

**LA RÉPONSE CANADIENNE AUX ARRIVÉES DE DEMANDEURS
D'ASILE PAR BATEAU: UNE ANALYSE CRITIQUE DES
CHANGEMENTS LÉGISLATIFS ET RÉGLEMENTAIRES APPORTÉS
ENTRE 1985 ET 2015**

**PAR
JEAN-MICHEL GENEST
768361**

**MÉMOIRE PRÉSENTÉ À L'ÉCOLE SUPÉRIEURE D'AFFAIRES
PUBLIQUES ET INTERNATIONALES DE L'UNIVERSITÉ D'OTTAWA
POUR L'OBTENTION DU DÎPLOME DE MAÎTRISE**

DIRECTRICE DU MÉMOIRE : PROFESSEURE PATTI LENARD

API6999

**OTTAWA, ONTARIO
NOVEMBRE 2016**

RÉSUMÉ

Cette étude analyse les changements dans la réponse gouvernementale aux arrivées de demandeurs d'asile par bateau au Canada entre 1985 et 2015. Utilisant l'analyse critique des cadres comme méthodologie, nous nous intéressons aux arrivées individuelles pour nous permettre de voir quelles unités de significations sont élaborées par des acteurs publics ayant participé à l'élaboration de la réponse gouvernementale, cas après cas. Inspirés par la théorie néo-institutionnaliste de la dépendance de parcours, nous mettons en évidence le changement incrémental ayant eu lieu dans la politique canadienne et l'impact démesuré de développements granulaires en lien avec cet enjeu. Prenant cette analyse comme point d'ancrage, nous soulignons alors en quoi un paradigme de contrôle s'est lentement mis en place au sein de la réponse gouvernementale. Au sein de ce paradigme, le mode d'arrivée irrégulier des arrivants a lentement pris le dessus sur la demande d'asile en trait au traitement de cette demande même. Ce phénomène contraste avec les engagements humanitaristes envers les demandeurs d'asile arrivants par bateau, lesquels engagements demeurent les mêmes que pour d'autres demandeurs.

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1. INTRODUCTION

Le Canada est un pays qui s'est construit à travers des vagues successives de migrants ayant traversé les océans pour s'installer sur un continent nouveau. Une quantité incroyable de récits rapportent les exploits de ces colons qui, de tout temps, ont bravé les mers à la recherche d'une vie nouvelle en ce pays. Pendant longtemps, quantité d'individus laissaient la vie au cours de ces traversées. Dans plusieurs cas, ce voyage n'était ni plus ni moins qu'une échappatoire pour arriver à fuir la guerre, la pauvreté et/ou la discrimination. Ce n'est qu'à peu près qu'au milieu du XXIème siècle que les choses changèrent finalement, les nouveaux arrivants commençant à arriver principalement par la voie des airs.

Au niveau législatif, le Canada est un pays réputé pour ses politiques et réglementations libérales en matière d'immigration et de refuge. Le Canada a signé plusieurs traités internationaux en trait au respect des droits de la personne. En sus, la Charte canadienne des droits et libertés garantit le respect des droits de toute personne se trouvant sur le territoire canadien, peu importe son statut de résidence. (CCR, 2000) Depuis les années 80, en proportion à la taille de sa population, le Canada a accepté plus de réfugiés et de demandeurs de résidence permanente que tout autre pays dans le monde. (IMIS, 2007)

Suivant cette longue tradition, il est quelque peu déconcertant de constater à quel point le même phénomène aujourd'hui suscite des sentiments contradictoires au

sein de la société canadienne. Il est vrai que ces arrivées ne correspondent plus aux voies conventionnelles d'accès au pays. Les arrivées de migrants par bateau sont aujourd'hui devenues indissociables d'autres phénomènes complexes comme les demandes d'asile et, dans plusieurs cas malheureusement, le trafic de migrants.

Le trafic de migrants et l'arrivée de demandeurs d'asile par bateau (nous utiliserons à l'avenir le terme arrivée par bateau ; *boat arrival*) suscitent des débats conflictuels où s'imbriquent des considérations mêlant la gestion de la criminalité et l'humanitarisme. La lourdeur et la visibilité accordée à ces débats sont d'autant plus surprenantes dans un pays où les demandeurs d'asile arrivés par bateau ne constituent qu'une infime fraction des demandes d'asile soumises annuellement. Parmi les quelques 850 000 demandes enregistrées par Immigration, Réfugiés et Citoyenneté Canada (IRCC) de 1985 à 2014, un peu moins de 1500 demandeurs seulement ont soumis cette demande suite à une arrivée au Canada par bateau, soit approximativement 0.18% du total. (IRCC, 1991, p.8) (IRCC, 2015-1, p.4-5)

Suivant l'avis de plusieurs chercheurs, un changement de perspective sur cette question semble s'être enclenché depuis les années 70, à une époque où le gouvernement canadien avait accueilli avec grand bruit des réfugiés vietnamiens, ces *boat people* qui avaient fait les manchettes internationales en fuyant le Viêt Nam à bord de frêles embarcations surchargées de passagers. (Johnson, 2010, p.1) (Mann, 2009, p.192) Le Canada n'est pas seul dans cette situation. À travers le monde, les arrivées

par bateau se sont mises à susciter la grogne de nombreux pays, incluant l'Australie, les États-Unis, l'Italie, la Grèce et l'Espagne. (Johnson, 2010, p.1)

L'attention prêtée par les médias à ce phénomène tend aujourd'hui à dévaloriser les besoins de ces demandeurs d'asile ainsi que les causes de leur exil et à focaliser l'attention sur les circonstances de leur arrivée. Les mots utilisés pour parler de ces migrants incluent aujourd'hui des termes comme « arrivée de masse », « migrants illégaux », « resquilleurs » ou « criminels ». (Neve & Russell, 2011, p.41) (Ellis, 2015, p.100-101) Des auteurs comme Alexandra Mann n'hésitent pas à parler de la « disparition discursive du réfugié ». (Mann, 2009, p.203)

Dans ce contexte, les considérations humanitaristes liées aux obligations internationales du Canada suivant sa signature de la *Convention des Nations Unies relative au statut des réfugiés* de 1951 sont mises de côté. Nous reviendrons ultérieurement sur la Convention elle-même. Ces considérations humanitaristes sont remplacées par un paradigme de contrôle, mettant l'emphase sur des considérations sécuritaires comme le contrôle migratoire et la surveillance des frontières. (Ellis, 2015, p.103) Le mode d'arrivée du réfugié prend préséance sur le devoir national envers ce réfugié. Prenant comme point de départ ce nouveau paradigme, quels sont les éléments déterminants qui ont contribué, dans les trente dernières années, aux changements dans le style et dans le ton de la réponse du gouvernement canadien à l'arrivée de demandeurs d'asile par bateau ?

La recherche proposée ici vise deux buts. D'abord, nous entendons décortiquer cette transformation alléguée. Il ne s'agit pas ici de mettre l'emphase sur les caractéristiques du traitement de l'enjeu aujourd'hui comparativement à ce qu'il était il y a trente ans mais plutôt d'effectuer une analyse critique de la manière par laquelle les perceptions publiques mènent à des changements graduels et incrémentaux à travers le temps. Nous entendons ensuite démontrer comment, indépendamment des considérations contextuelles liées à un incident donné, des changements législatifs et réglementaires passés agissent à titre de force motrice dans l'élaboration des changements amenés en réaction à un nouvel incident. L'élément déterminant dans ce passage au paradigme de contrôle en devient dès lors cet effet d'entraînement au fil de changements granulaires multiples.

Cette recherche s'articule en quatre sections. Nous entamons d'abord une discussion en ce qui a trait à notre cadre théorique, la dépendance de parcours, et notre méthodologie, l'analyse critique des cadres (*critical frame analysis*). Nous développons ensuite une base contextuelle à notre analyse en revisitant la littérature existante sur une variété d'enjeux reliés aux arrivées par bateau au Canada, incluant la migration irrégulière, le trafic de migrants et une revue générale des cas ayant eu lieu au cours de la période à l'étude. Employant l'analyse critique des cadres, nous présenterons par la suite une esquisse des cadres ressortant de la réponse gouvernementale à chaque incident. Inspiré par les approches néo-institutionnalistes et le concept de dépendance de parcours, nous soulignerons la nature incrémentale des changements législatifs et réglementaires à l'œuvre au sein de cette réponse et l'effet

d'entraînement qui s'en dégage. Nous concluons en esquissant des hypothèses sur l'avenir de ce paradigme au Canada et en dégageant des pistes de recherche futures.

2. REVUE DE LA LITTÉRATURE

2.1 UN MOT SUR CE QUE NOUS SAVONS DU PASSAGE AU PARADIGME DE CONTRÔLE

La question de l'accueil à réserver aux individus fuyant leur pays d'origine pour s'installer au Canada n'est pas un enjeu nouveau. Le 28 juillet 1951, une Conférence plénipotentiaire des Nations unies est tenue Genève à l'issue de laquelle est élaborée la *Convention des Nations Unies relative au statut des réfugiés*. La Convention consolidait les instruments internationaux existant précédemment en la matière et établissait les normes essentielles minimales pour le traitement des réfugiés. (Convention des Nations Unies relative au statut des réfugiés, 1951, p.5)

En plus d'élaborer une définition juridique exacte du terme « réfugié », la Convention établissait également le principe du non-refoulement, selon lequel aucun État contractant n'expulsera ou ne refoulera en aucune manière un réfugié, contre sa volonté, vers un territoire où il croirait risquer d'être persécuté. (Convention des Nations Unies relative au statut des réfugiés, 1951, p.5) Le Canada accède officiellement à la Convention le 4 juin 1969. (Haut-Commissariat des Nations unies pour les réfugiés, 2015, p.2) Une nouvelle *Loi sur l'immigration*, incarnant une approche plus positive envers les réfugiés et synchronisée avec les buts de la Convention, est finalement mise en place en 1978. (Aiken, 2001, p.9)

C'est dans ce contexte chapeauté par le droit international et les considérations d'ordre humanitariste sous-tendant l'accession du Canada à la Convention qu'a lieu l'accueil des réfugiés vietnamiens par le gouvernement Trudeau à la fin des années 70. C'est également à partir de ce point de départ que nous entendons nous positionner afin de mettre au jour le passage au paradigme de contrôle qui s'est opéré par la suite.

Comme nous l'avons mentionné en introduction, le passage au paradigme de contrôle correspond à un renforcement de la lecture sécuritaire du phénomène migratoire. Le passage au paradigme de contrôle en devient indissociable du phénomène de la sécurisation de l'immigration.

