states that “if U.S. immigration officials treat Canadian citizens of Middle Eastern and Muslim origin like criminals, how can Canada in good faith deem the U.S. to be a safe place for refugee claimants” (Kairos 2003). For example, Macklin explains that “Maher Arar, a Canadian citizen born in Syria, was detained for over a year and quite likely tortured in a Syrian jail through the indisputably illegal act of the United States government in sending him to Syria rather than allowing him to return to Canada” (Macklin 2003: 19). It is assumed by Macklin that asylum seekers from the same area will be treated the same, if not worse. Kairos (2003) suggests that Canadian officials are not blind to this treatment and should be able to recognize that asylum seekers will be at risk if turned back at the border.

3.3 THE ROLE OF THE UNHCR

The role of the UNHCR in the debate regarding the ‘safe third country’ agreement is an interesting point of analysis. When considering this role it is important to recognize the complications that plague the UNHCR’s criticism of the asylum systems of the U.S. Loescher explains that the states that provide the funding for the UNHCR “exercise a disproportionate amount of influence on the organization. For example, in 1999, the United States, Japan, and the European Union accounted for 94 per cent of all government contributions to the UNHCR” (Loescher 2001: 349-350). Figure 3.2 provides a breakdown of the money given by countries to international refugee aid agencies. Since the U.S. provides a large amount of the funds that go to the UNHCR, it becomes difficult for the UNHCR to interfere in the asylum system of the U.S. The UNHCR, rather than being critical of this new agreement, has simply set out guidelines that Canada and the U.S. should consider when implementing the agreement.

In 1979 the executive committee of the UNHCR developed guidelines that now relate to ‘safe third country’ agreements. Conclusion 15 states that “asylum should not be refused solely on the ground that it could be sought from another state” (UNHCR 1979). As well Conclusion 15 explains that the “intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account” (UNHCR 1979). However, the UNHCR has also suggested that ‘safe third country’ agreements can improve the efficiency of asylum systems. The argument that this agreement can improve the ‘efficiency’ contradicts previous statements made by the UNHCR that the choice of individual refugees should be taken into consideration.

Figure 3.2:
2002 Contributions to International Refugee Aid Agencies

Contributions Per Capita in U.S. Dollars		Contributions in Millions of U.S. Dollars	
Norway	\$12.89	United States	\$422.5
Luxembourg	10.94	European Commission	138.7
Denmark	7.71	Japan	124.1
Sweden	7.13	Netherlands	78.5
Netherlands	4.88	Australia	70.9
Australia	3.50	United Kingdom	64.1
Switzerland	3.22	Sweden	63.5
Finland	2.63	Norway	58.0
Ireland	2.25	Germany	43.5
United States	1.47	Denmark	41.6
United Kingdom	1.07	Canada	32.9
Belgium	1.04	Italy	26.1
Kuwait	1.02	Switzerland	23.6
Canada	0.99	France	13.9
Japan	0.97	Finland	13.6
Germany	0.53	Belgium	10.7
Italy	0.45	Ireland	8.5
New Zealand	0.36	Spain	6.1
France	0.23	Luxembourg	5.4
Austria	0.21	Saudi Arabia	2.5

(Source: UNHCR 2003: World Refugee Survey)

This seems to be an argument used by the UNHCR in order to avoid criticism of Western governments implementing this agreement.

One of the major concerns expressed by the UNHCR appears to be consistency between countries' asylum systems when implementing a 'safe third country' agreement. The CCR outlines the guidelines provided by the UNHCR explaining that it is "important to ensure that such arrangements do not result in refugees and asylum-seekers being subject to protection standards which are inconsistent with international norms" (CCR 2002). This argument suggests that if one country's asylum practices do not comply with international guidelines set out by the UNHCR whereas the other country's does, then it is the latter country's responsibility to refrain from exposing an asylum seeker to the other system. The UNHCR has suggested that both the U.S. and Canada are consistent with international norms with regards to their asylum systems.

However, the CCR suggests that the UNHCR should not consider the U.S. to be a country that complies with international norms. For example, CCR explains that the UNHCR has been critical of the detention practices that take place in the U.S. (CCR 2002). The CCR is suggesting that Canada, when returning asylum seekers to the U.S., will be contributing to an asylum system that does not comply with international norms and is therefore responsible for these actions. With regards to the U.S. and Canada the UNHCR has suggested that since both countries comply with international norms, as long as certain guidelines¹⁷ are followed then Canada and the U.S. will have the support of the UNHCR. On the other hand, the NGOs argue that if an asylum seeker, such as a woman with a gender-based claim, is denied access in the U.S. and deported when she could have

¹⁷ These guidelines and their role in the 'safe third country' agreement will be discussed in detail in chapter 4.

clearly gained refugee status in Canada, then both countries are going against international regulations with regards to *non-refoulement*.

3.4 CONCLUSIONS

In this chapter I have discussed the criticisms expressed by the NGOs with regards to the 'safe third country' agreement. The major concerns that these groups have towards the agreement have to do with significant differences between the Canadian and U.S. asylum systems as well as restrictions within the agreement that will make it increasingly difficult for asylum seekers to make the transition to the country of asylum.

The U.S. asylum system has been criticized by the international community and human rights organizations for its procedures of expedited removal, detention, the one-year filing deadline and restrictions on gender-based claims. These are all drastic differences when compared to the Canadian asylum system. The Canadian system, too, has its share of problems and has practiced detention but to a significantly lesser extent than the U.S. As a result of the differences between the two systems there is a fear that asylum seekers will be forced to apply for asylum in the U.S. first where their chances of gaining asylum are significantly reduced compared to their chances in Canada. The NGOs argue that the international track record of U.S. treatment of asylum seekers has been declining since increased security measures were implemented in 2001 and there have been instances where asylum seekers have been *refouled* as a result of regulations such as the one-year filing deadline. A number of NGOs have gone as far as to suggest that the U.S. is not a 'safe' country for asylum seekers and Canada should refrain from

sending asylum seekers back to the U.S. because they are at risk of detention and of being *refouled*.

Other fears regarding the agreement have included the narrow definition of family member and disregarding important community and/or linguistic affiliations. NGOs have strongly pushed the importance of any familial or community ties that a person may have in a country of asylum. This relationship is considered integral to the positive transition into a new country and results in a decreased reliance on state funding.

In this chapter I have also discussed the way in which humanitarian organizations categorize ‘the refugee’ as the victim and contribute to the homogenization of refugees. The NGOs involved in the debate regarding the ‘safe third country’ construct refugees as speechless and helpless. As a result it is difficult “for people in the refugee category to be approached as historical actors rather than simply as mute victims. It can strip from them the authority to give credible narrative evidence or testimony about their own history in politically and institutionally consequential forums” (Malkki 1996: 378). The NGOs contribute to the dehistoricizing and depoliticizing of ‘the refugee’ in their expressed opposition towards the ‘safe third country’ agreement and, thus, remove the ability of refugees to have authority over their own historical and political situations.

The debate that has come out of the NGO community has been very strong in its opposition of the agreement. However, the agreement was signed in December 2002. In the following chapter I will discuss the Canadian Government’s response to this opposition and the justification for signing the agreement. I will include interviews with key informants and articles from refugee consultants who attempt to explain the political influences that have resulted in this agreement.

CHAPTER 4: Response of the Canadian Government

While humanitarian organizations construct ‘the refugee’ as victim, the Canadian Government in their response to the NGOs and the continued development of the ‘safe third country’ agreement construct ‘the refugee’ as a security threat. In this chapter I discuss the responses of the Canadian Government to the opposition expressed by the NGOs and examine the way in which ‘the refugee’ is constructed in this response. The Canadian Government, in particular then Minister of Immigration, Denis Coderre, and Citizenship and Immigration Canada have acknowledged the discrepancies that were pointed out by NGOs in this debate. However, they have decided to sign the agreement despite the opposition. I will explore the justification that government officials provided for this move and tie this discussion into my broader theoretical analysis.

In this chapter I include excerpts from interviews that I conducted as a part of my research. I include details about the interviews and those people whom I interviewed in Appendix 1 and 2.

4.0 PUBLIC RESPONSE

In the previous chapter I discussed the opposition that was expressed with regards to this agreement and the Canadian officials developing the agreement were fully aware of this opposition. According to Citizenship and Immigration, “Canada listened to the comments of NGOs on the initial draft text of the Agreement. Canada and the United States agreed to include several suggestions made by NGOs in the final draft text of the Agreement” (CIC 2002b). Although abandonment of the agreement appeared to be the

strongest suggestion that was expressed by the NGOs, this possibility was not discussed by Canadian officials.

Many of the concerns of the NGOs are downplayed or diminished in the responses provided by the Government. One of the main issues raised by the NGOs as a concern about this agreement was the discrepancies between the Canadian and U.S. asylum systems. However, there was little to no acknowledgement of these discrepancies by the Canadian Government. The response with reference to this concern by the Canadian Government was that they “conducted [their] own careful review of the American asylum system before entering into the Agreement with the United States. It concluded that both Canada and the United States meet international refugee protection standards” (Safe Third Country Regulations 2003). While not stating outright that the U.S. and Canadian systems differ, the Canadian Government suggests that this is irrelevant because both systems are in-line with international standards and therefore when an asylum seeker is returned to the U.S. they are being sent back to a place that has an internationally reputable system. This response pays little attention to the concerns that the NGOs had with regards to the U.S. asylum system.

