When Politics Dictates Persecution: The Danger of 'Safe Lists'

By Ainslie Avery

The state policies that build and sustain the non-entrée refugee regime increasingly sever the link between persecution and refugeehood. When separated from this unique characteristic, refugees, and refugee policy, are viewed through a politico-economic lens, rather than from an humanitarian perspective. This article illustrates the role 'designated countries of origin' or 'safe list' policies can play in establishing and enhancing trade and political relationships. Based on a case study of Canada's 'safe list' policies, this article argues that trade and politics influence the construction of 'safe lists' as much as legally established measures of refugeehood, particularly a forward-looking assessment of potential persecution. Safe lists negate the individual experiences of asylum claimants and obscure the true subject of refugee status: refugees themselves.

Introduction

Refugee receiving states, particularly in the developed world, have constructed an array of policies to exclude refugees from protection. Throughout the global north, refugee policies increasingly seek externalisation and containment in 'empty spaces' of the global south (Chimni 1998). This occurs, for instance, by taking extreme measures to protect border crossings, and constructing expansive refugee camps in refugee-producing regions. Shifts in media and state discourse have led to the *de facto* creation of classes of refugees, such as 'legitimate' versus 'bogus' asylum seekers (Zetter 2007). The emergence of parallel protection regimes – for example, 'temporary' or 'humanitarian' protection – circumvent refugee status determination and allow states to offer discretionary protection without dedicating resources to protecting rights guaranteed under the 1951 Refugee Convention. These policies are characteristic of what B.S. Chimni describes as a *non-entrée* regime, and signal the global north's diminishing commitment to refugee protection. The international refugee regime is interpreted through a political lens that legitimates the ongoing victimisation of refugees. This interpretation severs the link between persecution and refugeehood, and conflates refugees with other types of migrants (Zetter 2007). Refugee policy, as a subset of migration policy, loses touch with its defining characteristic, and as such, asylum policies act as an extension of international politics and trade.

'Safe lists', or lists of designated countries of origin, are an increasingly common feature of the *non-entrée* policy regime. Although this article highlights Canadian policy, such policies exist throughout the global north, primarily in Western Europe. Safe lists identify countries that are perceived as unlikely to produce refugees, making it more difficult for claimants from those countries to seek and obtain asylum. In Canada, claimants from designated countries undergo an accelerated hearing process to 'ensure that people in need get protection fast, while those with unfounded claims are sent home quickly – through expedited processing' (Citizenship and Immigration Canada).

Safe Lists: Between Politics and Policy

Concerns regarding the potential weaknesses of due process in refugee application processing are important; however, a critical lens should also be focussed on the inherent dangers of allowing politics to dictate persecution at a macro level. When safe lists are developed based on political and economic considerations, rather than solely on a realistic assessment of the likelihood of persecution, the possibility of persecution is perpetuated. This article argues that 'safe lists' place refugees in harm's way by effectively reinterpreting the protective principles of the international refugee regime. The rationale behind adopting safe lists is based on two problematic assumptions: first, that a large number of claims made by asylum seekers are unfounded; and second, that determining whether a claim is unfounded can be largely reduced to a single factor.

The assumption that many asylum claims are unfounded is closely related to perceptions that asylum seekers claim refugee status to circumvent other immigration channels. This assumption encourages an 'exclusion-first' reading of refugee law – that is, applicants are excluded until proven included. Evaluating the exclusion of a claimant due to their country of origin before evaluating whether the refugee definition has been met is both practically imprudent and morally reprehensible.

Determining whether a claimant faces a reasonable, forward-looking likelihood of persecution requires consideration of a wide range of factors, including the presence, opinions and activities of state and non-state actors; the conditions in the country and region of origin; the willingness and ability of the state to offer protection in the short- and long-term; whether tests of persecution have been met; and whether persecution stems from Refugee Convention grounds, among other factors. Such an evaluation requires in-depth research and analysis, and cannot be made simply on the basis of the

claimant's country of origin. Legal scholar Kay Hailbronner (1991) describes criticisms claiming that safe lists detract from the principle of status determination based on individual circumstances and impose a *de facto* geographic limitation on the application of the Refugee Convention. Additionally, using an expedited hearing process traps claimants between tighter deadlines and arguably higher burdens of proof. That claimants from designated countries have lower success rates is likely as much related to the administrative burden placed on them as it is to the weakness of their claims.