Le concept constructiviste de « sécurisation » a été introduit pour définir ce processus par lequel des enjeux politiques de la vie courante sont altérés à travers un processus discursif pour produire une reconceptualisation de ces enjeux en termes de menace. Le problème passe ainsi du domaine courant au domaine de l'exceptionnel. En opérant cette transition, les conditions à la gestion légitime et illégitime du problème sont également transformées et des mesures extraordinaires sont ainsi légitimées. (Themistocleous, 2013, p.2)

Les premières apparitions du concept dans la littérature peuvent être repérées dans le contexte de la fin de la guerre froide. À ce moment, les changements d'envergure apportés par la fin de la bipolarité sur l'échiquier international amenèrent beaucoup de chercheurs à renouveler le champ des études de sécurité. Si le but de

l'exercice a pu être critiqué pour n'avoir d'autre objectif que de garder à flot la carrière de ces chercheurs, le changement de contexte n'avait pas moins créé un réel engouement pour la reconceptualisation théorique de la notion de risque. (Themistocleous, 2013, p.3-4)

Les arguments développés par les acteurs de la scène politique et académique en faveur d'une lecture sécuritaire de l'immigration sont très variés et touchent autant l'économie que la cohésion sociale ou la stabilité politique. L'entrée d'immigrants aurait un impact négatif sur l'économie du pays d'accueil, y introduisant une masse de travailleurs qui sont prêts à travailler à des salaires plus bas que les travailleurs locaux. (Themistocleous, 2013, p.5) Certains soulignent le potentiel de certains migrants à nuire à la stabilité politique du pays, introduisant des valeurs et des mœurs étrangères qui entrent en conflit avec les mœurs du pays d'accueil et nuisent à la cohésion du tissu social. D'autres soulignent que leurs liens à l'étranger font d'eux une catégorie d'individus plus à risque de développer des rapports avec des mouvements contestataires radicaux, voire terroristes. (Ibrahim, 2005, p.172)

Si le phénomène de sécurisation de l'enjeu migratoire précède les événements du 11 septembre 2001, ceux-ci ont à tout le moins amené le renforcement du phénomène. L'insécurité, la peur et l'angoisse donnent lieu à des phénomènes de crises, les populations se tournant vers leurs gouvernements et requérant de ceux-ci une action qui permettra de ramener cette sécurité. (Hyndman, 2012, p.246) Des lois et régulations plus sévères sont mises en place, permettant entre autres de renforcer les

mécanismes de contrôle aux frontières. (Hyndman, 2012, p.246) L'État a aussi à gagner de la perpétuation de cette dynamique. Présenter un enjeu en des termes sécuritaires permet de conférer une légitimité à l'appareil étatique, en renforçant son rôle de protection des citoyens contre la menace. (Boswell, 2007, p.1) (Liempt & Sersli, p.1029-1030) Il en devient plus aisé pour l'État d'asseoir son pouvoir dans les différentes sphères d'une société.

Plusieurs auteurs ont souligné en quoi la gestion de l'immigration irrégulière (incluant les arrivées par bateau) est aujourd'hui teintée par ce phénomène de sécurisation au Canada. Dans l'article *Disappearing Refugees: Reflections on the Canada-U.S. Safe Third Country Agreement*, Audrey Macklin (2005, p.365 à 367) souligne en quoi le renforcement de l'image du migrant dit illégal érode le concept de réfugié et promeut l'hostilité envers les demandeurs d'asile. Macklin prend comme point de départ la contradiction entre les engagements des États développés suite à la signature de la *Convention* et leurs craintes de ces flots spontanés d'étrangers se massant à leurs frontières.

Ce dilemme est résolu à travers l'introduction de catégories de désirabilité fondées sur la fusion de deux schémas de classification distincts : le comment d'un passage (légal/illégal) et le pourquoi de ce passage (migrant/réfugié). Les liens entre ces deux dyades ne vont pas de soi. Leur congruence est pourtant encouragée par ces États à travers l'introduction de mécanismes de contrôle toujours renforcés qui rendent virtuellement impossible à des demandeurs d'asile légitimes de se présenter sur le

territoire d'un de ces États. (Macklin, 2005, p.367) Suivant l'augmentation de ces mécanismes de contrôle, les individus fuyant des persécutions à l'étranger se retrouvent plus à risque de recourir aux services de trafiquants qui deviennent, dans certains cas, la seule option viable pour espérer accéder au territoire d'un de ces États, et ainsi avoir l'opportunité de déposer une demande d'asile. De fil en aiguille, de nouveaux mécanismes de contrôle sont développés afin de cibler ces entrées irrégulières et le paradigme de contrôle s'en trouve répliqué.

Lorsqu'un réfugié est conceptualisé comme migrant illégal (suivant un mode d'entrée au pays illégal), il est perçu comme criminel et, de ce fait, la réponse discursive qui sera élaborée ne sera pas la même que celle entamée lorsqu'un demandeur d'asile entre par une voie régulière. En reconceptualisant étroitement la notion de réfugié, le processus d'admissibilité au point d'entrée devient plus facile à contrôler. Allant plus loin dans cette direction, elle souligne également les liens entre les discours politiques concernant le contrôle migratoire d'une part, et le contrôle sur l'admissibilité au *membership* national d'autre part. (Dauvergne, 2005, p.163)

Alexandra Mann, (2009, p.191-192) a écrit sur la question en analysant la teneur du discours public au Canada lors d'arrivées par bateau passées: En 1914, en 1986 et en 2009. Suivant cette étude, Mann souligne comment l'emphase publique mise sur l'illégalité de l'entrée des arrivants en 2009 semble effectivement avoir nui à la légitimité de leurs demandes d'asile. « Indeed, the current government (gouvernement conservateur de Stephen Harper) has recently introduced an overhaul of the refugee

determination process aimed at making the system more efficient and less vulnerable to abuse. » (2009, p.203) Si elle constate une continuité au niveau des procédures effectuées pour traiter une demande d'asile et déterminer si un individu est bel et bien un réfugié suivant les critères de la *Convention*, elle n'en souligne pas moins un changement récent dans le discours officiel, entre 1986 et 2009, en ce qui a trait à l'appui politique à la perpétuation de ces procédures. (2009, p.203)

Prenons à ce stade une certaine distance par rapport à notre sujet d'étude. Nous focalisons évidemment ici notre attention sur les perceptions entourant les arrivées de demandeurs d'asile par bateau en particulier. Est-ce à dire que nous croyons cette grogne et cette anxiété polarisée à l'encontre de ce groupe uniquement ? Bien sûr que non. Sous bien des angles, le phénomène de disparition discursive du réfugié sur lequel Mann assoie son raisonnement ne s'applique pas qu'aux réfugiés arrivant par bateau. Reprenons un instant les chiffres que nous avons mentionné plus tôt : 0.18% seulement du total des réfugiés arrivés entre 1985 et 2014 correspondent à la catégorie des demandeurs d'asile arrivés par bateau.

Le malaise national que nous souhaitons pointer du doigt ici, cette peur du « migrant illégal », s'applique à n'en pas douter à la catégorie migratoire des réfugiés au grand complet. Les auteurs portant leur attention sur les perceptions de l'immigration irrégulière et de l'abus de la générosité du système migratoire du Canada ne peuvent faire autrement que de constater la méfiance du Canada à l'endroit de tous les réfugiés

et non seulement qu'envers ceux arrivant par voie des mers. (Rygiel, 2012, p.211)
(Aiken, 2001, p.3)

La curiosité que nous souhaitons mettre au jour dans cette étude ici cependant est à quel point un lien direct peut-être fait entre chaque « arrivée de masse » (les arrivants par bateau) et l'introduction d'une résultante correspondante dans les politiques canadiennes tirant un peu plus vers l'établissement d'un paradigme de contrôle. Est-ce à dire que ce paradigme ne se serait jamais mis en place sans ces arrivées par bateau ou qu'il ne vise que ces réfugiés? Bien sûr que non. Cependant, comme notre analyse le démontrera, chaque arrivée peut être lue comme un catalyste ayant permis de focaliser l'attention nationale sur l'enjeu du contrôle de la mobilité des réfugiés entrant au pays, lequel enjeu aurait autrement tenu le haut du pavé à d'autres moments à travers d'autres types d'événements.

En ce qui a trait au contrôle des réfugiés arrivant par bateau en particulier cependant, nous pouvons littéralement pointer du doigt certains changements législatifs et réglementaires ayant un impact différentiel envers ces arrivants par bateau à comparer de ceux arrivant autrement. Ces changements en particulier mènent ensuite (par effet d'entraînement) à de nouveaux changements du même ordre, ce qui perpétue la différenciation de ces demandeurs d'asile en particulier et institue davantage le paradigme de contrôle pour ce groupe, ce qui ne n'empêche pas le développement « latéral » d'un paradigme de contrôle plus large touchant l'accueil de tous les réfugiés au Canada, tous types confondus.

Toutes ces pistes de réflexion sont importantes pour notre étude en ce sens où elles nous amènent à prêter attention à la transformation de la gestion de l'enjeu des arrivées par bateau au Canada en particulier, à travers le temps. L'aspect incrémental de cette transformation n'en demeure pas moins mal défini. Aucune des recherches consultées dans le cadre de la présente étude ne s'est intéressée à l'effet d'entraînement au sein de ce paradigme de contrôle et en quoi cette dépendance de parcours nous en apprend sur la nature du paradigme de contrôle. C'est sur ces questions que notre recherche compte se pencher.

2.2 L'ARRIVÉE PAR BATEAU EN TANT QUE CONCEPT À GÉOMÉTRIE VARIABLE

La signification accordée au concept d'arrivée par bateau est changeante et varie en fonction des grilles de lecture utilisées pour comprendre le phénomène. Ce constat vaut autant pour ce qui en est dit sur la scène publique que dans les milieux académiques. Le terme est souvent imbriqué à des concepts plus larges comme, par exemple, la migration irrégulière ou encore le trafic de migrants.

Les migrants irréguliers au Canada incluent tous ceux et celles qui vivent et/ou travaillent au Canada en l'absence de statut, sans les permissions ou les documents requis qui permettraient d'établir leur droit à le faire. Cela inclue tous ceux qui pénètrent les frontières du Canada illégalement, demeurent au pays illégalement, effectuent des

activités sans autorisation ou s'engagent dans toute forme de combinaison des cas précédents. (Ellis, 2015, p.94)

La notion de migration irrégulière se conçoit nécessairement en termes indirects, en opposition à ce qui constitue une migration régulière. Au niveau national, cette constitution de la régularité s'accomplit à travers deux groupes de lois. Un premier groupe de lois migratoires définit quels canaux sont utilisables et donc quels types de migrants sont désirables (les types n'entrant pas dans ces catégories seront de ce fait considérés comme indésirables). Un deuxième groupe de lois émet des sanctions contre les individus contrevenant aux lois migratoires du premier type. (Ellis, 2015, p.94, 100 & 101)

En superposant ces deux groupes de loi, la migration dite irrégulière est invariablement construite de manière négative, les contrevenants aux lois migratoires faisant face à des sanctions légales. (Ellis, 2015, p.94, 100 & 101) L'action et l'attitude des décideurs politiques et d'une diversité d'autres acteurs sociaux ont une influence considérable sur la perception de cette irrégularité. L'incidence de la perception publique sur l'irrégularité (en l'associant à l'illégalité) amène à interpréter celle-ci non plus comme un statut légal mais plutôt comme une condition sociopolitique générée et maintenue par une variété de déterminants, tant au niveau macro que micro. (Ellis, 2015, p.94) L'illégalité ou le caractère criminel de l'immigration irrégulière ne vont pas de soi mais constituent plutôt des étiquettes discursives apposées par surimpression sur le phénomène de l'immigration irrégulière.

Un autre concept qui revient invariablement lorsque nous étudions les arrivées par bateau est l'association de ce phénomène au trafic de migrants. Cette problématique constitue un souci croissant pour la communauté internationale. Dans le *Protocole sur le trafic illicite de migrants par terre, air et mer des Nations Unies*, (2000, p.2) ce terme est défini comme étant « le fait d'assurer, afin d'en tirer, directement ou indirectement, un avantage financier ou un autre avantage matériel, l'entrée illégale dans un État d'une personne qui est ni un ressortissant ni un résident permanent de cet État. » Les raisons pour lesquelles un individu peut avoir recours aux services de ces trafiquants sont variées : des persécutions individuelles ou de groupe, la violence généralisée, d'autres formes de violation des droits humains, une agression externe, une occupation ou autre forme de domination étrangère, des désastres naturels ou économiques, la pauvreté extrême, la soif pour une amélioration de son sort ou toute forme de motivation constituée par un mélange des raisons qui précèdent. (Brouwer & Kumain, 2003, p.9)

Le phénomène du trafic de migrants est à dissocier d'un deuxième phénomène, la traite de personnes. Dans un cadre migratoire, la principale différence entre le trafic de migrants et la traite de personnes réside en l'aspect coercitif du déplacement. Là où le trafic de migrants vise des individus qui donnent leur assentiment à ce déplacement, la traite de personnes vise des individus qui n'y ont pas consenti. De ce fait, les individus subissant la traite de personnes sont clairement des victimes.