The role of the UNHCR in this situation is of particular interest. The U.S. is one of the main contributors to the UNHCR and this complicates the ability of the UNHCR to criticize the asylum system in the U.S. (Loescher 2001: 349, 350). The UNHCR is critical of expedited removal in the U.S. (Macklin 2003: 14), for example, but does not say outright that the asylum system in the U.S. does not meet international standards. As a result, the ‘safe third country’ agreement “is built on the foundation that both Canada and the United States maintain refugee protection programs that meet international

standards and both have mature legal systems that offer procedural safeguards” (Safe Third Country Regulations 2003). The concern with regards to the differences between the two asylum systems and the resulting discrepancies that asylum seekers will encounter is diminished in this response. The Canadian Government is able to disregard the concerns of the NGOs through the assumption that the UNHR is reputable in its analysis of the U.S. asylum system.

A similar argument can be made with regards to the non-*refoulement* article in the Convention and Canada’s potential risk of violating this international obligation as was suggested to be a major concern by members of the NGOs. In the preamble of the ‘safe third country’ agreement Canada and the U.S. state that they are “aware that sharing of responsibility must ensure in practice that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of non-*refoulement* are avoided” (CIC 2002b). It is not discussed in the agreement how this will be avoided other than reassurances that the situation will be monitored with the help of the UNHCR. However, Macklin suggests that if “the United States departs in important ways from the standards of procedural and substantive protection that Canada observes, then the agreement allows Canada to do indirectly what it cannot do directly, namely deny refugees the rights to which they are entitled according to international and domestic law” (Macklin 2003: 5).

A major concern expressed with regards to the increased risk of *refoulement* for asylum seekers was directed at the one-year filing deadline in the U.S. The concern here is that if an asylum seeker arrives at the border after having been in the U.S. for more than a year and requests asylum in Canada they will be turned back to the U.S. but their

claim will be denied there because of the filing deadline. This person may then be *refouled*. However, when this concern was expressed to Canadian officials the response was that the “U.S. requirement that claims must be made within one year of arrival is not inconsistent with the principle of non-refoulement” (Safe Third Country Regulations 2003). Although excluded from the asylum process, asylum seekers who fail to meet the one-year filing deadline will still fall under the protection from *refoulement* under the Convention (Safe Third Country Regulations 2003). As was discussed in the previous chapter, the concerns of the NGOs are that this has not always been the case. As well, this is a scenario wherein an asylum seeker is likely to gain access to the Canadian system but not in the U.S. because of the filing deadline. Both Governments have argued that asylum seekers who fall under the ‘safe third country’ agreement should have access to an asylum system but this is not the case in this situation.

Further differences between the U.S. and Canadian asylum systems include that of gender-based persecution. This has been a concern raised over and over again by asylum seeker advocates because of the differences between the Canadian and U.S. treatment of such cases. The Canadian Government’s response to this concern suggested that “[w]hile there may be some differences in approach on individual cases, it is Canada’s position that, at a policy level, the approaches are substantively similar. Acknowledging the ongoing debate, however, a review of these types of cases will form part of the review and monitoring process” (Safe Third Country Regulations 2003). This appears to be a very vague attempt to appease the concerns expressed by the NGOs while avoiding a direct criticism of the U.S. treatment of gender-based persecution. As well, then Minister of Immigration Denis Coderre stated that the “agreement doesn’t need to be

tweaked [to account for gender-based persecution] because he will continue to have the power to grant special exemptions” (The Canadian Press 2002: 6). How these exemptions will be granted, or for what cases, is not specified anywhere in the agreement. Rather, some cases, if deemed in the public interest by the Minister, will be exempt from the agreement (Safe Third Country Regulations 2003). It is unclear what position the present Minister of Immigration will take on this issue. While gender-based persecution was a major concern to the NGOs it does not appear to be so to the Canadian Government. There is a notable difference in the way in which these cases are decided between Canada and the U.S. with a better success rate in Canada. However, women who have encountered gender-based persecution and transit through the U.S. will be forced to apply there as opposed to Canada. No exception will apply to their case despite the likelihood that they have a decreased chance of being accepted in the U.S.

As well, concerns that were expressed with regards to the definition of a family member in the agreement were responded to concisely. The Canadian Government justified the definition and complemented its breadth stating that this definition is “consistent with Canada’s immigration regulations and go far beyond those found in other international agreements” (Safe Third Country Agreement 2003). Once again, international standards are used to justify the agreement. These are the same international regulations and standards that the NGOs used to criticize state asylum systems. Thus, it is possible to surmise that this system is ‘failing’ yet both sides of this debate continue to adhere to its so-called standards.

There is no consideration provided by the Canadian Government for expanding the definition of family to account for community ties. Also, there is no response from

the Government to the suggestion that community contacts are beneficial to the settlement of refugees and ease the reliance on government assistance. Linguistic affiliation is discussed but the Canadian Government suggests that “it would not be appropriate to take responsibility for refugee claimants solely on the basis of their language ability. Language skills are considerations that relate to the settlement of migrants, not the protection of refugees” (Safe Third Country Regulations 2003). It could also be argued, however, that familial ties are also a ‘settlement’ issue yet they are a category of exemption in the agreement.

There are international regulations and government institutions within Canada that deal with refugees. If a person does not fall under these regulations or an issue within the realm of the institution, there is no need to deal with the person or the issue. Definitions and boundaries allow the Canadian Government to explain away the concerns expressed by the NGOs with regards to the ‘safe third country’ agreement. The Canadian Government continually attempts to place refugees within the confines of the categories that it has created for them and if refugees or their issues do not fit within those confines they are considered outside the category of ‘refugee.’ The homogenizing of refugees through the asylum system does not allow for complex historical and political scenarios but, rather, insists on a standardized view of who a refugee is and what specifically are considered refugee issues.

Throughout the responses that the Canadian Government has provided to the NGOs who have expressed concern over the agreement, there are reassurances that there will be a monitoring process that will examine the effects that this agreement will have on both refugees and the asylum systems of Canada and the U.S. The UNHCR is also

expected to play a role in this monitoring. Continually emphasized by Canadian government officials throughout their response to the debate regarding the 'safe third country' agreement and in the agreement itself is that both the U.S. and Canada have asylum systems that are fair and in-line with international standards. As well, the support of the UNHCR for this agreement is referred to on numerous occasions.

For example, the Canadian Government explains that the UNHCR "has stated that responsibility-sharing agreements between states can, where appropriate safeguards are in place, enhance the international protection of refugees by ensuring the orderly handling of asylum applications" (Safe Third Country Regulations 2003). The safeguards suggested by the UNHCR, such as a broader definition of the family member, were implemented and, as a result, the Canadian Government suggests that "[t]he UNHCR supports the objectives of the Agreement and considers that both Canada and the United States meet their international obligations" (Safe Third Country Regulations 2003). The role of the UNHCR in this situation can be questioned. The ability of the UNHCR to criticize the asylum procedures in Canada and particularly the U.S. is complicated because it is an organization that is dependent on the funds it receives from states. However, the approval of the UNHCR is crucial in order for both Governments to demonstrate that this agreement is in accordance with international regulations.

As previous Canadian Chief of Missions to the UNHCR from 1999 to 2003, Judith Kumin is able to explain the role of the UNHCR with regards to this agreement. In an interview that I had with her she explains that "the UNHCR's role, it seems to me, is always either one of alibi or scapegoat and this is a really awkward position to be in. And certainly the Government was very keen to take whatever supportive statement came

out of the UNHCR especially from the headquarters in Geneva.” She continues to explain that “the official position of the UNHCR is indeed supportive of the agreement.” Kumin suggests that “the UNHCR headquarters in Geneva, the Director of Protection, certainly feel that the necessary safeguards are present in the current agreement in that this is a closed system which in principle cannot result in people being sent on to other countries without a substantive examination of their claim, and that both countries have systems which meet international standards.” The official position of the UNHCR is that agreements such as the ‘safe third country’ agreement, Kumin suggests, “can help to have a more rational allocation of responsibility for determining asylum claims as long as such agreements do not leave a lot of latitude for people to fall through the cracks.” The UNHCR ‘rationalizes’ the ‘safe third country’ agreement through the suggestion that it allows responsibility sharing between states rather than suggesting that it is a way for states to turn asylum seekers away at the border. As well, she explains that with regards to family linked cases the UNHCR feels that Canada and the U.S. “went beyond what we would have expected” in terms of their definition of ‘family member.’

However, Kumin explains that in her role with the UNHCR she did “warn of the problem [...] that once [this agreement] goes into effect, of course, people will not come to the border to apply for asylum if they know they do not qualify [for an exception].” She suggests that asylum seekers “would be foolish to do so because they would only be drawn formally to the attention of the United States.” As a result, she believes that asylum seekers will be more likely to “cross the border irregularly.” The warning that Kumin expressed with respect to the ‘safe third country’ agreement was that it would encourage, indirectly, smuggling across the border and encourage asylum seekers to

avoid the border and cross illegally. She labels this as ‘irregular movements’ and, thus, normalizes the migration through border controls. This encourages the perception that one form of movement is better than the other and that ‘those refugees’ who migrate ‘irregularly’ are not as deserving of asylum as those who move ‘regularly’ because they used illegal means of arriving in Canada. It is precisely this type of binary logic that constructs refugees outside of politics and history. When histories are revealed it is much more difficult to categorize in this way because ‘the refugee’ and his/her situation becomes more complex and less homogenous than previously assumed. As a result, it is important to problematize the language used in this discussion and understand the way in which it creates a dichotomous way of thinking that homogenizes ‘the refugee.’