Courts, scholars and advocates have struggled to define persecution, particularly against the evolving characteristics of inter- and intra-state conflict. While some standards seem well-established, such as those established by the 1984 Convention Against Torture, the realities of persecution and the relationship between persecution and displacement are much more complex. It has become clear that receiving states – primarily in the global north, and largely without input from the international community – play a significant role in determining the standards for persecution and whether persecution exists on a case-by-case basis through the refugee status determination process. This places the existence of persecution firmly in the eye of the beholder. Safe lists provide a further opportunity for negating the individual experiences of asylum claimants and obscuring the true subject of refugee status: refugees themselves.

Canada's Safe List Policy in Domestic and International Contexts

In Canada, immigration and immigration policies have historically received significant public attention. Given that immigrants form approximately one-fifth of Canada's population, its importance in the public imagination and national identity is unsurprising. Despite an underlying humanitarian philosophy in refugee policy through the late 20th century, recent sporadic arrivals of 'boat people' fleeing conflict in Southeast Asia[1] – combined with dramatized media coverage of arrivals – gave the impression that the country was being 'flooded' or 'swamped' with refugees, notwithstanding the relatively low numbers arriving by sea compared to those arriving by other means. The explosion of securitisation and a 'fracturing' (Zetter 2007) of the refugee label through qualifiers such as 'bogus' or 'illegitimate' has solidified negative perceptions of refugees in the public imagination.

In Canada, legislation permits the addition of countries to the safe list if asylum applications are rejected at least 75% of the time, or are withdrawn or abandoned at least 60% of the time. However, the federal Minister of Immigration reserves the right to add countries to the list if they have a democratically elected government and an independent judiciary. The involvement of the Minister in approving and recommending additions leaves ample room for politics and political relations to influence perceptions of whether persecution exists in particular countries of origin.

Two recent examples of additions to Canada's safe list, Hungary and Israel, illustrate the influence of political rather than humanitarian factors. Hungary is a significant source of asylum applicants to Canada. In 2010, Canada received over 3,000 applications from Hungarian Roma asylum seekers, and Hungary has consistently been one of the top sources of asylum applications in Canada for the past five years. Though the Minister of Immigration justified adding Hungary to the safe list because of the high number of abandoned cases, the Minister was also quoted as acknowledging that a combination of lengthy processing delays and unsanitary reception facilities – rather than unfounded claims of persecution – were key in influencing case abandonment (Carlson 2011). Further, there is evidence that undertaking an initial assessment may not expedite the overall process. Initial assessments were attempted in Canada in the late 1980s and early 1990s; however, approximately ninety percent of cases passed this initial credibility assessment, with approximately eighty percent of claimants receiving refugee status after full RSD hearings (Hailbronner 1991).

The Minister also recently announced the addition of Israel to the safe list. Though Israel has not been a significant source of refugees and asylum seekers in recent years, as an ethnically-based state there is potential for asylum claims at any time. Simply producing few refugees to Canada should not be a determinant of the safety of a country. Indeed, one might ask whether an application from Israel would not be worth more attention than less, to be certain that no injustice is done inadvertently, as ethno-political tensions remain persistently unstable.

In both instances current events in the political relations between Canada and the new additions mean benefits to Canada beyond the purported quick review process. In the first instance, Canada and the EU have been negotiating a free trade agreement for several years. While safe country designation would not in and of itself change the outcome of those negotiations, it is a strong signal that Canada supports or approves of the social, economic and political conditions in the EU. With respect to Israel, the current Canadian government has on numerous occasions shown its strong support for the governance strategies of that state. Additions to the safe list thus reflect Canada's political and economic relationships as much as an assessment whether persecutory conditions actually exist.

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[1] Arrivals continued through the 1990s and 2000s, including, most recently, the arrival of the MV *Ocean Lady* (2009) and MV *Sun Sea* (2010).

Conclusion

This article has argued that safe lists are significantly influenced by domestic and international politics at the expense of the original goals of humanitarian assistance. In Canada, refugeehood is often described as a loophole in immigration policy and is thus perceived as a challenge to the state's ability to control its borders. Reliance on safe list policies is in part a response to domestic concerns that large numbers of asylum applications are unfounded. Viewed against the backdrop of an increasingly *non-entrée* refugee policy regime, it is also clear that perceptions of 'legitimate' refugeehood have changed. Such treatment of refugees detracts from the persecutory roots of refugeehood, conflating refugees with other types of migrants and treating asylum policy as an extension of international politics and trade.

The factors contributing to migratory decisions are increasingly complex, and the mechanisms and policies used to respond have become pale imitations of their original manifestations. Although it may be impossible to separate refugees from politics, political priorities are malleable. If countries' politics prioritise understanding and responding to the underlying conditions leading to migration – including the role of international political and economic power imbalances – their policies will follow suit, allowing states to respond more appropriately to contemporary migration.

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