Les individus ayant donné leur assentiment aux trafiquants de migrants pour le déplacement sont moins souvent considérés comme des victimes. En facilitant l'entrée de personnes dans un pays de manière illégale, le trafiquant de migrant pose à n'en pas douter un geste illégal. En ce qui a trait aux individus ayant recours aux services du trafiquant, la question est plus complexe. À tout le moins, il faut considérer que le motif de leur action n'est pas déraisonnable, soit la fuite d'un pays au sein duquel ces individus étaient victimes de persécutions et difficultés de toutes sortes. (Crépeau & Nakache, 2006, p.17)

Même si ces individus contreviennent aux lois migratoires d'un pays en y entrant illégalement, ils conservent certains droits et libertés, dont le droit de soumettre une demande d'asile. (Crépeau & Nakache, 2006, p.17) L'article 31 de la *Convention* (1951, p.31) interdit aux États d'appliquer des sanctions pénales contre des individus étant entrés ou ayant séjourné de façon irrégulière dans leurs territoires. En ce sens, le statut de migrants irréguliers entrés sur un territoire national par bateau est régularisé du moment qu'une demande d'asile est déposée.

Si nous revenons à présent sur la notion de migration irrégulière, nous comprenons à présent comment le caractère irrégulier de l'entrée des demandeurs d'asile arrivant par bateau ne devrait pas permettre d'étiqueter ces individus eux-mêmes comme des migrants irréguliers. L'identité et le moyen de transport ne sauraient être confondus à cet égard. (Bradimore & Bauder, 2011, p.10) La question de la régularité de la migration est fondée sur l'identité de ces migrants, à travers le statut

attribué. Un migrant arrivé par bateau et ayant déposé une demande d'asile à son arrivée est donc *ipso facto* un migrant régulier. Ni son entrée irrégulière, ni le recours à un trafiquant ne contreviennent à ce principe.

2.3 UN RAPPEL HISTORIQUE CONCERNANT LES ARRIVÉES PAR BATEAU AU CANADA

Les incidents liés à des arrivées par bateau au Canada ne sont pas tous récents. L'histoire nationale est ponctuée d'événements de ce type ayant fait les manchettes et requis une intervention gouvernementale.

En mai 1914, le *Komagata Maru* arrive à Vancouver avec à son bord 376 migrants, pour la plupart des Sikhs venus d'Inde. Suivant les politiques d'immigration canadiennes ouvertement racistes de l'époque, ces passagers ne furent jamais admis au Canada et le *Komagata Maru* fut contraint de retourner en Inde. (Silverman, 2014, p.28) (Neve & Russell, 2011, p.38) En juillet 1939, le SS *St. Louis*, un bateau venu d'Europe et transportant à son bord 937 migrants juifs fuyant l'Allemagne hitlérienne, se voit lui aussi refuser d'accoster à Halifax. (Rygiel, 2012, p.224)

En contraste à cette période clairement marquée par la xénophobie, les années 70 et le début des années 80 semblent avoir ouvert la porte à une approche beaucoup plus accueillante de la part du gouvernement canadien. De 1979 à 1981 seulement, le Canada admet pas moins de 60 000 réfugiés vietnamiens ayant fui le pays à bord de

bateaux. En 1986, le Haut-Commissaire des Nations Unies remet au Canada la médaille Nansen en signe de reconnaissance pour ces efforts effectués afin de permettre l'accueil de tous ces réfugiés. Un point clé à souligner ici est que ces réfugiés n'arrivèrent jamais au Canada à bord de bateaux. Leur voyage se fit à partir de pays voisins du Viêt Nam, par avion et dans un contexte où le gouvernement canadien avait le plein contrôle sur l'arrivée des migrants. (Neve & Russell, 2011, p.39)

Passons à présent à la période qui se trouve à l'étude dans le cadre de notre recherche. Depuis 1985, un total de huit arrivées par bateau comptant plus de 25 demandeurs d'asile à bord ont eu lieu au Canada.

Les deux premières arrivées par bateau ont respectivement lieu en 1986 et 1987, sous le gouvernement progressiste-conservateur de Brian Mulroney. Le 11 août 1986, 155 Tamils sri-lankais, incluant des hommes, des femmes et des enfants, sont secourus aux larges des côtes de Terre-Neuve après avoir passé cinq jours dans des canots de sauvetage. Il sera éventuellement confirmé après coup que ceux-ci avaient effectué la traversée de l'Atlantique à bord de l'*Aurigae*, un cargo en partance d'Allemagne de l'Ouest. Ils auraient ainsi voulu éviter d'être déportés au Sri Lanka compte tenu des discussions en Allemagne qui avaient alors cours à ce sujet. (Mann, 2009, p.193) (Markham, 1986)

L'été suivant, le 12 juillet 1987, une autre arrivée a lieu sur la côte Est dans des circonstances similaires. 173 indiens Sikhs s'échouent sur les plages du Sud de la

Nouvelle-Écosse à bord de canots de sauvetage. Comme dans le cas précédent, il est ensuite déterminé que le groupe avait été laissé là par un navire étranger, le cargo chilien *Amelie*. (Regan, 2015)

Il faut ensuite attendre plus de dix ans avant que d'autres arrivées de ce genre se produisent. Sous le gouvernement libéral de Jean Chrétien, à l'été 1999, pas moins de quatre cargos sont saisis par la garde-côtière canadienne aux larges de la Colombie-Britannique. Les arrivées ont lieu le 20 juillet, 9 août, 30 août et 9 septembre 1999, comptant respectivement 123, 140, 190 et 146 individus en provenance de la province chinoise du Fujian. (Anderson, 2013, p.6)

Les deux dernières arrivées par bateau à répertorier ont lieu sous le gouvernement conservateur de Stephen Harper, en 2009 et en 2010. Les deux arrivées ont encore lieu, comme en 1999, aux larges des côtes de la Colombie-Britannique. Le 17 octobre 2009, les autorités canadiennes interceptent dans les eaux canadiennes l'*Ocean Lady*, un cargo transportant à son bord 76 Tamils du Sri Lanka. L'année suivante, le 12 août 2010, un autre cargo est saisi dans ces circonstances similaires, avec à son bord 492 Tamils. (Anderson, 2013, p.6)

Cette brève revue de littérature nous a permis de souligner certaines caractéristiques clés des arrivées par bateau au Canada. Utilisant la discussion précédente comme contexte, nous allons dans la section suivante présenter les fondements théoriques et méthodologiques qui nous permettront de fonder notre

questionnement sur des bases concrètes et développer une réponse à notre question de recherche.

Il nous faut à présent identifier les cadres à la discussion publique entourant la réponse gouvernementale aux arrivées par bateau au Canada. De la même occasion, nous en profiterons pour présenter les échantillons discursifs recueillis dans cette recherche.

3. CADRE THÉORIQUE ET MÉTHODOLOGIE

3.1 LE NÉO-INSTITUTIONNALISME ET LA DÉPENDANCE DE PARCOURS

Un cadre législatif est un terrain de lutte politique, qu'il s'agisse de la formulation d'une loi, son abrogation, son interprétation ou son application. (Hyndman, 2012, p.246)

Selon Theodore Lewi, (1972, p.299) les tendances dominantes en science politique mettent généralement davantage d'emphasis sur l'aspect événementiel d'un enjeu et les actions prises par un gouvernement (en d'autres termes, le politique). L'aspect procédural et juridique sous-tendant l'action gouvernementale est, quant à lui, moins souvent mis de l'avant. Pourtant, les deux domaines ne peuvent être compris l'un sans l'autre. Les politiques établissent un contexte et des paramètres au sein desquels le politique prend place: « It should be amply clear why one can say little new about the politics of regulation without introducing the general policy context within which regulation is only one small, albeit important, part. » (Lowi, 1972, p.299) Dit autrement, les politiques (*policies*) influencent le politique (*politics*) tout autant que le politique influence les politiques.

Cette perspective nous amène à poser un coup d'œil nouveau sur la rhétorique des protagonistes de l'arène politique (ses acteurs). La persuasion, le langage et les

symboles utilisés par ces acteurs gagnent à être analysés à un niveau structurel. La configuration des discussions qui donnera lieu et accompagnera la mise en œuvre d'une politique devient un facteur clé quant à la façon dont cette politique sera reçue. (Mulvey, 2010, p.438)

Le cadre théorique que nous tissons ici s'inspire des grands tenants de la théorie néo-institutionnaliste. Au sein de celle-ci, l'hypothèse selon laquelle les institutions constituent les piliers d'un ordre stable, n'est pas acceptée. « L'arène » est vivante. La nature tout autant que le sens d'une institution sont intrinsèquement ambigus et ses origines, ses évolutions ou ses fonctions, intrinsèquement problématiques. (Stone, 1992, p.162)

Ce sont donc les institutions plutôt que les acteurs qui ont la primauté théorique et analytique au sein du néo-institutionnalisme. En cela, l'État en vient à tenir le haut du pavé en frais d'unité d'analyse. Cela ne signifie pourtant pas que la grille de lecture néo-institutionnaliste n'est constituée que d'institutions ou de processus structurants :

L'ontologie néo-institutionnaliste est constituée d'institutions coexistant avec des acteurs, que ce soient des groupes, des individus, des classes sociales ou des élites politiques. Théoriquement, l'action n'est pas évacuée dans le cadre néo-institutionnaliste. Elle est cependant fortement conditionnée par le contexte institutionnel, un contexte qu'elle a bien sûr créé mais non sans contraintes résultant de l'environnement institutionnel précédent. » (Lecours, 2002, p.4)

La notion d'institution est elle-même définie de façon beaucoup plus large au sein de la théorie néo-institutionnaliste qu'au sein d'autres écoles de pensée. L'institution inclut non seulement des règles, des procédures et des normes formelles mais aussi des systèmes de symboles, de schémas cognitifs et des modèles moraux, lesquels fournissent des « cadres de signification » guidant une action sociale ou politique. En adhérant à cette définition, la distinction que beaucoup de théoriciens tendent à accorder entre l'explication institutionnelle et l'explication culturelle à une action ou un phénomène est brisée. Les explications institutionnelles, centrées sur les règles ou les procédures instituées par des organisations, et les explications culturelles renvoyant à des ensembles de valeurs, d'attitudes et de démarches communes ne procèdent plus que d'une seule et même dynamique. (Hall & Taylor, 1997, p.482-483)

Une dimension du néo-institutionnalisme importante à mentionner ici tient à l'accent mis sur l'incrémentalité du changement en tant que phénomène social ou politique.

Au lieu de décrire le développement des politiques publiques comme une série de longues périodes de stabilité entrecoupées de brèves périodes de changement « révolutionnaire », ces auteurs (néo-institutionnalistes) mettent l'accent sur le caractère souvent incrémental du changement dans le secteur public. [...] Cette nouvelle approche néo-institutionnaliste s'attarde sur le fait que des changements en apparence mineurs peuvent s'accumuler au fil des ans et des décennies pour changer en profondeur la nature et les effets de certaines politiques publiques. La contribution principale de cette approche est de souligner l'importance – à long terme – de changements qui semblent subtils à première vue mais qui peuvent s'accumuler au fil des ans pour opérer une transformation profonde. (Béland, 2014, p.11)

C'est cette caractéristique incrémentale du changement propre aux approches néo-institutionnelles qui nous intéresse véritablement ici. Elle est en effet une caractéristique importante au sein d'un autre concept essentiel à notre recherche : la dépendance de parcours.