4.1 MOVING AHEAD WITH THE AGREEMENT

Based on the responses from the Canadian Government towards the opposition that was expressed by the NGOs, it is increasingly obvious that the Canadian Government was determined to approve this agreement despite opposition. The reasons for this decision can be explained in numerous ways.

The most obvious of these reasons is that this agreement is an attempt to reduce the numbers of asylum seekers making claims in Canada and, thus, reducing costs and the backlog at the Immigration and Refugee Board. The Canadian Government explains that it is “expected that the Agreement will reduce backlogs and improve the efficiency of Canada’s refugee determination system, allowing Canada to better respond to the needs of refugees” (Safe Third Country Regulations 2003). The assumption here by the Government is that the ‘needs of refugees’ are homogenous. Even though they will be

accepting fewer claims as a result of this agreement, the Government continues to perpetuate the image of 'protecting refugees' and suggest that this is enabled through making the system more efficient. The image of Canada as 'doing good' (Razack 2000) is used by the Canadian Government in this instance to justify the development of the 'safe third country' agreement.

Recently, Canada has begun introducing interdiction procedures in order to reduce the number of asylum seekers that make it to Canada such as the imposition of visa requirements. The 'safe third country' agreement is an extension of these interdiction measures and this tendency demonstrates the desire on the part of the Government to reduce the number of asylum claims made in Canada. From the chart on the following page it can be seen that up to 2001 the number of asylum claims increased significantly followed by a dramatic drop in the number of claims made in 2002 (see Figure 4.1). The Canadian Government has been attempting to develop a 'safe country' agreement with the U.S. since the mid-1990s (Macklin 2003: 2). It has been the U.S. who has resisted its development up until the security measures that were introduced after the terrorist attacks on 9/11 (Macklin 2003: 18). After 9/11 border security became a heightened issue and both the U.S. and Canadian Government used this opportunity to increase interdiction measures. This also explains the drop in asylum claims made in Canada in 2002.

Figure 4.1: The Number of Asylum Claims Made in Canada 1998-2002

Year	Asylum Claims Filed in Canada
1998	24,937
1999	30,124
2000	36,534
2001	44,500
2002	33,400

(Source: USCR 2003, 2002, 2001, 2000, 1999)

In an interview I conducted with Michael Bossin, an immigration lawyer, he suggested that the reduction of the number of asylum seekers and the reduction of the cost of adjudicating claims is one of the main motivating forces behind the Canadian Government developing this agreement. Bossin believes that the Canadian Government “characterize[s] the system as one that is being abused and is overburdened, and that this will help alleviate that.” Through this characterization cutting the cost and time of asylum claims through measures such as the ‘safe third country’ agreement are politically sellable arguments. Bossin explains that this agreement is not the only way of reducing the number of asylum claims that Canada has introduced but, rather, “they have immigration control officers [...] stationed at airports around the world, in Europe in particular, and they question people who are boarding planes headed for Canada.” He explains that “Canada uses visa restrictions.” For example, if a person from Afghanistan is to visit or transit through Canada, he/she requires a visa (CIC: Visas 2004).¹⁸ Bossin suggests that “Canada has always been interested in adopting measures that will reduce the number of asylum seekers.”

Judith Kumin also suggests that this agreement is a part of a trend and that the reduction of the numbers of asylum claims made in Canada is the “single most important motivating factor” behind Canada developing this agreement. She believes that “certain sectors of the Canadian Government would like to see a radical [...] change in the approach to spontaneously arriving asylum seekers in Canada.” She suggests that these

¹⁸ For a complete list of countries and territories whose citizens require visas in order to visit or transit through Canada see www.cic.gc.ca/english/visit/visas.html (accessed 2004/07/01). Since 9/11 Canada has imposed visa restrictions on 10 more countries, increasing the total number of countries with visa requirements to 144 (Government of Canada: Privy Council Office: 2004).

sectors of people “would like to have a way of separating the place where protection is requested from the place where it is granted.” Kumin believes that “there is considerable thinking going on within Citizenship and Immigration about what such creative or radical approaches” will achieve this objective. However, she explains that what “the governments of the South say in return is, of course, this is a real ‘do as I say not as I do’ approach to refugee protection because the countries of the South [...] would directly be committing [*refoulement*] if they turn people back.” Kumin suggests here that while governments in the North continue to impose interdiction measures that restrict the number of asylum claims that they have to process, these same governments expect governments of the South to accept more claims because they are geographically closer to ‘refugee-producing’ areas and would risk *refouling* refugees if they imposed similar interdiction measures.

It can be fairly asked, how the North is proposing to share the burden of refugee protection with the South? Kumin thinks that the schemes that are being developed to reduce the numbers of asylum seekers cannot work but, nonetheless, “we are going to go through a long period where all sorts of trial balloons are going to be floated.” These schemes are tested in an attempt to replace the current system. She explains further that “no state has really been ready yet to invoke the denunciation clause of the refugee Convention [...] and say that they] no longer accept the premise of Article 33 [the *refoulement* article]. Nobody is quite willing to say that but what they all want to do is to find some way to get out of the responsibility to not *refoule* [refugees].” Countries in the European Union, North America and Australia are all trying to get out of this obligation through ‘responsibility sharing’ schemes. These governments, Kumin explains, “may

manage to shut off the ‘tap of asylum seekers,’ in fact, they probably will one way or the other.” Kumin’s metaphor of the ‘tap of asylum seekers,’ is similar to Malkki’s (1996) discussion of the ‘sea of humanity’ wherein refugees ‘flow’ from one nation to another as an anonymous group that is a part of the landscape. Such images used by humanitarian organizations inevitably perpetuate the image of ‘the refugee’ as an anonymous victim.

Kumin suggests that as a result of these interdiction measures “people [will simply go through] another channel.” This agreement will not in effect reduce the movement of people but will change the way in which this movement takes place. On the other hand, she suggests that “asylum seekers cost money and are visible [...whereas] an illegal immigrant [...] is invisible and so from the point of view of public opinion maybe one is preferred over the other.”

In interviews with Ruptash, Nielsen, and Davis¹⁹ the public perception towards asylum seekers was discussed. Ruptash described “refugees [as] a ‘hot-button’ issue in the Canadian political scenario.” He explains that the Government “is always subjected to the ebb and flow of public opinion around refugees. Over the past few years the [...] public perception is that there are too many refugees arriving and they are taking advantage of the [Canadian asylum] system” (e.g., Gallagher 2003). Ruptash suggests that “the Canadian Government is not immune to public opinion whether it is right or wrong, informed or uninformed.” Ruptash is suggesting here that the Government has to respond to the public perception towards refugees and the ‘safe third country’ agreement is one way of doing this.

¹⁹ All three of these people whom I interviewed chose to use pseudonyms as opposed to their real names.

Nielsen²⁰ also suggests that there is a constituency in Canada that believe the asylum system is wrought and the Government has to be seen as doing something to help alleviate the stresses on this system. He explains that the Government has to “read the political wind” and it is that simple. In fact, Nielsen suggests that there is a “double opposing idea” about refugees in Canada: “we love them but we hate them.” Here Nielsen is suggesting that Canada embraces the image of being an accepting country for asylum seekers but when they are perceived to be burdens on the asylum system there emerges a desire to reduce these numbers. As Edwards (1994: 185) explains, it is the symbol of being a multicultural country that is considered a part of Canadian identity but this is merely an image. On the one hand, the image of Canada is to ‘do good’ and accept people who need protection, on the other, the fear of ‘the refugee’ as a security threat and a person who comes from an illiberal and immoral place creates a backlash against ‘refugees.’ In both cases ‘the refugee’ is characterized as ‘the other’ and perpetuates the dichotomous ‘us’ verses ‘them’ mentality that allows refugees to be homogenized.

Davis explains further that there is no political will that cares about the ‘safe third country’ agreement and, thus, it is not about genuine refugees but is simply about reducing numbers. She suggests that this agreement is not about international obligations and not about protection. Davis is opposing the perception and image that Canada works exclusively to protect ‘genuine’ refugees and meet their international obligations as a member of the UNHCR. Rather she agrees with other refugee advocates mentioned earlier in this discussion who suggest that Canada is simply attempting to reduce the number of asylum seekers that actually make it to Canada.

²⁰ Nielsen and Davis chose not to have their interviews tape-recorded and, therefore, I have paraphrased their comments.

In addition to reducing numbers, a common reason used by government officials to explain the need for this agreement has been to create a more orderly flow at the border and to eliminate asylum shopping. “As [then] Deputy Prime Minister John Manley declared in June 2002, after initiating the formal process leading to the agreement: ‘It’s not a matter of shopping for the country that you want, it’s a matter of escaping the oppression that you face’” (Macklin 2003: 6). This statement is addressing the belief that if one is desperate enough, he/she will apply for asylum at the first possible opportunity. Through this frame of mind, asylum shopping is considered an abuse of asylum systems and the Canadian Government suggests that the ‘safe third country’ agreement will “reduce the misuse of our asylum systems and will free up resources that we could use to address other security concerns” (CIC 2003). Basok suggests that in order to “silence its critics, the government acquiesces in the myth that refugees abuse the Canadian system and drain its resources” (Basok 1996: 149). Through constructing refugees as people who abuse the system the Government is able to justify implementing interdiction measures such as the ‘safe third country’ agreement.