William Sewell (1996, p.262-263) résume le concept ainsi: « (path dependence means) that what happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time. » Pour chaque politique élaborée dans le passé, des débats ont pu avoir lieu. À chaque fois qu'un enjeu de ce type réapparaît dans la sphère publique, un peu plus d'attention sera accordée à l'enjeu et les angles de discussion entourant la mise en œuvre d'une nouvelle politique dépendront des angles de discussion passés. (Mulvey, 2010, p.438)

Une définition plus étroite du concept est préférée par certains. Pour Margaret Levi, (1997, p.28) la dépendance de parcours implique un coût de renonciation une fois que des développements ont été amenés dans un certain sens. D'autres choix amèneront d'autres embranchements possibles, mais les fondations d'un ordre institutionnel donné obstrueront un retour rapide à un statu quo passé. À l'inverse, continuer dans une voie donnée amène des rendements croissants, ce qui implique forcément une probabilité accrue de progresser davantage dans une direction donnée à mesure que des choix passés ont mené dans cette première direction. Toute politique « nouvelle » se retrouve ainsi à se définir « en référence (positive ou négative) à un ensemble de politiques passées ; les problèmes sociaux sont immédiatement interprétés en termes de

politiques inadaptées qu'il convient de réformer, alors même que le poids des institutions et des politiques passées contraint les réorientations présentes des politiques publiques. » (Palier & Bonoli, 1999, p.404)

Dans le cadre de notre recherche, la dépendance de parcours a un intérêt considérable. Elle nous donne une bonne idée de la manière par laquelle le paradigme de contrôle se nourrit de lui-même et mène à plus de contrôle. Les politiques mises en place de 1985 à aujourd'hui ont pratiquement toutes donné lieu à un changement focalisant un peu plus l'attention (et donc les discussions) sur la manière par laquelle le demandeur d'asile traverse la frontière. Comparativement, peu de cas a été fait des besoins de protection de l'individu qui sous-tendent la demande. En caractérisant le problème comme un enjeu de sécurité lié au trafic de migrants, le discours employé a dépersonnalisé et « objectifié » le migrant. La compréhension de celui-ci en tant que sujet est distordue, de même que ce qui est à débattre en termes de réponse appropriée à l'enjeu. (Bradimore & Bauder, 2011, p.10) À quelque part, c'est le migrant lui-même qui est criminalisé :

By characterizing the “problem” as one of human smuggling, the migrants themselves have been criminalized. This results in an almost *a priori* delegitimation of their asylum claims, and fundamentally robs them of political voice, without which they cannot challenge the discourse or norms of the regime. (Johnson, 2010, p.5)

L'approche de la dépendance de parcours nous amène à effectuer une analyse critique des perceptions publiques d'une arrivée par bateau (lesquelles ont mené à

l'action publique). Point encore plus intéressant, il devient aussi possible d'imbriquer les analyses de ces perceptions publiques d'un événement à un autre, en des thèmes spécifiques, pour mettre à jour l'effet d'entraînement au sein des politiques qui ont progressivement été mises en place.

3.2 L'ANALYSE CRITIQUE DES CADRES

Dans *Frame analysis : An essay on the organization of experience*, Erving Goffman conceptualise le cadrage comme un processus aidant des individus et des groupes à faire sens d'informations obtenues et organiser des représentations des significations développées. Les cadres sont donc composés d'unités de significations, une organisation des expériences. (1986, p.10) D'autres auteurs soulignent aussi en quoi les cadres ne correspondent pas à des perspectives passives mais fournissent au contraire des éléments prescriptifs quant à l'action à entreprendre, s'agisse-t-il de définir un problème, diagnostiquer la cause d'un problème, poser un jugement moral et suggérer des solutions. (Entman, 1993) (Wagenaar, 2011)

La question de la localisation des cadres est elle aussi importante au sein de l'analyse de ces cadres. Les communicateurs, les textes, les récepteurs et la culture environnante sont tous des sources de cadres interagissant entre eux. (Entman, 1993) L'analyse des cadres revient à distinguer et à examiner individuellement des cadres existant au sein d'enjeux politiques, économiques et sociaux particuliers.

L'aspect critique de l'analyse porte quant à lui sur l'étude des connections sous-jacentes à plusieurs cadres en interaction. Dans le cadre de notre recherche, ceci nous amène à mettre une emphase sur les continuités sous-jacentes à la réponse gouvernementale aux arrivées par bateau au Canada. Chaque arrivée ouvre la porte à un contexte donné, comptant ses propres communicateurs, textes, récepteurs et cultures. L'analyse critique des cadres revient donc à dégager les continuités et les effets d'entraînement au cours du processus, puis à comparer l'adéquation de ceux-ci par rapport au paradigme de contrôle qui a été présenté plus tôt.

Il nous faut à présent chercher à identifier les cadres à la discussion publique entourant la réponse gouvernementale aux arrivées par bateau au Canada. De la même occasion, nous traiterons de la nature des échantillons discursifs recueillis dans cette recherche.

4. UN COUP D'ŒIL SUR LA RÉPONSE GOUVERNEMENTALE : **CADRES RETENUS ET SÉLECTION DES ÉCHANTILLONS** **DISCURSIFS**

Nous nous affairerons dans cette section à opérationnaliser notre méthodologie, l'analyse critique des cadres. En tant qu'unités de significations ou construits sociaux, les cadres possèdent nécessairement en eux un potentiel de variabilité extrêmement élevé. La catégorisation et la différenciation peuvent s'opérer suivant de multiples facteurs : cadres identitaires et cadres de caractérisation (Gray, 2003) ou encore cadres liés à des enjeux spécifiques et généraux (Jacoby, 2000).

Aux termes de notre recherche, nous avons préféré à des fins de simplicité demeurer dans un schéma d'organisation de nos cadres plus près des cas à l'étude. Comme il s'agit pour nous d'évaluer l'existence et la nature des effets d'entraînement caractérisant des cas d'arrivées par bateau concrets, nous avons opté pour une catégorisation historique fondée sur les arrivées par bateau de 1986, 1987, 1999, 2009 et 2010 : Cinq cadres pour huit cas donc (les quatre cas de 1999 comptant pour un cadre).

Il convient ici de bien expliquer la notion de cadre au sein de notre recherche et la valeur ajoutée de ce choix conceptuel. Une arrivée par bateau concrète et la réponse gouvernementale qui s'y rattache pourraient techniquement être réifiés ensemble et former conjointement un « thème d'étude ». Nul besoin à prime abord de développer la notion de cadre.

Nous avons préféré utiliser la notion de cadre pour plusieurs raisons. D'abord, ce sont les unités de significations qui se trouvent à être nos cadres, élaborées publiquement et projetées au sein de la réponse gouvernementale à une arrivée par bateau donnée. Cette nuance est importante et différencie le cadre de la notion de thème d'étude (le regroupement conceptuel d'une arrivée et d'une réponse gouvernementale donnée). Nous avons dans cette recherche préféré ne pas utiliser cette notion de thème d'étude. Nous nous serions retrouvés par la suite à traiter parallèlement d'une arrivée (le cas), d'une réponse gouvernementale et d'un thème d'étude (l'ensemble). Le « cadre » devient l'isolation des unités de signification (intimement liés aux actes discursifs) entourant l'élaboration d'une réponse gouvernementale donnée. Le lien entre des unités de signification données et un thème d'étude est beaucoup plus ténu. La notion de cadre permet d'élaborer sur ce lien. C'est pour cette raison que nous avons préféré nous asseoir sur les travaux de Goffman, Entman et Wagenaar pour traiter de ces interactions entre les unités de signification et des thèmes d'étude donnés (d'où l'intérêt de l'analyse critique des cadres comme méthodologie).

Ce n'est qu'en un deuxième temps que nous développons le concept de thème, non pas en référence à un « thème d'étude » (le cas plus une réponse gouvernementale), mais les thèmes horizontaux qui s'incarnent successivement à travers plusieurs réponses gouvernementales en référence à plusieurs cas donnés. Utiliser la notion de cadre plutôt que celle de thème d'étude devient un choix sémantique qui permet d'ajouter une lunette particulière à notre analyse. Le « thème » est ainsi bien dissocié comme notion horizontale. Parler de « thème horizontal » et de « thème d'étude » aurait été mélangeant pour le lecteur et n'aurait pas aidé à bien dissocier la nature intrinsèquement différente que nous tentons de mettre au jour entre ces différentes notions.

Les sources documentaires traitant du développement d'une réponse gouvernementale à un phénomène donnée sont elles aussi fort variées. Aux fins de notre recherche, nous nous proposons de focaliser notre attention sur les discours publics d'élus, avec au premier plan le discours d'élus issus du parti au pouvoir au cours de débats parlementaires à la Chambre des communes à Ottawa. Afin de compléter cet échantillon, nous avons également consulté des articles de presses, certains textes législatifs et certains communiqués de presse.

Il va sans dire que les unités de significations développés au sein d'une réponse gouvernementale donnée vont bien plus loin que la ligne d'action élaborée par un gouvernement. Les médias, certains groupes de pression et d'autres acteurs de la scène socio-politique poussent eux-mêmes certains de leurs intérêts sur la place

publique, lesquels intérêts pourront subséquemment se retrouver au sein de la réponse gouvernementale. Cette ligne de pensée nous éloigne cependant de notre cadre théorique, lequel entend précisément se pencher sur les influences institutionnelles au sein du développement d'une réponse donnée. À ce titre, sélectionner des sources mettant une emphase sur les acteurs proches des sphères du pouvoir gouvernemental est une excellente façon de souligner l'incidence institutionnelle (et la dépendance de parcours ayant cours en pointillé derrière celle-ci) au sein d'une réponse gouvernementale donnée.

La totalité des données recueillies dans le *Hansard* des débats parlementaires se retrouve en annexe A. À des fins d'identification, nous avons répertorié pour chaque échantillon discursif le nom de l'auteur, ses affiliations partisans et, bien évidemment, le cadre au sein duquel l'échantillon discursif prend place.

À noter également que nous nous sommes restreints dans notre collecte au sein du *Hansard* à une période de un an suivant une arrivée par bateau donnée. Cette période, décidée de manière arbitraire, permet d'obtenir une bonne gamme d'échantillons à la fois dans les jours et les semaines suivant une arrivée par bateau, mais aussi à plus long terme. Des éléments constitutifs importants de l'influence institutionnelle sur la réponse gouvernementale à une arrivée par bateau se lisent dans les premiers temps après une arrivée. Les débats entourant des changements législatifs et réglementaires prennent cependant plus de temps à se mettre en place mais sont tout autant influents dans la constitution d'un cadre institutionnel donné.

Lorsque pertinent, nous faisons également référence à des développements législatifs et réglementaires sortant de ce cadre annuel mais demeurant essentiel, eux aussi, à la caractérisation d'un cadre donné.

5. ANALYSE

Dans cette section, nous utilisons l'analyse critique des cadres pour évaluer la dépendance de parcours au sein de la réponse gouvernementale du Canada aux arrivées par bateau entre 1985 et 2015. Tel que mentionné dans la section précédente, nos cinq cadres retenus sont les suivants:

| Cadre | Période étudiée | Cas associé | Parti au pouvoir |
|--------------|--|---|--|
| 1 (1986) | 11 août 1986 – 11 août 1987 | 155 Tamils sri-lankais (Terre-Neuve et Labrador) | Parti progressiste-conservateur de Brian Mulroney |
| 2 (1987) | 12 juillet 1987 – 12 juillet 1988 | 173 Sikhs indiens (Nouvelle-Écosse) | Parti progressiste-conservateur de Brian Mulroney |
| 3 (1999) | 20 juillet 1999 – 9 septembre 2000* | 599 chinois (Colombie-Britannique) | Parti libéral de Jean Chrétien |
| 4 (2009) | 17 octobre 2009 – 17 octobre 2010 | 492 Tamils sri-lankais (Colombie-Britannique) | Parti conservateur de Stephen Harper |
| 5 (2010) | 12 août 2010 – 12 août 2011 | 76 Tamils sri-lankais (Colombie-Britannique) | Parti conservateur de Stephen Harper |

* Un an suivant la dernière arrivée par bateau au sein des quatre cas associés à ce cadre

En conséquence à ce choix méthodologique, les diverses dimensions de la mise en place du paradigme de contrôle sont présentées en pointillé d'un cadre à l'autre. Au

sein de notre analyse, ces cadres sont associés à une section, lesquelles se suivent de façon chronologique. Baser nos cadres sur des thématiques horizontales nous aurait empêché de jeter un regard d'ensemble sur le contexte historique d'un cas donné, lequel est essentiel afin de saisir les interrelations qui participent, conjointement, à la mise en place du paradigme de contrôle.