The assumption that refugees should not be able to choose where they will apply for asylum removes the ability of refugees to make choices regarding their own lives. Lippert explains that in a so-called advanced liberal government a “liberal subject must have the capacity for choice and it is precisely this feature that refugees are assumed to lack” (Lippert 1998: 381). As a result, refugees are categorized as illiberal because of their inability to exercise choice over their own lives. “The liberal subject contrasts starkly with the refugee, the former being the stable Western figure of reason and normality, the latter an entity of non-reason and abnormality that flees illiberal

government by migrating to the West” (Lippert 1998: 382). The Canadian Government’s suggestion that asylum seekers should not engage in ‘asylum shopping,’ stems from this dichotomous assumption that refugees do not have the capability to make choices and, if they do, they are not conforming to the way in which refugees are expected to act. In this case refugees should act as desperate people who are willing to take refuge in the first ‘safe’ country they arrive in as opposed to making the decision as to where they should claim asylum.

The ‘safe third country’ agreement has also been presented as a measure that will improve the security of the Canada-U.S. border by both Governments involved. This is considered one of the main reasons behind the U.S. support of the agreement. Prior to 9/11, the U.S. was not willing to sign a ‘safe third country’ agreement with Canada. Macklin explains that “Canada has insisted on the Agreement as a *quid pro quo* for various concessions it has made to the U.S. on matters of state sovereignty and border control under the 30 point border plan formulated after 9/11” (Macklin 2003: 18). The 30-point “action plan has four pillars: the secure flow of people; the secure flow of goods; secure infrastructure; and information sharing” (Langlois 2002). One of the 30 points is the ‘safe third country’ agreement and this agreement is suggested to aid in the ‘secure flow’ of people. Again, the image of refugees as a ‘sea of humanity’ (as discussed by Malkki 1996) is used constructing an image of a ‘sea of helpless people’ who are at the whim of the ‘flow’ of the water. In this metaphor refugees are undifferentiated from one another and the focus of the Government becomes how to control the direction that these ‘flowing’ refugees will take.

“In an open letter published in various Canadian newspapers, Coderre alludes to the Safe Third Agreement as one of several measures ‘taken under the Canada-U.S. Smart Border Action Plan [to] help ensure the safety of Canadians in the fight against terrorism that this department is pursuing in collaboration with Canadian and U.S. partners’” (Macklin 2003: 17). Both Canada and the U.S. have used increasing security measures at the border as a reason for developing this agreement. However, it seems as though the U.S. was less interested in the ‘safe third country’ agreement and more interested in other aspects of the ‘smart border’ plan. For example, Michael Bossin, in his interview, suggests that this agreement “is a part of a package deal with the United States [and] the so-called smart border policy or plan.” In fact, Bossin suggests that “there is nothing really in this for the United States.” Besides the concessions that Canada has made with regards to the smart border plan, the U.S. has little to gain with the implementation of this agreement. Judith Kumin explains further that “for the U.S., of course, there is no direct benefit from the agreement. On the contrary, if it works the way it is intended to work the U.S. would have a significantly larger number of claims to determine.” However, she explains that “those disadvantages were outweighed by achieving other objectives that the Americans wanted to achieve as part of the whole smart border accord.” As well, Davis explains that while the U.S. agreed to this agreement as a concession since Canada committed to a number of other border changes that are involved in the 30-point border plan, Canada conceded to the U.S. from a security perspective through this agreement by suggesting that it is Canada’s border that is a security threat.

'The refugee' has clearly been associated with security by both the Canadian and U.S. Governments in the development of this agreement. Refugees as a homogenous group are considered within the context of security and are constructed as a security threat that needs to be dealt with. Through constructing 'the refugee' as a security threat the Canadian Government is able to justify imposing restrictions on the number of asylum seekers making claims in Canada without affecting the image of Canada as a 'do good' nation (as discussed by Razack 2000) that protects people who are in need. Manning explains that "the obsession with 'Canadian identity' perpetuates a violent discourse of national exclusion that is masked in the myth of Canadians as a harmless, open, and generous people" (Manning 2003: xvii). With regards to the 'safe third country' agreement, the Government maintains this image of Canada while it proceeds to introduce an interdiction measure that excludes asylum seekers from coming to Canada.

Nielsen, in his interview, suggests that the provision in Article 9, which states that "[b]oth parties, upon request, endeavor to assist the other in the resettlement of persons determined to require protection in appropriate circumstances" (CIC 2002b), is a side deal that is not open to the public. Kumin describes this article as "the *quid pro quo* of the *quid pro quo*." That is, the U.S. was willing to go along with this agreement in response to Canada agreeing to the 'smart border' accord and in response the U.S. is requesting that Canada consider accepting refugees that the U.S. does not want, in particular people who are taken to Guantanamo Bay.²¹ If some of these people who are intercepted at sea are determined to be refugees by the U.S., Kumin explains that the U.S.

²¹ Many asylum seekers, mostly from Cuba and Haiti, are intercepted at sea by U.S. authorities and are taken to Guantanamo Bay, a U.S. detention centre in Cuba (Macklin 2003: 4).

“do[es] not want to award [them] by having them sent to the U.S. even though [their] immigration service has found them to be refugees under [their] law and so [... they are essentially] ‘farmed out’.” According to Kumin the U.S. “can propose these cases to Canada [...] but Canada has made a kind of commitment to consider resettling up to 200 of them [mostly Cubans and Haitians].” Adding Canada to the list of countries that are willing to accept refugees that the U.S. has determined to be refugees but does not want to bring the U.S., provides another place for the U.S. to deflect people that they do not want.

Davis questions this action, asking how does this reflect on Canadian sovereignty and what happened to the Canadian commitment to protect ‘genuine’ refugees? If Canada’s commitment is to protect ‘genuine refugees’ then why are they willing to accept people that the U.S. does not want? It is clear that, while constructing themselves as a ‘protector of refugees,’ the Canadian Government is at the same time reducing the number of people they are willing to ‘protect.’ Just as in Razack’s discussion wherein she suggests that “Canadian naivete and passivity as a nation constitute a narrative of innocence that blocks accountability for racist violence in Somalia” (Razack 2000: 135), so too does the image of Canadian innocence and desire to ‘do good’ block accountability for interdiction measures that are aimed at keeping refugees out of Canada.

4.2 ‘THE REFUGEE’ CONSTRUCTED THROUGH THE AGREEMENT

The rationalization that the Government has provided for the NGOs concerned about the ‘safe third country’ agreement as well as to the public can be further analysed

in the context of the broader theoretical discussion of ‘refugees’ and how they have been constructed through this debate and the development of this agreement.

When discussing the desire on the part of the Canadian Government to reduce the number of asylum seekers it is important to understand the unique situation in which Canada falls. That is, sharing a border with only one country that generally does not produce a significant number of refugees, Canada is able to impose successful interdiction methods. This is simply a result of geography and other countries particularly in the South are unable to impose such methods because of their proximity to countries from which large numbers of refugees come. If countries in the North continue to increase the number of interdiction policies, where will the responsibility to provide asylum fall?

From the table on the following page it can be seen that Canada already carries a relatively low caseload of asylum seekers when compared to those countries that are geographically close to ‘refugee-producing’ countries (see Figure 4.2). The total number of refugees to Canada in 2001 was 27, 894. When compared to countries close to ‘refugee-producing’ areas, this number is quite small. Countries such as Iran, Pakistan, and Jordan will only have more asylum seekers if Canada and other countries in the North continue to reduce the number of asylum seekers they are willing to accept. However, the Canadian Government continues to pursue an image of accepting people who are in need of protection. Perpetuating this image is essential in order to continue the construction of Canada as a ‘do good’ nation. For example, in a news release Joe Fontana, chair of the Standing Committee on Citizenship and Immigration, stated that there should be assurances in the agreement “that Canadian values will be respected and

Figure 4.2:
Comparing Canada to Other Areas of the World

Statistics for Canada:	Statistics from around the world:
Total number of refugees and immigrants to Canada in 2001: 222,411	Number of refugees and asylum seekers worldwide: 14,921,000
Total number of refugees to Canada in 2001: 27,894	Number of refugees and asylum seekers in:
Percentage of refugees to total immigration in 2001: 12.5%	Iran: 2,558,000
Number of refugees resettled to Canada in 2001: 12,263	Pakistan: 2,018,000
Number of refugees landed in Canada in 2001: 15, 631	Jordan: 1,643,900

(Source: CCR 2003b)

that those seeking refugee status will have meaningful access to one of the two asylum systems” (Safe Third Country Regulations: News Release 2002). The ‘Canadian values’ discussed in this statement are suggested to be the continued protection of ‘refugees in need.’ As a result in the Government response to the recommendations made by the Standing Committee they explain that “[t]he primary purpose of the Agreement is to reinforce refugee protection by establishing rules for the sharing of responsibility for hearing refugee claims between Canada and the United States” (Safe Third Country Regulations: 2003). Through suggesting that the Government’s first concern is the continued protection of refugees they appease the Canadian image of ‘doing good’ while continuing to implement measures that are aimed at reducing the number of asylum claims made in Canada. The “narrative of innocence” (Razack 2000:135) removes accountability because the assumption is that Canadians will ‘do good’ and continue to ‘protect’ refugees. This allows the Canadian Government to continue to attempt to reduce the number of asylum claims that will increase the number of claims made in the South.