Cadre #1 : 1986

Les deux premiers cadres à l'étude s'inscrivent dans un contexte où l'outil législatif principal pour gérer les arrivées par bateau est encore la *Loi sur l'immigration de 1976* (entrée en vigueur en 1978). (CCR, 2015-1) C'est cette loi qui codifie pour la première fois au Canada des barèmes légaux au processus d'entrée d'un réfugié, en attribuant à celui-ci une catégorie de migration spécifique.

La loi créait également une délimitation entre les demandes faites outre-mer et les demandes effectuées à partir du territoire canadien. En termes d'inadmissibilité, des clauses d'exclusion écartaient expressément les individus s'étant rendus coupable d'un crime de guerre, d'un crime non-politique sérieux ou d'autres actes considérés comme contraires aux buts et principes des Nations Unies. (Aiken, 2001, p.10)

Le cadre de 1986 ébauche une réponse gouvernementale radicalement différente de ce qu'elle est devenue quelques trente ans plus tard face à des arrivées

par bateau plus récentes. Le cadre législatif de l'époque, passablement différent également, ne permet que peu de maniabilité du système pour ouvrir la porte à des stratégies de contrôle.

À leur arrivée au Canada, les demandeurs d'asile Tamils sont accueillis à bras ouverts par la population locale d'Admirals Beach, à Terre-Neuve & Labrador. (Anandasangaree, 2016) Dans les jours qui suivent cependant, les médias de l'époque font grand cas de la manière par laquelle les Tamils remettent en contexte leur histoire en avouant être partis d'Allemagne de l'Ouest plutôt que d'Inde, comme ils l'avaient d'abord clamé. (Watson, 1986) (Freed, 1986)

Leaders of Canada's Tamil organization, faced with a growing public backlash against their group, acknowledged [...] that 155 Tamil refugees from Sri Lanka who were picked up in overcrowded lifeboats off Newfoundland last week had sailed from West Germany and not South Asia as the refugees first claimed. (Freed, 1986)

Un député conservateur de la Chambre des communes, Alex Kindy, tiendra le discours suivant:

My phones have been ringing off the hook since the Sri Lankans, who are Hindu Tamils, admitted late Saturday they lied to immigration officers when they said they left India in a boat July 7 and were set adrift a month later to founder for five days off the coast of Newfoundland. [...] The basic message is that these people are pirates trying to sneak into Canada and that we should put them back in the same boats they came in and send them home. (Watson, 1986)

La décision que prendra le Premier ministre Brian Mulroney va cependant à l'encontre du discours tenu par d'autres députés de son propre Parti et souligne au contraire les engagements humanitaristes de son gouvernement : « We are not in the business of turning away refugees », (Anandasangaree, 2016) « And if we err, we will always err on the side of fairness and compassion ». (Watson, 1986)

Mulroney écrase également par ce discours un autre groupe d'opposants selon qui ouvrir la porte à ces Tamils créerait un précédent qui amènerait quantité d'autres à tenter de faire la même chose. Une suggestion par un député libéral prônant le « détention » du groupe dans un camp d'internement est également mise de côté. (Watson, 1986)

Faisant taire les critiques, le gouvernement Mulroney permet finalement aux Tamils d'accéder au processus de demande d'asile sans aucune restriction liée au particularisme de leur arrivée. Mulroney réitère sa position à l'automne, quelques mois après l'arrivée des Tamils : « Indeed, I indicated that such people (les Tamils arrivés par bateau) would never be turned away from Canada. They were hopeless people seeking exile and some possible future in Canada. » (Mulroney, 1987)

Il faut attendre le début de 1987 avant de voir poindre dans le discours officiel des éléments tranchant avec cet engagement apparent du gouvernement Mulroney envers l'humanitarisme.

En février 1987, des rumeurs se font entendre sur la scène nationale comme quoi un nouveau groupe de demandeurs d'asile naviguerait vers le Canada en partance d'Allemagne. Les propos tenus par le Ministre de l'immigration, Benoît Bouchard, sont ici particulièrement intéressants à noter. D'entrée de jeu, il réitère les engagements du Canada envers les demandeurs d'asile, une fois que ceux-ci accostent au pays:

Now, if we hear about it when the boat has already reached Canadian waters or its passengers are on Canadian soil, the usual regulations apply, which means that we do not expulse citizens of Sri Lanka, we automatically give them a permit to stay, as we did last year. (Bouchard, 1987-1)

Les mots utilisés par Bouchard pour décrire cet état des choses diffèrent pourtant grandement de l'approche de Mulroney. D'une part, l'étiquetage de ces individus arrivant par bateau en tant que réfugiés est absent. D'autre part, c'est la dimension humanitariste de la ligne d'action gouvernementale qui brille par son absence dans le discours de Bouchard. L'action n'a pas lieu parce qu'il s'agit d'un devoir moral envers des individus dans le besoin, il s'agit simplement de mettre en marche des régulations déjà existantes.

Le discours tenu par d'autres députés conservateurs en Chambre réitère la thématique de resquilleurs venant prendre la place de réfugiés légitimes. En faisant référence à ces rumeurs d'un nouveau bateau de Tamils en provenance d'Allemagne, John Oostrom lance l'argument selon lequel le passage par un autre pays où ces arrivants peuvent déposer une demande d'asile (l'Allemagne) devrait amener le Canada

à attribuer un statut différent à ces arrivants, comparativement à des demandeurs arrivant d'un théâtre de conflit. (Ostrom, 1987)

La réponse du gouvernement à cette thématique semble aussi différer de ce qu'elle était à l'automne 1986. Sans confirmer ni infirmer le projet de créer un nouveau statut pour des arrivants de ce type, Bouchard ne souligne pas moins en quoi le gouvernement est sur le point d'introduire de nouvelles législations afin de résoudre les abus du système de demandes d'asile et pour améliorer les procédures en place pour gérer de tels cas. Il confirme aussi le travail effectué afin de mettre en place des mesures temporaires pour gérer ces problèmes. (Bouchard, 1987-1)

Cadre #2 : 1987

Dans l'esprit des propos tenus par Bouchard, deux projets de lois sont effectivement déposés à la Chambre des communes le 11 août 1987: les projets de loi C-55 et C-84. Il devient cependant impossible pour nous de commenter ces projets de loi sans introduire également notre deuxième cadre d'analyse, suivant l'arrivée de 173 Sikhs indiens en Nouvelle-Écosse le 12 juillet 1987. C'est en effet en réponse directe à cette arrivée que la Chambre est rappelée pour siéger le 11 août alors qu'elle avait été ajournée pour la période estivale. (Parlement du Canada, 2016) La réponse du Canada à cette arrivée par bateau devient elle-même intimement imbriquée à ces deux projets de loi.

Le projet de loi C-55 (*Loi sur des mesures de réforme concernant les réfugiés*) élabore d'importants changements au système de détermination du statut de réfugié, à commencer par la création de la Commission de l'immigration et du statut de réfugié (CISR). Un processus d'audience par étapes est mis en place pour traiter les demandes. Une étape préliminaire de filtrage des demandes précède une seconde et dernière étape où le demandeur passe en audience devant un membre de la Section du statut de réfugié de la Commission (une forme de tribunal semi-judiciaire). (Chan, 2005, p.36) (Aiken, 2001, p.13) La première étape du processus de détermination sera subséquemment éliminée suivant le très haut taux de légitimité des demandes enregistrées (95%). (Chan, 2005, p.36)

Un autre changement important introduit par C-55 concerne la création d'une liste d'États transitoires sûr. Par cette mesure, le gouvernement canadien se réserve ainsi le droit de rejeter une demande d'asile sous prétexte que le pays par lequel il a transité est sur une liste de pays où l'individu ne cours pas un risque grave à sa sécurité et a eu la possibilité de déposer une demande d'asile. (Ellis, 2015, p.98) (Chan, 2005, p.36) Le lien avec l'arrivée par bateau de 1986 est ici très clair et va dans le sens de l'introduction d'un nouveau statut auquel Oostrom faisait référence.

Le projet de loi C-84, pour sa part, confère notamment des pouvoirs plus importants aux services d'immigration en matière de détention et de renvoi de demandeurs d'asile identifiés comme criminels ou comportant un risque à la sécurité du pays. D'autres changements apportés incluent la possibilité de détenir des demandeurs

dont l'identité ne peut être vérifiée, la mise en place de pénalités significatives envers les trafiquants de migrants (jusqu'à 10 000\$ et/ou 5 ans d'emprisonnement) et l'augmentation des amendes données aux compagnies de transport amenant des passagers au Canada ne possédant pas les documents appropriés. (Angus & Hathaway, 1987, p.9) (Aiken, 2001, p.13) En raison des débats publics importants entourant la nature des changements proposés par ces deux projets de lois, il faut attendre à juillet 1988 avant que ceux-ci n'obtiennent finalement la sanction royale. (Dirks, 1995, p.92)

À ce stade dans notre présentation de notre deuxième cadre d'analyse, il devient important de comprendre comment le cadre de 1986 et celui de 1987 sont finement reliés. Par cela, nous entendons bien sûr que la réponse gouvernementale de 1987 est en partie constituée des thèmes discursifs développés au sein de la réponse gouvernementale de 1986. Lorsque nous observons les thèmes discursifs abordés en Chambre, il apparaît clair que les enjeux auxquels répondent les projets de loi C-55 et C-84 étaient, à la base, ceux qui avaient commencé à poindre au sein du cadre de 1986

En ce sens, comment devient-il possible de discerner des effets d'entraînement entre ces deux réponses gouvernementales si nous admettons qu'elles se chevauchent, à tout le moins partiellement ?

Le véritable lien entre les deux réponses tient au contexte du discours gouvernemental qui se met en place au sein des débats de la Chambre des communes. Comparativement au cadre de 1986, le discours portant sur les engagements humanitaires du Canada ou encore les obligations liées au cadre législatif de l'époque est presque absent. Au contraire, la réponse gouvernementale est tout de suite entamée dans un contexte de refonte du principal outil législatif permettant de gérer les arrivées par bateau, la *Loi sur l'immigration* de 1976.

Dit autrement, la réponse gouvernementale au sein du cadre de 1987 saute complètement le débat parlementaire de 1986 puisqu'elle se positionne déjà en faveur d'un remaniement législatif permettant d'apporter davantage de contrôle au système des demandes d'asile. Au sein du cadre de 1986, ce positionnement n'arrive jamais. Il est plutôt devancé par l'arrivée par bateau de 1987.

Les propos du ministre Bouchard sont encore une fois très éclairant sur ce sujet et témoignent de cette orientation de la réponse gouvernementale :

There is a much graver problem which has been highlighted by this latest incident. It concerns the growing influxes of undocumented persons who claim refugee status at ports of entry from one end of this country to the other. [...] People steal their way into Canada confident that although they have broken our laws, we, the people of Canada, will not break our own laws. [...] The generosity of the entire system of justice has been abused. (Bouchard, 1987-2)

Un autre point important au sein des débats parlementaires de 1987 concerne la cible de ce durcissement du système. Pour reprendre les propos de Bouchard:

It is a tough Bill containing responsible measures. It will deter those seeking to enter Canada illegally. It will protect the integrity of our immigration and refugee programs. [...] Under this deterrent and detention legislation – Penalties against smugglers and their accomplices will be increased substantially [...] People who arrive with no documents can be detained until their identities are established. [...] The Bill is tough on those who would break the law. (Bouchard, 1987-2)

Des représentants de l'opposition dénonceront cette orientation du durcissement du système, accusant le gouvernement d'en faire bien peu pour s'en prendre aux trafiquants eux-mêmes et beaucoup pour limiter l'accès aux demandeurs d'asile. (Marchi, 1987) (Heap, 1987)

À noter également en quoi le ministre Bouchard associe l'arrivée de ces demandeurs d'asile dépourvus de pièces d'identité à une entrée illégale : « organized attempts to evade the immigration laws of this country », « those seeking to enter Canada illegally », « people steal their way into Canada ». (Bouchard, 1987-2) Ces termes sont nouveaux et étaient absents du cadre de 1986 au sein du discours gouvernemental.

Un autre point particulièrement intéressant tient à la manière par laquelle le gouvernement amène, à travers le projet de loi C-84, des possibilités de renvoi des

demandeurs d'asile pour des considérations en lien avec la criminalité ou en vertu d'un risque sécuritaire pour le pays.

Les possibilités de renvoi en lien avec la criminalité étaient déjà pré-existantes dans le système précédent, comme le mentionne en Chambre John N. Turner, du Parti libéral : « Sections 19 through 32 of the *Immigration Act*, 1976, declare persons with a criminal record or those likely to engage in criminal activity, inadmissible to Canada. » (Turner, 1987)

Les mesures introduites par le gouvernement annoncent cependant un tournant intéressant. L'introduction de davantage de restrictions en lien avec la criminalité et le risque à la sécurité n'est pas qu'en lien avec les cas de demandeurs d'asile arrivés par bateau. Cependant, l'ajout de ce point précis dans ce projet de loi amené en réaction directe à l'arrivée par bateau peut être interprété par une variété d'acteurs dans la société comme une confirmation par le gouvernement que ces arrivées sont plus risquées pour le pays que les milliers de demandeurs d'asile transitant quotidiennement par les aéroports du Canada. En ce sens, le gouvernement glisse encore un peu plus loin de la position qui était sienne à l'automne 1986 lorsque Mulroney avait réaffirmé son engagement à accueillir ces individus en détresse arrivant par les mers.

Bouchard dira de ces deux projets de loi qu'il s'agit d'une action décisive afin de régler le problème de ces arrivés par bateau, une fois pour toutes : « We must act swiftly now to guard against the possibility that we might at some later date be forced to

take even tougher measures. » (Bouchard, 1987-2) Cette volonté d'amener une solution « finale » au problème est également une caractéristique importante de la réponse gouvernementale dans ce deuxième cadre d'analyse. Cette orientation de la réponse axée sur la résolution finale du problème ouvre la porte à une interprétation comme quoi une arrivée par bateau ne devrait jamais sembler extraordinaire au sein du système migratoire canadien. L'accommodation ou la flexibilité par rapport à un événement en soi très peu commun deviennent des options vers lesquelles le gouvernement peut tendre un peu moins. De même, l'occurrence d'un autre événement de ce type pourrait impliquer une faille dans cette solution « finale » et impliquer, comme Bouchard l'indique lui-même, d'autres durcissements du système.

Cadre #3 : 1999

Notre troisième cadre d'analyse correspond historiquement à un saut dans le temps de plus de dix ans, lorsque quatre bateaux chargés de demandeurs d'asile chinois sont interceptés par la garde-côtière canadienne en Colombie-Britannique à l'été 1999. Sans grande surprise, le contexte législatif a considérablement évolué lui aussi, entre temps.

Comme mentionné plus tôt, les projets de loi C-55 et C-84 reçoivent la sanction royale en juillet 1988. (Dirks, 1995, p.92) Il faut ensuite attendre aux années 90 avant de voir de nouveaux développements législatifs portant sur la question.

En février 1993 entre en vigueur le projet de loi C-86, lequel propose de nouvelles révisions du système de détermination du statut de réfugié. Les changements incluent la mise en place de procédures possibles de fouille, de prises de photo et de prises d'empreintes digitales des demandeurs d'asile ou des réfugiés sélectionnés outre-mer n'arrivant pas à soumettre des pièces d'identité satisfaisantes lors de leur arrivée au Canada. Les dispositions en matière de détention sont également transformées, repoussant les possibilités de revue de dossier de sept à trente jours pour des détenus en attente de déportation.

Enfin, les critères d'inadmissibilité liés à des considérations d'ordre sécuritaire sont également étendus. Les exclusions ne visent plus que des individus s'étant rendus coupables d'actes criminels. Jusqu'alors, un tel acte impliquait une exclusion possible si le même acte commis au Canada était passible d'une peine d'emprisonnement de dix ans ou plus. C-86 étend l'exclusion à tout individu à l'endroit duquel il y a des soupçons réalistes de croire qu'il ait commis un tel acte. Il devient aussi possible d'exclure un tel individu s'il existe un doute raisonnable de croire qu'il ait entretenu ou entretienne actuellement des liens avec des organisations soupçonnées de s'être rendues coupables d'actes punissables par la loi. (CCR, 2015-1) (Chan, 2005, p.37) (Dumas, 1995, p.114-115)

Un autre projet de loi allant dans le même sens entre en vigueur en juillet 1995. Le projet de loi C-44 restreint les possibilités pour les résidents permanents faisant face à un mandat de déportation de porter leur cause en appel ou d'effectuer une demande d'asile s'ils sont déclarés représenter un danger pour le public. (Chan, 2005, p.37)

Toutes ces nouvelles dispositions contribuent à renforcer le schéma narratif selon lequel les frontières canadiennes se trouvent à être infiltrées par des criminels, perçus comme des migrants « illégaux » et non pas des demandeurs d'asile légitimes. Dans les faits pourtant, aucune nouvelle arrivée par bateau n'a encore eu lieu.

Revenons maintenant sur les quatre arrivées par bateau par rapport auxquels nous avons élaboré notre troisième cadre. Ces quatre arrivées ont lieu à l'été 1999. Le système migratoire canadien, déjà à ce moment, se trouve à l'étude par le gouvernement pour une révision future. Un premier rapport est complété en 1998 par un Groupe consultatif pour la révision de la législation sur l'immigration, à la lumière des nouveaux défis et des nouvelles tendances de l'époque. (Parlement du Canada, 2000)

Les arrivées de 1999 agissent ici à titre de catalyseur d'attention au sein de la population canadienne en direction de la politique nationale sur les réfugiés.

Lorsque le premier bateau arrive en Colombie-Britannique en juillet et que la quasi-totalité des arrivants soumettent une demande d'asile, des procédures sont tout de suite enclenchées pour traiter ces demandes. Les arrivants sont alors relâchés et une certaine quantité disparaîtra alors, abandonnant du même coup leurs demandes d'asile. (Mountz, 2006, p.61) En conséquence, lorsque les occupants des trois autres bateaux arriveront un peu plus tard au courant de l'été, tous seront mis en détention à la base des Forces armées canadiennes d'Esquimalt (suivant les dispositions introduites par C-84). Procédant ainsi, le gouvernement espèrera minimiser la quantité de ces migrants disparaissant du radar gouvernemental. (Clarkson, 2000) (Parlement du Canada, 2000)

La couverture médiatique de ces arrivées sera extrêmement populaire, la dimension dramatique de l'arrivée assurant la première page à l'événement dans une foule de journaux à l'été 1999. Les grands titres utilisés imagent bien la prise de position éditoriale de ces journaux : « Ship's passengers must be sent home », « Boat people who need a return ride », « Gatecrashers are not welcome ». (Clarkson, 2000) Un point important à souligner ici est l'incidence de la possibilité de détention à des fins d'identification amené par le projet de loi C-84 sur le déroulement des événements. Sous un certain angle, la détention des arrivants a précisément permis de renforcer cette image du migrant criminel, les mettre aux fers devenant une mesure de saine gestion de l'enjeu.

Dans la grande majorité des cas, les journalistes feront peu de cas du système en place et ne prendront pas la peine d'esquisser les procédures législatives, réglementaires et administratives auxquels le gouvernement doit se plier pour une variété de raisons, y compris ses engagements en tant que signataire de la *Convention de Genève sur la protection des réfugiés* de 1951. Au contraire, la nuance humanitariste apportée par cette obligation à la gestion de ces arrivées sera pratiquement absente de la couverture médiatique. Le « capital » de sympathie élaboré par la presse à l'endroit des arrivants est plutôt dirigé en direction de la terrible difficulté du voyage pour ces arrivants et l'inhumanité du traitement accordé à ces passagers par les trafiquants. Pour le reste, leur détention sera perçue comme normale en de telles circonstances, alors même que des arrivées similaires dans le passé n'avaient jamais vu la mise en place de telles procédures. (Clarkson, 2000)

C'est bien le mode de transport irrégulier qui primera au sein de la couverture médiatique et en Chambre. Le mode de transport devient non seulement central, certains crieront même en quoi les obligations humanistes du Canada inscrites dans la Charte deviennent un boulet qui nuit à l'expulsion de ces migrants illégaux :

Those laws were repeatedly violated this summer by international gangsters smuggling illegal entrants into Canada on our west coast. [...] The official opposition has called for expedited procedures to detect, detain and assess illegal immigrants and to immediately deport those who are not genuine refugees. In doing so we are not calling for something unusual or draconian. This is what the 1987 amendments to the 1976 Immigration Act were supposed to accomplish. [...] The problem is that [...] the supreme court ruled that the Charter of Rights and Freedoms applies to everyone

who is physically present in Canada, even if they got here illegally and even if they have no legal standing whatsoever. [...] This is an issue of law and order. It is an issue of criminal justice. (Manning, 1999)

Autre exemple où un projet de loi passé peut être interprété comme ayant influé sur la « scénarisation » des arrivées de 1999, c'est suite à une fouille au sein du groupe de détenus (fouille admissible suivant les changements introduits par C-86 en 1993) où des stylos, peignes et punaises seront découverts que le gouvernement augmentera les mesures de sécurité afin d'assurer la surveillance des demandeurs d'asile. Le Sun traduira cet épisode sur la scène publique en renforçant l'imagerie du danger en rapport avec les arrivants: « Migrants face tight security after police find weapons. » (Clarkson, 2000)

En Chambre, les discussions ayant eu cours au sein de nos deux premiers cadres ont déjà tissé des unités de significations différentes pour les réfugiés arrivés par bateau. L'introduction de nouvelles restrictions législatives et réglementaires en réponse aux arrivées par bateau précédentes de 1986 et 1987 n'est pas totalement oubliée.

La finitude espérée des changements apportés par les projets de loi C-55 et C-84 ne l'est pas non plus. Ces projets de loi avaient été introduits dans l'esprit de protéger le droit à l'asile tout en préservant le système contre l'abus. Dans la couverture médiatique de 1999, le droit à l'asile étant simplement absent des débats, ce n'est plus qu'en référence à la protection contre l'abus que l'efficacité de C-55 et C-84 est

analysée. Les migrants chinois ne sont pas imaginés une seconde comme étant, pour certains du moins, des réfugiés légitimes. Suivant cette ligne de pensée, un réfugié légitime n'arrive simplement pas de cette manière. Un mode de transport illégal couplé à un statut légitime de réfugié est tout simplement inconcevable pour les adhérents à cette vision. En ce sens, comme C-55 et C-84 ne ferment pas la porte à l'acceptation de certains de ces arrivants par bateau à titre de réfugiés, le système de l'époque est dès lors perçu comme défaillant et à réformer. En clair, c'est précisément parce que les projets de loi C-55 et C-84 promettaient une finitude au problème qu'ils ouvrent la porte à de nouveaux changements.

En Chambre, la stratégie gouvernementale ne semble au prime abord pas outre-mesure appuyer un renforcement des mesures de sécurité à l'endroit des demandeurs d'asile arrivant par bateau. La ministre de l'immigration de l'époque, Elinor Caplan, s'en tiendra à une approche très légaliste:

The government will uphold the charter of rights and freedoms. We stand for due process of law. [...] We are not attempting to throw out compassionate and humanitarian traditions. We will not rip up our charter of rights and freedoms. We will not walk away from our international obligations. (Caplan, 1999)

C'est ce même gouvernement qui apportera, en partie suite aux arrivées par bateau de 1999, en partie à la revue du système enclenché précédemment, la *Loi sur l'immigration et la protection des réfugiés* de 2002 (LIPR). Dans cette nouvelle loi, en

net contraste avec les propos de la ministre Caplan, les changements de pratique tirent au contraire en faveur d'un durcissement du système envers les arrivants par bateau.