The reduction of asylum claims made in Canada appears to be the main motivating force behind the Canadian Government signing the agreement but this motivation goes against the image that the Government is attempting to portray. As a result, the Government has suggested that the agreement will also reduce abuse of the asylum system and improve security. Constructing refugees as a security issue allows the Government to pursue the image that Canada is a country that protects people who are fleeing persecution while at the same time it works to reduce the number of asylum claims made in Canada.

The suggestion that the 'safe third country' agreement will eliminate asylum shopping demonstrates the homogenization of asylum seekers that will abuse the Canadian asylum system. This argument suggests that it is not an asylum seeker's right to choose where he/she can apply for asylum. Macklin explains that "'forum shopping' connotes the idea that choosing the country of asylum is essentially an opportunistic abuse of the international regime of refugee protection" (Macklin 2003: 6). However, where an asylum seeker chooses to apply for refuge can depend on a number of factors. For example, asylum seekers may apply where they have a "greater likelihood of acceptance, presence of kin or friends, language or cultural affinity, and better treatment pending the determination of status (physical liberty, access to legal aid, work permits, social services, language training, health care)" (Macklin 2003: 6). According to Macklin, these deciding factors do not suggest abuse of asylum systems but rather are understandable reasons why an asylum seeker would choose to place a claim in a particular country.

Whether or not an asylum seeker has the right to choose where he/she can apply for asylum is not clear according to international regulations (as discussed in Vedsted-Hansen 1999). "In short, there is neither a strict 'direct flight' requirement, nor any legally protected right of individual choice" (Vedsted-Hansen 1999: 287). However, viewing asylum seekers as so desperate that they should not be making these decisions encourages the construction of 'the refugee' as speechless and helpless to make their own choices. As a result of the persecution that forces asylum seekers to flee their country, they are categorized as people without the ability to make choices. This is a convenient

way of treating asylum seekers because it allows the receiving countries to determine what to do with asylum seekers rather than allowing them to make their own choices.

Governments such as the U.S. and Canada can argue against 'asylum shopping' because it works in their favor geographically. If asylum seekers apply for refuge in the first place they are able to it is not likely to be in Canada. As well, suggesting that asylum seekers are attempting to abuse the asylum system through 'asylum shopping' encourages the construction of 'the refugee' as a person who should be treated with suspicion. Labeling 'asylum shopping' as abuse constructs refugees as people who are willing to abuse the asylum system of Canada and, thus, are not 'genuine refugees' and their intentions should be treated suspiciously.

As well, this suspicious treatment is furthered through the labeling of refugees as potential security threats. The 'safe third country' agreement has been touted by the Canadian Government to be a security measure that will protect Canadians from potential terrorist threats. Canadian anti-immigration critic James Bissett explains that "Canada is a favourite target for asylum seekers. We are considered a soft target. We have one of the most generous asylum systems in the world" (Bissett 2000). This 'generosity' is believed, by Bissett, to lead to abuse of the asylum system by asylum seekers and, as a result, is a security concern.

Numerous security measures have been developed between Canada and the U.S. since 9/11. For example in the new Immigration and Refugee Protection Act, developed after 9/11, there are "harsher penalties for people using or selling forged or false documents" (CIC 2003). As well, "Canada and the United States will be deploying new immigration officers overseas to deal with document fraud, liaison with airlines and local

authorities, and work with other countries to interrupt the flow of illegal migrants to North America” (CIC 2003). These measures are justified by the Government because they are imposed on ‘illegal migrants.’ Asylum seekers that make it to Canada have often used what is deemed to be illegal methods of arriving in Canada. By labeling these acts as illegal the Government continues to construct ‘the refugee’ as a suspicious person that has engaged in illegal activities. Along with these security measures has been the development of the ‘safe third country’ agreement. The security measures developed after 9/11 by Citizenship and Immigration have been largely targeted at asylum seekers and/or refugees in general.

Both Canada and the U.S. have changed the procedures of their asylum systems and these changes have been said to increase security. For example, in the U.S., the terrorist attacks of 9/11 “provided a pretext for the extension of expedited removal to aliens arriving by sea, and the automatic detention of Haitian asylum seekers” (Macklin 2003: 14). As well, in this same time period and particularly in the last few months “Canada has begun detaining more refugee claimants who arrive without documentation allegedly in furtherance of Canada’s security agenda” (Macklin 2003: 17). Figure 4.3 shows the increased number of asylum seekers who have been detained since 9/11. While the practice of detention had been used before, the political motivation to increase security has provided the justification to proceed with detaining a growing number of asylum seekers in Canada.

Figure 4.3:
The Number of Refugee Claimants Detained in Canada

Fiscal Year	Number of Persons Detained in Canada
1996-1997	6,401
1997-1998	6,650
1998-1999	7,968
1999-2000	8,658
2000-2001	9,148
2002-2003	11,500

(Source CCR n.d. and CBSA 2004)²²

²² I was unable to access information for the year 2001-2002.

The association that has been made by the Governments of Canada and the U.S. linking asylum seekers to terrorist threats is considered by refugee advocates to be unfair and unjustifiable. It is believed that asylum seekers have become a scapegoat in the 'war on terrorism.' For example Macklin explains that "[a]lthough none of the perpetrators of 9/11 entered the U.S. as asylum seekers, and none had even been to Canada, the claim that Canada's asylum system is somehow particularly vulnerable to abuse by terrorists has acquired the status of conventional wisdom" (Macklin 2003: 17). As well the Canadian Council for Refugees suggest that "[s]ince September 11, a totally ungrounded linkage has been made between refugees and terrorism, gaining the status of an urban myth" (CCR 2003a).

It does not appear to be the case that the refugee advocates whom I interviewed would deny that there have been breaches of security through the asylum system but the suggestion is that these numbers are so minor that they do not warrant the drastic changes that are being made to the asylum system. As well, developments such as the 'safe third country' agreement do not target the people that Canada and the U.S. are concerned about. People who are considered security threats are often well financed and arrive legally. In fact, in the interviews I conducted there was consistent sentiment that this agreement will hinder security efforts because people will stop coming to the border directly and will, in turn, encourage smuggling.

For example, Clarel Midouin, in his interview, explains that "the people [Canada and the U.S.] are afraid of [...] have the means to come without claiming refugee [status]." The very people that both Governments are attempting to keep out will come despite measures such as the 'safe third country' agreement because they will have the

means. As well, they can avoid the refugee process and use alternate methods of arriving in Canada or the U.S. It can be assumed from this statement that the 'safe third country' agreement is targeting the wrong people and does not enhance security. Ruptash also suggests that if "there is a desire for people to come into the country, the chances of people using alternative methods to skirt around th[ese] provisions are bound to increase." People will attempt to smuggle into Canada in order to avoid having the 'safe third country' apply to their situation. If the Canadian Government considers 'refugees' to be a security threat, should it not be the case that the possibility of increased smuggling would create more cause for concern?

In the interviews I conducted, people disputed the suggestion made by the Government that this agreement will make Canada more secure. Bossin "does not see any evidence that refugee claimants pose a risk to the security of Canada and if they do there are lots of safe-guards in place to deal with that." Bossin states that ever "since he has been practicing [as a refugee advocate, the Government] has tried to limit the number of refugee claimants in Canada and almost nothing has worked. 'By hook or by crook' people still end up coming here." He explains that "people continue to take huge risks to get to countries of asylum, [for example] they board rickety old boats." Bossin argues that "if people have it in their mind that they want to get somewhere they will take huge risks to do so. I have met countless people who spend all of their savings to get to Canada, have used every resource available to get here and I do not see that this agreement is going to stop someone who is that determined."

Davis suggests that this agreement will actually increase insecurity for refugees because of human smuggling and debt bondage. That is, if people do not have money to

pay smugglers they are going to be forced to pay these people back somehow. Davis explains that this use of smugglers will reflect poorly on refugees because people in Canada will think that if they are 'true refugees' they would not have to use illegal methods to get to Canada.

Judith Kumin explains that it is possible to argue that "too many people are applying for asylum who are not bona-fide asylum seekers [and] they are only doing it to take advantage of special benefits, employment authorization and so forth." However, she suggests that "in a way it might be better to have that happening because at least [then] you know who the people are and where they are and what they are up to [rather] than simply to have people staying irregularly." She explains that this "is a trade-off that policy-makers have to think about." When Kumin expressed these concerns to both Canadian and U.S. officials the response she received "was that 'we will have better border controls.'" The Governments of both countries explain away concerns regarding increased smuggling by suggesting that they will have more secure borders to prevent this action. However, she questions the ability to gain this control because "smuggling enterprises are very well-organized." As well, tight border controls between the U.S. and Mexico, for example, have had limited impact on preventing smuggling (CBC 2002). Kumin explains that "the perception and the way you can sell it to the public is that 'we are getting tough on abuse, we are cracking down.'" On the other hand, she believes that "the agreement [...] has absolutely nothing to do with security because there are too many other ways to enter." She explains that if

both [Canadian and U.S.] authorities know who these people are it does not matter whether they enter the asylum process or not, they should take action. But if they do enter the asylum process in both countries there are pretty rigorous security screenings that take place at the front end of the asylum process so these

people should be found and weeded out. The real problem that nobody wants to articulate is that we do not know who the risks are, we do not know where they are, and there is no particular reason to think that they are among the asylum seeking population more than amongst the student population, or the tourist population, or the business visa population, or anything else. As a lot of commentators have pointed out, asylum seekers are actually subjected to much more scrutiny once they apply than many other categories of entering which would actually argue, again, in favor of a system that encourages people to present themselves rather than in favor of a system that encourages people to stay underground.