La LIPR étend encore les pouvoirs de détention accordés aux services d'immigration. Dans l'article 55(2) de la loi, il est entendu que tout demandeur d'asile puisse être détenu s'il (1) est à risque de ne pas se présenter à une comparution liée à une enquête, une requête ou une mesure de renvoi, (2) représente un danger pour le public ou (3) ne possède pas de pièces d'identité adéquates. (Crépeau & Nakache, 2006, p.16)

Si ces motifs ne sont pas nouveaux, l'applicabilité de ceux-ci est étendue. Ainsi, le motif permettant la détention en raison de l'absence de pièces d'identité adéquates ne s'applique plus qu'au point d'entrée, mais à tout moment du processus de demande. Les possibilités de détention au point d'entrée sont également étendues, permettant maintenant cette détention pour des raisons de commodité administrative ou lorsqu'un doute raisonnable existe quant à l'inadmissibilité du demandeur pour des raisons sécuritaires. Les agents du service d'immigration obtiennent aussi l'autorisation de détenir sans mandat toute personne jugée inadmissible, même si aucune mesure de renvoi n'a encore été légalement approuvée. (Crépeau & Nakache, 2006, p.16)

Parmi d'autres changements apportés, la LIPR prévoit des sanctions plus sévères contre les trafiquants de migrants, allant jusqu'à la prison à vie pour des

trafiquants aidant au moins dix migrants à entrer illégalement au Canada (Crépeau & Nakache, 2006, p.17) (Mountz, 2006, p.73)

Sous plusieurs angles, le cadre de 1999 s'inscrit dans un contexte législatif et réglementaire où les problèmes et les solutions législatives et réglementaires du passé ont contribué à une problématisation particulière de l'enjeu axée sur la sécurité. En observant le discours du gouvernement en Chambre, nous observons peu d'appui au paradigme de contrôle. Les changements introduits à travers la LIPR de 2002 tranchent cependant avec le discours du gouvernement. La question de la détention et une obsession par rapport à la légalité du mode de transport plutôt qu'envers la légalité de la demande tiennent une importance considérable dans cette loi. En cela, le cadre de 1999 effectue un pas décisif en direction du paradigme de contrôle.

Cadre #4 : 2009

L'agence des services frontaliers du Canada (ASFC) est créée en 2004, une entité séparée d'IRCC prenant notamment en charge le mandat d'application de la LIPR.

À travers la mise en place de cette agence, le gouvernement canadien souhaitait attribuer au processus de contrôle des frontières une quantité opportune de ressources. À partir de ce moment cependant, comme le souligne Alison Mountz, (2006, p.66 & 75) les possibilités de contradiction entre les valeurs sous-tendant le mandat d'acceptation

des demandeurs attribué à IRCC et les objectifs opérationnels en lien avec les mécanismes de contrôle aux frontières (du ressort de l'ASFC) sont décuplées.

Les deux dernières arrivées par bateau à répertorier ont lieu sous le gouvernement conservateur de Stephen Harper, en 2009 et en 2010. Les deux arrivées ont encore lieu, comme en 1999, aux larges des côtes de la Colombie-Britannique. Le 17 octobre 2009, les autorités canadiennes interceptent, au large de la ville de Victoria, un cargo transportant à son bord 76 Tamils du Sri Lanka: l'*Ocean Lady*. L'année 2009 marque elle-même un tournant pour le conflit au Sri Lanka opposant le gouvernement sri-lankais à l'organisation rebelle des Tigres Tamils. Des organisations non-gouvernementales et d'autres acteurs internationaux dénonceront durant cette période des atteintes aux droits humains commises contre de nombreux civils Tamils au Sri Lanka. (Davies, 2009)

Sans grande surprise, cet intérêt sur la scène internationale envers l'enjeu humanitaire au Sri Lanka teinte notre quatrième cadre à l'étude. La semaine suivant l'arrivée par bateau, plusieurs représentants des partis de l'opposition relieront directement le conflit au sri-lankais à l'obligation gouvernementale eu égard à l'accueil des arrivants par bateau :

The Sri Lankan government is making life unbearable for the Tamil population, especially those who remain in detention camps. New Democrats have long called on the government to pressure the Sri Lankan authorities to respect the Tamil people's human rights. Its failure to do so has only increased the desperation and attempts of these people to flee. (Davies, 2009)

The 76 Tamil people who landed in British Columbia are claiming refugee status. The Tamil people seek refuge due to the injustices they experience each and every day from their government merely because they are Tamils. Even as we speak, over 250,000 people are languishing in displacement camps exposed to the elements and in unsanitary conditions. [...] People fleeing Sri Lankan injustice and seeking Canadian justice have a right to expect the expeditious application of our laws. (McKay, 2009)

Nous voyons avec ces deux interventions une réintroduction du thème humanitariste dans notre quatrième cadre. À l'image des arrivées de 1999 cependant, le discours gouvernemental demeure très légaliste. Questionné sur son engagement envers l'accueil de ces demandeurs d'asile, le ministre de l'immigration Jason Kenney réitérera son engagement envers le respect des procédures :

I can assure the House that any individual who arrives in Canada will be processed in full accordance with our Immigration and Refugee Protection Act. That means that people will undergo a screening for their admissibility and their eligibility to come to Canada. It means that if they are detained, they will have access to the IRB (Immigration Refugee Board) for detention hearings. (Kenney, 2009)

À ce titre, les propos de Kenney partagent certaines similitudes avec le discours du ministre libéral Benoît Bouchard suivant l'arrivée de 1986 que nous avons mentionné dans notre premier cadre: l'accent du message est mis sur le respect du système législatif et réglementaire en place.

Notre recherche au sein du *Hansard* des débats à la Chambre des communes se révèle très peu fructueuse en termes d'échantillons discursifs de la réponse

gouvernementale à cette arrivée par bateau. L'absence de débat sécuritaire en Chambre ne peut cependant pas être interprétée comme un signe que l'arrivée de 2009 est passée sous les radars médiatiques ou encore que la thématique humanitariste a prédominé au sein de ce cadre.

Dans une recherche portant sur la couverture médiatique de cette arrivée en particulier, Ashley Bradimore et Harald Bauder soulignent en quoi la couverture tendait au contraire à être négative et à mettre l'emphase sur les risques sécuritaires posés par les arrivants : « La couverture était axée sur la sécurité – plutôt que les droits humains – et décrivait le système d'immigration comme étant défaillant et abusé par de faux demandeurs d'asile. » (Bradimore & Bauder, 2011, p.637)

Sans avoir effectué une analyse médiatique de la même ampleur que Bradimore & Bauder, nous avons à tout le moins cherché à retracer les énoncés du ministre Kenney sur l'arrivée par bateau en dehors de la Chambre. Le 21 octobre 2009 est ainsi paru dans le *Ottawa Citizen* un titre révélateur qui tend à appuyer la thèse de Bradimore & Bauder: *Would-be migrants should face scrutiny, Kenney says : Handling of 76 men will send example.* (Greenway, 2009)

Nous nous sommes intéressés à cet article en particulier en raison du fait qu'il contient des citations du ministre Kenney durant sa première déclaration suivant l'arrivée par bateau. Une citation de Kenney en particulier est fort intéressante et réitère la thématique des resquilleurs apparue dans les cadres précédents: « We want to

ensure that we don't end up with a two-tier immigration system, one tier for legal, law abiding immigrants who wait patiently to come to Canada the legal way, and another that incentivizes (*sic*) false refugee claimants to come through the back door. » (Greenway, 2009)

Si l'association n'est pas faite directement entre ces arrivants et des resquilleurs tentant d'abuser du système de demande de refuge au Canada, ces propos de Kenney n'en sont pas moins fort éloignés de la thématique humanitariste.

Par-delà la répétition des thématiques vues dans les cadres précédents, le point le plus important à souligner par rapport à ce cadre demeure le renouveau d'un engagement envers la refonte du système. Pour reprendre l'article de l'*Ottawa Citizen*: « Kenney, who has long complained that bogus refugee claimants are abusing Canada's system, says he plans to bring in legislation to overhaul the system before Christmas. He used the arrival of the latest group to restate his unhappiness with the existing system. » (Greenway, 2009)

Voilà probablement le point critique à souligner au sein de la réponse gouvernementale dans ce cadre. Si Kenney souligne la volonté du gouvernement à respecter le système législatif et réglementaire en place, la volonté de réformer le système nous amène à soulever la même observation apportée que par rapport à la réponse gouvernementale de 1999 : L'arrivée par bateau est à nouveau perçue comme

une goutte faisant déborder le vase et un problème à résoudre. L'arrivant par bateau ne peut être considéré comme un réfugié légitime.

Avant même que ces changements législatifs peuvent être mis en place cependant, une nouvelle arrivée par bateau a lieu.

Cadre #5 : 2010

Pas même un an après l'arrivée de 2009, le 12 août 2010, un autre cargo comptant 492 Tamils à son bord est saisi au large de la Colombie-Britannique: Le *Sun Sea*. (Anderson, 2013, p.6)

Nos quatrième et cinquième cadres, un peu comme pour les arrivées de 1986 et 1987, sont imbriqués l'un à l'autre et il est difficile d'analyser la réponse gouvernementale dans un cadre sans glisser vers l'autre. Cela est majoritairement dû à la lenteur du processus de refonte législatif et réglementaire mais aussi à l'incidence d'une première arrivée par bateau sur la réponse à une deuxième lorsque celles-ci ont lieu dans un court laps de temps comme c'est le cas ici.

Pour entamer l'analyse de notre cinquième cadre, il nous faut porter une attention considérable à l'environnement législatif qui le teint d'un ton très particulier. En effet, d'importants changements législatifs et réglementaires (concernant les arrivées par bateau) sont amenés par le gouvernement dans les mois qui précèdent mais aussi

dans les années qui suivent l'arrivée du *Sun Sea*. Le tout dernier et plus récent développement législatif apporté au système de demandes de refuge au Canada est la *Loi visant à protéger le système d'immigration du Canada* (projet de loi C-31), entrée en vigueur en décembre 2012. (IRCC, 2015-2) À prime abord, ce développement législatif peut sembler déborder le cadre de notre cinquième cadre, ayant lieu plus de trois ans après l'arrivée du *Sun Sea*. Le projet de loi C-31 apporte pourtant plusieurs changements à l'IRPA ayant eu une incidence sur la réponse gouvernementale aux arrivées par bateau, lesquels changements avaient déjà été introduits à la Chambre des communes à travers les projets de loi C-11 et C-4, respectivement déposés en juin 2010 et juin 2011. (OCASI, 2012) (le projet de loi C-4 était lui-même une version remodelée d'un projet de loi antérieur déposé en octobre 2010, C-49). (CCR, 2015-2)

À l'étude de C-31, les liens avec l'arrivée par bateau du 12 août 2010 peuvent donc paraître effacés, dilués à travers d'autres variables et d'autres événements ayant généré leurs propres modèles de compréhension. Ce sont donc les changements introduits par C-31 et C-49 qu'il nous faut étudier si nous souhaitons comprendre les tenants de la réponse gouvernementale au sein de notre cinquième cadre. C'est aussi de cette manière que nous pouvons mettre en relation notre quatrième avec notre cinquième cadre, les projets C-11 et C-49 (les plus anciens dans la série qui nous intéresse ici) ayant tous les deux été introduits en Chambre aux environs d'un an après l'arrivée de l'*Ocean Lady*, en 2009). Afin de simplifier notre analyse, nous avons cependant regroupé notre analyse au sein de notre cinquième cadre (l'entrée en vigueur de tous ces changements législatifs n'ayant finalement cours, après tout, qu'en

décembre 2012, bien longtemps après le cadre historique retenu pour notre quatrième cadre).