Increasing security measures has been a strong argument used by the Government to suggest that 'safe country' agreements are necessary. There are a number of problems with the Government's argument that the 'safe third country' agreement will improve security which indicates that this is simply an argument used to avoid suggesting that the Canadian Government wants to reduce the number of asylum seekers that make it to Canada. Admitting that this is the main motivating force behind this agreement would go against the 'do good' image that the Government wants to maintain.

4.3 CONCLUSIONS

Through the debate that has taken place regarding the 'safe third country' agreement and the responses of the Government towards this debate the homogenization of 'the refugee' is evident. This homogenization of 'the refugee' is of particular relevance when analyzing the reasons why the Canadian Government suggests this agreement is necessary. Whether preventing abuse of the asylum system, reducing the cost of the system, or improving the security of the borders, it is clear that refugees are homogenized. Refugees as a group are constructed by the Canadian Government as people who are out of the ordinary and a problem that needs to be fixed. Refugees, in this context, are treated suspiciously because they are considered to be illiberal and

immoral and because of these traits pose a security threat to Canada. Refugees are stripped of specific historical, political, and social backgrounds and are homogenized in a way that makes them out to be ‘the problem’ rather than locating ‘the problem’ as the specific contexts that create refugees. Through categorizing refugees as a homogenous group they are expected to fit into the categories that have been created for them. For example they are categorized as either ‘genuine’ or un-‘genuine,’ they are believed to use either legal or illegal methods to arrive in Canada. However, when the historical and political situations of refugees are revealed it becomes more difficult to fit ‘the refugee’ into one of these constructed categories.

It is important to analyse aspects of asylum systems in order to understand the way in which refugees are constructed in these systems. Agreements such as the ‘safe third country’ agreement demonstrate the homogenization of ‘the refugee’ by both humanitarian organizations as well as the Government. It is also clear from this discussion that as a result of their homogenization, refugees are removed from history and politics. The very situations that result in people becoming refugees are not taken into consideration in the construction of ‘the refugee.’ Malkki explains that

Involuntary or forced movements of people are always only one aspect of much larger constellations of sociopolitical and cultural processes and practices. Nationalism and racism, xenophobia and immigration policies, state practices of violence and war, censorship and silencing, human rights and challenges to state sovereignty, ‘development’ discourse and humanitarian interventions, citizenship and cultural or religious identities, travel and diaspora, memory and historicity are just some of the issues and practices that generate the inescapably relevant context of human displacement today (Malkki 1995a: 496).

As a result it is important to recognize that “[f]orced population movements have extraordinarily diverse historical and political causes and involve people who, while all displaced, find themselves in qualitatively different situations and predicaments” (Malkki

1995a: 496). It is essential to continue to analyse the international and state asylum systems to which refugees are exposed in order to understand how they fail to allow refugees to have agency and authority over their own lives as has been demonstrated through the analysis of the 'safe third country' agreement.

CHAPTER 5: Conclusions and New Directions

The purpose of my research and discussion is to demonstrate the way in which refugees are defined, constructed and categorized through the 'safe third country' agreement. This analysis reveals the homogenization of 'the refugee' and problematizes the tendency by both humanitarian organizations and the Canadian Government to construct 'the refugee' as a victim and as a security threat respectively. Both constructions of 'the refugee' in this situation remove the ability of refugees to have authority in their own lives and over their own situations. There is an expectation by both Governments and humanitarian organizations that refugees will fit into the categories that are created for them and when they fail to do so they are not considered 'genuine.' However, if the historical and political situations of 'the refugee' are revealed this type of categorization would be much more complex and difficult.

Malkki (1995a, 1995b, 1996) has been central to the discussion of my thesis. In her research she explains how current definitions and notions of 'refugees' are constructed and suggests that 'refugees' are not an inherent category of people that is free from political, social and historical influences. Refugees have been and continue to be treated as a homogenous category of people who have been persecuted. However, this treatment negates the specific situations that refugees come from and the context that resulted in them becoming refugees. Malkki (1995a, 1995b, 1996) explains that 'the problem' is not located in the situation that created 'the refugee' but rather on 'refugees' themselves. Even the humanitarian treatment of refugees results in the perception that refugees are powerless victims with no ability to control their own lives (Malkki 1995b:

4). The way in which humanitarian organizations construct 'refugees' as victims results in the belief that they are speechless and helpless. As a result, refugees are believed to be unable to make decisions regarding their own life and this enables others to make decisions for 'their own good.'

The categorization and displacement of refugees from a specific context is particularly evident in the analysis of the 'safe third country' agreement. Both Governments in the drafting of this agreement categorize refugees as people who are potential security threats or who want to abuse the Canadian system because of its 'lenient' (Krikorian 2002 and Bisset 2000) reputation. Through this categorization, refugees are homogenized as a security threat by the Canadian Government who proceeds to use this construction as a justification to impose regulations such as the 'safe third country' agreement when the actual intent of the agreement is simply to reduce the number of asylum claims made in Canada.

As well, the Canadian Government has suggested that this agreement will limit 'asylum shopping' by asylum seekers. Here, the Government suggests that 'asylum shopping' is an abuse of the asylum system. However, this argument suggests that refugees, because they are considered to be helpless and desperate, should not be able to make the choice of where to apply for asylum. Thus, decisions are made for them. For example, with regards to the 'safe third country' agreement, the Governments of Canada and the U.S. choose where asylum seekers will claim asylum, rather than allowing asylum seekers to choose for themselves. Lippert (1998) suggests that this assumption that refugees lack the ability to make choices stems from the construction of 'the refugee' as illiberal and immoral in contrast to liberal subjects who are able to exercise choice.

Canada claims a strong commitment to the protection of refugees in the discussion regarding the 'safe third country' agreement (CIC 2002b). When developing this agreement with the U.S. both Governments asked for NGOs and the UNHCR to respond to the agreement in order to perpetuate this image. A number of concerns were expressed by the NGOs suggesting that the 'safe third country' agreement would have serious implications for asylum seekers. Because this agreement would result in an increased number of asylum seekers going to the U.S. as opposed to Canada, the differences between the two country's asylum systems were of particular concern. For example, the NGOs discussed the detention of asylum seekers in the U.S. who are without proper identification and the denial of proper access to legal counsel to these detainees. As well, the NGOs discussed the difference between Canada and the U.S. with regards to gender-based claims. They suggested that in Canada women asylum seekers with gender-based claims have a greater likelihood of being accepted when compared to the U.S. In the discussion regarding the NGOs opposition to the agreement I analysed the way in which these humanitarian organizations contribute to the homogenization of 'the refugee.' For example, they advocate on behalf of the 'interests and needs of refugees' assuming that refugees are a homogenous group with similar needs and interests.

These NGOs believe that sending asylum seekers to the U.S. puts them at increased risk for detention, *refoulement*, and their claim being denied, particularly if the claim is gender-based. These concerns were brushed-off by the Canadian Government who explained that the U.S. asylum system is in-line with international regulations and, therefore is a 'safe' country for asylum seekers.

As well, the NGOs and the refugee advocates whom I interviewed explain that there will be an increase in the number of people who attempt to smuggle across the border in order to get to Canada without having to go through border patrols. This will further perpetuate the suspicion with which asylum seekers are treated because people who arrive in Canada illegally are condemned by the Canadian Government and public. The Canadian Government, despite its claimed commitment to 'do good' and protect refugees, largely ignored these concerns.

Canada has been pushing to sign a 'safe third country' agreement with the U.S. for a number of years and, as was discussed in the previous chapter, the U.S. finally agreed to sign it as a *quid pro quo* to Canada agreeing to other aspects of the 30-point border plan. Canada has been increasing its implementation of interdiction measures since the 1980s (Basok 1996: 142). These interdiction measures have increased dramatically since 9/11. The 'safe third country' agreement is simply another one of these measures. If claimants do not make it to Canada then the Government can continue to claim a commitment to the protection of refugees without having to accept as many of them into their own country. Through constructing refugees as a security threat the Government is able to justify imposing these restrictions. The categorization of 'the refugee' as a security threat creates political anxiety from the public towards refugees. In turn, this allows the Canadian Government to proceed with interdiction measures in order to reduce the number of claims and cost to the asylum system.

The 'failures' of the Canadian asylum system and the regulations of the UNHCR are evident through this analysis. However, there is no indication of a willingness to change them. As a result, it is important to analyse aspects of Canada's asylum system

such as the 'safe third country' agreement in order to understand how the construction of 'the refugee' takes place. Refugees continue to be de-historicized, de-socialized, and de-politicized through Canada's refugee system. Agreements such as the 'safe third country' perpetuate this homogenization of refugees by locating 'the problem' as the asylum seekers who come through the U.S. and try to apply for asylum in Canada. Once the agreement is implemented and is enforced at the border its effects will become increasingly clear allowing for further analysis of the construction of 'the refugee' by governments such as Canada and the implications this has on people seeking asylum in this country.

Through the analysis of the 'safe third country' agreement and the discussion of the problems that are involved with this agreement I advocate for a move away from the current refugee policies in Canada. I believe that the Canadian Government should not implement this agreement because it is an interdiction measure designed to curtail asylum seekers away from Canada. This policy has been justified by the Government through arguments related to 'security' and the 'abuse' of the Canadian asylum system. However, through the analysis of the agreement it is evident that it will not improve security or decrease the abuse of the asylum system. Instead, asylum seekers will have to use other methods of arriving in Canada, for example, by the use of human smugglers. These arguments are clearly problematic and this agreement will not address these concerns.

Canada should avoid interdiction measures and allow refugees to choose where to apply for asylum. While this appears to be a drastic measure it is important to realize that the vast majority of refugees flee to countries that neighbour their country of origin and,

thus, it will not necessarily increase the number of asylum seekers to Canada drastically (Hathaway cited in Faulkner 2003: 134). Rather than encouraging people to use alternative measures of arriving in Canada, such as smuggling, this move will encourage people to move through border crossings because they will not be stopped by interdiction measures such as the 'safe third country' agreement. As a result, the Government will be more aware of who is entering the country and process claims accordingly. If security is as heightened a concern as the Government makes it out to be, then being aware of the people who are entering the country should be considered desirable as opposed to having increased smuggling activity.

I advocate for refugee policies that can work with the changing dynamics of various refugee claimants. This would allow for a better understanding of the politics and histories of specific refugees as opposed to fitting them all into the current narrow definitions that Canada adheres to when determining whether or not a person is a 'genuine refugee.' Currently the Canadian refugee system clings to a definition that was developed to deal with certain refugees from certain, mostly European, countries. I suggest that Canada adopt a more malleable process for asylum seekers that can deal with claimants from different areas of the world who are moving for different reasons. Rather than clinging to, or developing more, bounded definitions for refugees and attempting to fit people into such definitions, Canadian asylum policies should focus on claims case by case. The Government can continue to do security checks and screen claimants in such a process. The abandonment of these definitions will change the focus of refugee determination that currently attempts to apply the Convention definition to refugee

claimants. Thus, Canada would be more able to move towards an asylum system wherein refugees are able to advocate on their own behalf.

The 'Canadian identity' that is based on a narrative of innocence and benevolence (as discussed by Razack 2000) clearly resonates with Canadians and, as a result, creating policies that are better suited to deal with refugee claimants should also resonate with Canadians. In fact, if people in Canada better understood how interdiction measures such as the 'safe third country' agreement prevented the protection of people who are considered to be 'in need,' there would most likely be concern expressed by more Canadians towards this agreement. Basok explains that "[o]n occasion the Canadian government has yielded to the pressures coming from particular interest groups" (Basok 1996: 153) including those concerned with refugee policies. For example, there was a campaign by the National Action Committee on the Status of Women in the early 1990s opposing the deportation of women with gender-based asylum claims and this led to the development of "Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution" issued by the IRB in 1993 (Basok 1996: 153). Many Canadians because of their adherence to a national image of benevolence want to be seen as accepting of people who are in need of protection. While I do argue that national narratives can be exclusive, I suggest that this image can be used to make Canadians aware of the problems that asylum seekers will encounter upon the implementation of the 'safe third country' agreement. If the Government were to remove this agreement from the context of 'security' and 'abuse,' contexts that I continually problematize throughout my discussion, most Canadians would be sympathetic to the problems that asylum seekers will encounter upon the implementation of this agreement.

With regards to refugee policies in Canada it is important to understand that the state is still able to exercise a great deal of control over these policies as opposed to current theoretical assumptions that the role of the state is diminishing (as discussed by Basok 1996). However, this does not mean that advocacy groups and the Canadian public are completely powerless to create changes within the refugee system. As a result it is important that people continue to pressure the Government to dispense with this agreement and future agreements that remove the ability of asylum seekers to choose where to apply for asylum. Once implemented, the 'safe third country' agreement will result in the exclusion of refugee claimants coming to Canada, claimants who would otherwise be considered by most Canadians to be deserving of protection within Canada.

Appendix 1

Davis has been practicing law as an Immigration Lawyer in Canada for 2 years and has volunteered with an Immigration Lawyer for 6 years doing research. She volunteers at the Amnesty International Refugee Network. She has worked with many refugee claimants through representation and as an assistant in research documenting and drafting submissions. With regards to the 'safe third country' agreement Davis assisted in the drafting of Amnesty International's brief and attended a conference held by the Canadian Council for Refugees where this agreement was discussed.

Michael Bossin has been a lawyer for almost 24 years and for most of this time has been in immigration and refugee law. He has worked with hundreds of refugee claimants through representation at the Immigration and Refugee Board and at the federal court for judicial reviews. He also teaches immigration law at the University of Ottawa. He took part in the debate regarding the 'safe third country' agreement by appearing in front of the House Committee on Immigration, giving lectures on this subject at the University of Ottawa, Carleton University, the University of Saskatchewan and the University of Regina. As well, he appeared in television to debate this agreement with James Bisset, who think that Canada is too lenient on refugee and immigrant policy.

Nielsen has worked in the field of immigration and refugee advocacy for 10 years. He is the Executive Director of an Immigration Centre and this agency works with thousands of refugees every year. He is very familiar with issues regarding refugees and immigrants because as the Executive Director he is involved in policy discussions, operations discussions and situations in particular countries. The agency is a member of the Canadian Council for Refugees (CCR) and it is through this organization that he participated in the debate regarding the 'safe third country' agreement. He was a member of a group through CCR that developed a position paper on the agreement and presented a brief with the Ontario Council of Agencies Serving Immigrants (OCASI) to the parliamentary committee regarding the agreement.

Judith Kumin has been working in the refugee field since 1979. This entire time she has been working for the office of the United Nations High Commissioner for Refugees (UNHCR). She has worked in various countries with the UNHCR including Germany from 1993-1996 as the UNHCR Chief of Missions and in Canada from 1999-2003 also as the Chief of Missions. She has been involved in the issue of 'safe third country' agreements twice. In Germany in 1993 a rigid 'safe third country' rule was implemented and that law was challenged in court and she was called as an expert witness to address this approach. When she came to Canada the negotiations between the U.S. and Canada started in earnest after 9/11 and, while the UNHCR was not a part of these negotiations, on both sides of the border the UNHCR was heavily engaged in discussing separately with each respective government what the content of that agreement would be, how it would function, and what the role of the UNHCR would be.

Ruptash has worked with immigrants and refugees since 1996. Originally he worked with an Immigration Centre and subsequently on an independent basis as someone with a history in the area helping people in specific communities. He has not taken part in the debate regarding the 'safe third country' agreement but has done a significant amount of reading and research on the issue.

Clarel Midouin began working with refugee claimants in 1989. At first he was helping people that he knew fill out forms in the refugee claim process. In 1994 he began working with an immigration lawyer and since then has become a lawyer himself working with refugees. He has taken part in the debate regarding the 'safe third country' agreement at an informal level as an immigration lawyer.

Appendix 2

The following is a list of questions that were used to guide my semi-structured interviews.

- How long have you been working in the area of refugee claimants?
- Approximately how many refugee claims have you worked with?
- In what capacity have you worked with refugee claimants?
- Have you taken part in the debate regarding the 'Safe Third Country Agreement'?
- In what capacity have you participated in this debate?
- Do you believe that this agreement will benefit or harm the Canadian asylum system? Explain.
- Why do you think that there has been such strong opposition to this agreement from the non-governmental community?
- Both Governments signed this agreement despite the strong opposition. Why do you think this is so?
- What do you think is the main motivating force behind the Canadian Government signing this agreement?
- In the long-term, how do you think this agreement will affect the asylum process in Canada?

References

- Acer, Eleanor
2002 "Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers."
Lawyers Committee for Human Rights. Pp.i-22. (website) www.lchr.org
(2004/01/11).
- Acer, Eleanor
n.d. "United States of America." Lawyers Committee for Human Rights. Pp.1-
6. (website) www.lchr.org (2004/01/08).
- Banks, Marcus
1996 Ethnicity: Anthropological Constructs. London: Routledge.
- Basok, Tanya
1996 "Refugee Policy: Globalization, Radical Challenge, or State Control?"
Studies in Political Economy 50: 133-166.
- Bhabha, Jaqueline
1996 "Embodied Rights: Gender Persecution. State Sovereignty, and Refugees."
Public Culture 9: 3-32.
- Bhabha, Jaqueline
1998 "Enforcing the Human Rights of Citizens and Non-Citizens in the era of
the Maastricht: Some Reflections on the Importance of States."
Development and Change 29(4): 697-724.
- Bissett, James
2000 "Current Immigration Policy and the Crises in Refugee Asylum."
(website) www.hri.ca/partners/G78/English/Global/bisset.shtml
(2004/02/21).
- Bissoondath, Neil
1994 Selling Illusions: The Cult of Multiculturalism. Toronto: Penguin Books.
- CBC News
2002 "'Safe Third Country' Pact Puts Refugees at Risk, say critics." (website)
cbc.ca/storyview/CBC/2002/12/07/borderdeal021207 (2003/11/04).
- CBSA (Canadian Border and Services Agency)
2004 "Fact Sheet: Enforcement – Detention Program." (website) [www.cbsa-
asfc.gc.ca/newsroom/factsheet/2004/0129detention-e.html](http://www.cbsa-asfc.gc.ca/newsroom/factsheet/2004/0129detention-e.html) (2004/02/25).

- CCR (Canadian Council of Refugees)
2002 "Issues to be Considered in the Context of Discussions Regarding a Responsibility-Sharing Agreement Between Canada and the United States." (website) www.web.net/~ccr/safethirdunhcr.html (2003/11/04).
- CCR (Canadian Council of Refugees)
2003a "Canada Turns its Back on Refugees." (website) www.web.net/~ccr/ (2004/01/11).
- CCR (Canadian Council for Refugees)
2003b "State of Refugees in Canada." (website) www.web.ca/~ccr/state.html (2003/11/21).
- CCR (Canadian Council for Refugees)
2004 "CCR Decries Security Policy's impact on Refugees." (website) www.web.net/~ccr/securitypolrel.html (2004/06/08).
- CCR (Canadian Council for Refugees)
n.d. "Detention Statistics." (website) www.web.net/~ccr/DetentionStatistics.htm (2004/05/13).
- Canadian Heritage: Multiculturalism
n.d. "Message from the Honourable Jean Augustine." (website) www.pch.gc.ca/progs/multi/reports/ann2002-2003/message_e.cfm (2004/06/25).
- The Canadian Press
2002 "Coderre Plan to ratify New Refugee Deal Without Suggested Changes." Portage Daily Graphic. December 4, 2002. Wednesday Final Edition: Sports: 6.
- CIC (Citizenship and Immigration Canada)
2002a "Safe Third Country Agreement: Proposed Regulations Pre-Published." (website) www.cic.gc.ca/english/press/02/0236-pre.html (2003/11/04).
- CIC (Citizenship and Immigration Canada)
2002b "Canada and US Negotiators Agree to Final Draft Text of Safe Third Country Agreement." (website). www.cic.gc.ca/english/policy/safe-third.html (2003/11/04).
- CIC (Citizenship and Immigration Canada)
2003 "The Standing Senate Committee on Foreign Affairs: Security Measures." (website) www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/FORE-E/witn-e/daniel1-e.htm (2004/05/25).

- CIC (Citizenship and Immigration Canada): Visas
 2004 "Countries and Territories Whose Citizens Require Visas in Order to Enter Canada as Visitors." (website)
www.cic.gc.ca/english/visit/visas.html (2004/07/01).
- Center for Immigration Studies
 n.d. "About the Center for Immigration Studies." (website)
www.cis.org/aboutcis.html (2004/06/09).
- Department of Homeland Security
 2004 "Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry." Federal Register 69(45). (website) www.regulations.gov/pub_today.cfm (2004/03/08).
- Edwards, John
 1994 Multilingualism. Toronto: Penguin Books.
- ECRE (European Council on Refugees and Exiles)
 1995 "Safe Third Country, Myths and Realities." (website)
www.ecre.org/positions/s3c.pdf (2004/05/26).
- Evans-Pritchard, E.E.
 1950 The Nuer: a description of the modes of livelihood and political institutions of a Nilotic people. Oxford: Clarendon Publishing.
- Faulkner, Brent
 2003 A solution in search of a problem: implications of the Canada-US Safe Third Country Agreement relating to refugee claimants at land border ports of entry. M.A. Thesis, Ottawa: Carleton University.
- Gallagher, Stephen
 2003 "Canada's Dysfunctional Refugee Determination System: Canadian Asylum Policies from a Contemporary Perspective." Public Policy Sources: The Fraser Institute 78: 1-40.
- Government of Canada: Privy Council Office
 2004 "Securing an Open Society: Canada's National Security Policy." (website)
www.pco-bcp.gc.ca/default.asp?Language=E&Page=publications&Sub=natsecurnat&Doc=catsecurnat_e.htm (2004/05/07).

- Kairos: Canadian Ecumenical Justice Initiatives
 2003 "Canada-U.S. 'Safe Third Country' Agreement is Signed But not yet Implemented." (website) [www.kairoscanada.org/english/statements/020622\(3rdcountry-pr\).htm](http://www.kairoscanada.org/english/statements/020622(3rdcountry-pr).htm) (2003/11/04).
- Krikorian, Mark
 2002 "The U.S.-Canada Safe Third Country Agreement: A Vital First Step." (website) www.cis.org/articles/2002/msktestimonv1016.html (2003/11/04).
- Langlois, Joseph E.
 2002 "United States and Canada Safe Third Country Pact." Federal Document Clearing House Congressional Testimony: Capitol Hill Hearing Testimony. Wednesday, October 16.
- LCHR (Lawyers Committee for Human Rights)
 2002a U.S.-Canada 'Safe Third Country' Agreement Will Hurt Asylum Seekers." (website) www.lchr.org/media/2002alerts/1204a.htm 2003/11/04.
- LCHR (Lawyers Committee for Human Rights)
 2002b "Comments of the Lawyers Committee for Human Rights On the Proposed Safe Third Country Agreement." (website) www.lchr.org/media/2002alerts/1204a/htm (2003/11/04).
- Lippert, Randy
 1998 "Rationalities and refugee resettlement." Economy and Society 27 (4): 380-406.
- Lippert, Randy
 1999 "Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime." Alternatives 24: 295-328.
- Loescher, Gil
 2001 The UNHCR and World Politics: A Perilous Path. New York: Oxford University Press.
- Macklin, Audrey
 2003 "The Value(s) of the Canada-US Safe Third Country Agreement." The Caledon Institute of Social Policy. (website) www.maytree.com/RefugeeImmigrant+Program/Publications/alpha_publications.html (2004/07/31).

- Malkki, Liisa H.
1995a "Refugees and Exile: From "Refugee Studies" to the National Order of Things." Annual Review of Anthropology 24: 495-523.
- Malkki, Liisa H.
1995b Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania. Chicago: University of Chicago Press.
- Malkki, Liisa H.
1996 "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization." Cultural Anthropology 11(3): 377-404.
- Manning, Erin
2003 Ephemeral Territories: Representing Nation, Home, and Identity in Canada. Minneapolis: University of Minnesota Press.
- Mead, Margaret
1961 Coming of Age in Samoa; a psychological study of primitive youth for Western Civilization. New York: Morrow.
- OHCHR (Office of the High Commissioner for Human Rights)
1951 "Convention relating to the Status of Refugees." United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. (website) www.unhcr.ch/html/menu3/b/o_c_ref.htm (2003/09/24).
- OCASI (Ontario Council of Agencies Serving Immigrants)
2002 " 'Safe Third Country' Agreement puts Refugees at Risk." (website) www.ocasi.org/sys/annoarticleprintasp?AnnoID=36 (2003/11/04).
- Razack, Sherene
2000 "From the 'Clean Snows of Petawawa': The Violence of Canadian Peacekeepers in Somalia." Cultural Anthropology 15(1): 127-163.
- Safe Third Country Regulations: News Release
2002 "Committee Tables Report on *Safe Third Country Regulations*." (website) www.parl.gc.ca/InfocomDoc/bak/37/2/CIMM/PressReleases/CIMMpr1-e.htm (2004/05/15).
- Safe Third Country Regulations
2003 "Government Response to the Report of the Standing Committee on Citizenship and Immigration." (website) www.parl.gc.ca/InfocomDoc/37/2/CIMM/PressReleases/CIMMGR01-e.htm (2004/03/22).

- Uehling, Greta
1998 "Is there 'Refuge' in the Refugee Category." Pp.123-144 in Ruth M. Krulfeld and Jeffrey L. MacDonald, Power, Ethics, And Human Rights: Anthropological Studies of Refugee Research and Action. Lanham: Rowman and Littlefield Publishers, Inc.
- UNHCR (United Nations High Commissioner for Refugees)
1979 "Refugees Without an Asylum Country." Executive Committee Conclusions No.15 (XXX). (website) www.unhcr.ch (2004/03/10).
- UNHCR (United Nations High Commissioner for Refugees): World Refugee Survey
2003 "2002 Contributions to International Refugee Aid Agencies." (website) www.unhcr.ch (2004/05/25).
- USCIS (U.S. Citizenship and Immigration Services)
2001 "Enforcement, Fiscal Year 2001." (website) uscis.gov/graphics/shared/aboutus/statistics/ENF2001text.pdf (2004/05/14).
- USCR (U.S. Committee for Refugees)
1999 "Canada." (website) www.refugees.org/world/countryrpt/amer_carib/1999/canada.htm (2004/05/13).
- USCR (U.S. Committee for Refugees)
2000 "Canada." (website) www.refugees.org/world/countryrpt/amer_carib/2000/Canada.htm (2004/04/13).
- USCR (U.S. Committee for Refugees)
2001 "Canada." (website) www.refugees.org/world/countryrpt/amer_carib/2001/Canada.htm (2004/05/13).
- USCR (U.S. Committee for Refugees)
2002 "Canada." (website) www.refugees.org/world/countryrpt/amer_carib/Canada.htm (2004/05/13).
- USCR (U.S. Committee for Refugees)
2003 "World Refugee Survey 2003 Country Report." (website) www.refugees.org/world/countryrpt/amer_carib/2003/canada.cfm (2004/05/13).

Valji, Nahla and Lee Anne De La Hunt

1999 "Gender Guidelines For Asylum Determination." Researched for National Consortium in Refugee Affairs. The European Foundation for Human Rights. (website) www.web.net/~ccr/safr.PDF (2004/07/31).

Vedsted-Hansen, Jens

1999 "Non-admission policies and the right to protection: refugees' choice versus states' exclusion?" Pp. 269-288 in Frances Nicholson and Patrick Twomey (eds.), Refugee Rights and Reslities: Evolving International Concepts and Regimes. Cambridge: Cambridge University Press.