Suivant sa lecture en Chambre des communes au printemps 2010, le projet de loi C-11 est finalement adopté de façon unanime par les différents partis de la Chambre en juin. Le ministre de l'immigration Jason Kenney résumera les changements amenés par ce projet de loi en soulignant en quoi ils devraient permettre d'accélérer le processus de détermination du statut de réfugié, offrir une meilleure protection aux réfugiés *bona fide* et le renvoi des individus qui voudraient abuser de la générosité des Canadiens. (Kenney, 2010-1)

Le changement majeur amené par C-11 tient à la création d'une liste d'États-tiers sûrs, lesquels n'ont généralement pas tendance à produire des réfugiés à comparativement d'autres pays. En conséquence de cause, un réfugié ne provenant pas de cette liste devrait pouvoir voir sa demande traitée plus rapidement comme il est plus probable qu'il fuit effectivement un danger le menaçant.

En bout de ligne, il est espéré que ce triage des demandes de refuge devrait permettre d'accélérer la vitesse du système, en plus de créer un effet de refoulement pour les resquilleurs, comme le rapporte le ministre Kenney : « We also anticipate that these reforms will over time lead to a substantial reduction in the number of false asylum claims being made in Canada as woul-be queue jumpers realize that they will face timely removal if they come to Canada. » (Kenney, 2010-2)

Le projet C-49 est encore plus intéressant pour notre analyse car il s'inscrit en relation directe avec l'enjeu du trafic de migrants. À cet égard, son nom est très révélateur : *Loi sur des mesures de réforme équitables concernant les réfugiés et la Loi sur la sûreté du transport maritime*.

C-49 permet la création d'une sous-catégorie particulière au sein des demandeurs d'asile pour les individus arrivés en groupe et désignés par le ministre comme « arrivée irrégulière ». À travers cette désignation, la structure légale des droits de l'individu et des restrictions qui lui sont imposées est dissociée des procédures qui réglementent les demandes d'asile régulières. (Neve & Russell, 2011, p.42) Nous reproduisons ici le paragraphe 20.1(1) de cette loi :

20.1 (1) Le ministre peut, par arrêté et compte tenu de l'intérêt public, désigner comme une arrivée irrégulière l'arrivée au Canada d'un groupe de personnes, dans l'une ou l'autre des situations suivantes :

- a) il est d'avis que le contrôle des personnes faisant partie du groupe — notamment en vue de l'établissement de leur identité ou de la constatation de leur interdiction de territoire — et toute autre investigation les concernant ne pourront avoir lieu en temps opportun;
- b) il a des motifs raisonnables de soupçonner que, relativement à l'arrivée du groupe au Canada, il y a eu ou il y aura contravention au paragraphe 117(1) au profit ou sous la direction d'une organisation criminelle ou d'un groupe terroriste ou en association avec l'un ou l'autre de ceux-ci ou en vue de tirer un profit. (Association du Barreau canadien, 2012, p.36)

Les pénalités imposées aux individus désignés comme faisant partie d'une arrivée irrégulière sont nombreuses :

- Détention allant jusqu'à une période d'un an pour tous les individus désignés âgés de 16 ans et plus
- Imposition d'une période d'attente de cinq ans avant de pouvoir déposer une demande de résidence permanente suivant l'acceptation d'une demande d'asile; entretemps l'individu se voit accorder un visa de résidence temporaire
- Impossibilité de parrainer des proches à travers le Programme de réunification familiale pour une période de cinq ans suivant l'acceptation d'une demande d'asile
- Obligation de se rapporter sur une base régulière aux services d'immigration
- Interdiction de voyager en dehors du pays, pour toute raison que ce soit (Silverman, 2014, p.28)
- Impossibilité de faire appel de la décision rendue par la CISR concernant la demande d'asile (Association du Barreau canadien, 2012, p.35)

Il est intéressant de noter que la Loi, en utilisant le terme « entrée irrégulière », ne s'en prend pas directement aux arrivants par bateau. Ceux-ci en sont pourtant la cible première, l'arrivée du *Sun Sea* s'inscrivant comme effet déclencheur à ces développements soudains.

En Chambre, nous retrouvons des thématiques similaires à celles entrevues dans nos cadres précédents. Par exemple, nous retrouvons la même dérive sémantique que celle entraperçue en 1999 entre le mode de transport illégal (« mass

illegal smuggling operations ») et le statut migratoire illégal (« illegal migrant »). Sans désigner spécifiquement les arrivants du *Sun Sea*, ce sont là des termes et des associations utilisés par le Ministre Kenney dans son allocution accompagnant le dépôt du projet de loi C-49 en Chambre. (Kenney, 2010-1)

La finitude de la solution proposée revient également comme thème dans les propos de Kenney « The necessary and responsible path is to take firm and meaningful action that does everything we reasonably and legally can to deter and disrupt the smuggling networks, to reduce both the pull and the push factors in this illegal migration so that it stops. » (Kenney, 2010-1)

Là où nous pouvons véritablement souligner la présence d'une dépendance de parcours, c'est lorsque nous portons notre attention sur l'appui public que le gouvernement utilise pour appuyer introduction de nouvelles politiques de contrôle des arrivants par bateau. L'argument selon lequel l'appui de la population à de nouvelles mesures de contrôle n'est pas nouveau dans le discours gouvernemental. Auparavant cependant, il n'avait jamais été utilisé comme argument pour contrer le discours humanitariste. Au contraire, il s'inscrivait au sein du paradigme de contrôle et appuyait la logique sécuritaire : (énoncé 1) Les Canadiens veulent plus de sécurité ; (énoncé 2) Les arrivées par bateau menacent cette sécurité ; (conclusion) il faut donc faire quelque chose. Les considérations humanitaristes et sécuritaires demeurent en contradiction mais les deux schémas logiques se tiennent.

Pour la première fois cependant, un saut est fait dans le raisonnement : (énoncé 1) Les Canadiens veulent renvoyer ces arrivants à la mer ; (énoncé 2) Nous avons des obligations internationales ; (conclusion) Il faut donc minimiser l'effort en extra effectué en sus de ces obligations de base. La question de savoir si oui ou non la position des Canadiens suit un schéma logique est évacuée. En évitant de mettre sur l'avant-scène les considérations sécuritaires, la position gouvernementale minimise les chances de voir la logique sécuritaire déconstruite par ses défractaires.

Pour illustrer notre argument, il nous faut encore revenir aux propos de Kenney tenus en Chambre :

According to the most recent polling that I have seen, over 60% of Canadians say that our response to this threat to our sovereignty, our laws and the fairness of our immigration system should be to prohibit these vessels from entering Canadian territorial waters. Fifty-five per cent of Canadians have said that even if these vessels land and some of their passengers subsequently attain refugee protection under our laws, that those people should be returned to their country of origin, notwithstanding a positive legal determination on their asylum claim. That is the public opinion environment. (Kenney, 2010-1)

C'est cependant la suite de son discours qui est intéressante, puisque Kenney y réitère les engagements du Canada envers ses obligations internationales :

We will not endanger the lives of people, as some would have us do, to prevent them from entering Canadian waters. Nor will we violate our international obligations under the convention for refugees and torture or our domestic obligations under the Charter of Rights and Freedoms to provide protection to those who are deemed by our legal

system to be in need of it, to have a well-founded fear of persecution in their country of origin. (Kenney, 2010-1)

Nous nous retrouvons ici avec une situation particulière. D'une part, le gouvernement réitère ses engagements envers ses obligations internationales. D'autre part cependant, le système en place en 2009 et 2010 permet déjà un contrôle beaucoup plus avancé des nouveaux arrivants que ce qu'il avait pu être en 1986, 1987 ou 1999. Le gouvernement utilisera d'ailleurs ces ressources législatives et réglementaires pour détenir les arrivants et rejettera une partie des demandes en ayant recours aux exceptions au droit de refuge liés à la criminalité (lesquelles exceptions elles-mêmes ont été largement étendues comme nous l'avons vu plus tôt et s'appliquent maintenant à tout doute raisonnable de criminalité depuis l'implémentation de la LIPR en 2002).

Ce qui arrive par la suite est encore plus intéressant cependant. Cette augmentation des mécanismes de contrôle n'a visiblement pas apaisé la population. Au contraire, à en croire Kenney, une quantité importante de Canadiens s'attendent à encore une ligne encore plus dure du gouvernement comparativement à ce qu'elle est. En conséquence, l'introduction de nouvelles mesures par le gouvernement peut être perçue comme modérée dans la sphère publique. Ce qui est occulté dans cette dynamique cependant, c'est à quel point l'insécurité de l'opinion publique a elle-même été renforcée par les mécanismes de contrôle précédents : Plus de rejets de demandes liés à la criminalité (nonobstant la légitimité de ces rejets), plus de détention, plus d'insatisfaction liés à l'absence de finitude aux solutions du passé.

Comble de l'ironie, le gouvernement peut, à ce stade, clamer apporter une solution « modérée » plutôt qu'une ligne dure, alors même qu'il renforce encore des mécanismes de contrôle introduits précédemment, qualifiés de sévères par le ministre de l'immigration Benoît Bouchard en 1987: « We must act swiftly now to guard against the possibility that we might at some later date be forced to take even tougher measures. » (1987)

6. CONCLUSION

Le but de cette étude visait à démontrer comment une accumulation de changements législatifs et réglementaires ont contribué, au fil du temps, à modifier la réponse gouvernementale aux demandeurs d'asile par bateau, de 1985 à 2015. Pris individuellement, ces changements pourraient apparaître comme soudains et transformationnels. Lorsque les unités de significations, ou cadres, élaborés sur la scène publique en réaction à une arrivée par bateau donnée sont juxtaposés les uns aux autres cependant, il est possible de mettre au jour l'effet d'entraînement qui les sous-tend.

En nous intéressant aux cadres qui accompagnent les arrivées par bateau de 1986, 1987, 1999, 2008 et 2009, nous avons ainsi pu visualiser comment chaque changement législatif ou réglementaire passé participe de manière incrémentale à la mise en place d'un paradigme de contrôle au sein de la réponse gouvernementale canadienne. Ce paradigme de contrôle s'inscrit en rupture nette avec les considérations humanitaristes qui avaient d'abord caractérisé l'approche canadienne au moment de la signature de la *Convention* et de l'accueil des *boat people* vietnamiens dans les années 70.

Le paradigme de contrôle mis au jour est affublé de plusieurs caractéristiques distinctes. Point principal peut-être, le mode d'arrivée du demandeur prend le pas sur sa demande elle-même. Des associations sont successivement faites entre l'arrivant et un mode de transport illégal, un «arrivant illégal » et enfin, un « migrant illégal ». En conséquence, l'enjeu des demandeurs d'asile par bateau en devient un de justice criminelle avant d'être un enjeu humanitaire.

Un des thèmes récurrents aux changements législatifs et réglementaires est l'expansion graduelle des procédures possible de détention visant les arrivants par bateau. Autre thème, les mesures d'exception liées à la criminalité sont étendues à répétition, ce qui renforce aux yeux du public l'association entre les arrivants et les trafiquants ayant permis au groupe d'arriver au Canada. Enfin, la question de la finitude de la solution à apporter en réponse au « problème » de l'arrivée par bateau revient périodiquement dans la réponse gouvernementale.

Juxtaposés les uns aux autres, ces thèmes participent à une modification graduelle de la perception publique des arrivées par bateau. Des associations infondées sont faites entre des individus détenus ou renvoyés pour criminalité et un groupe d'arrivants en leur ensemble. Les changements législatifs et réglementaires apportés sont à chaque fois présentés comme finaux, ce qui décuple le sentiment d'urgence et d'insécurité, lors d'une arrivée suivante. Les stratégies de communication gouvernementale échouent à chaque fois à souligner en quoi l'introduction de

mécanismes permet de contrôler la trame de l'accueil de ces demandeurs d'asile et non pas leur arrivée eux-mêmes. L'introduction de mesures est trop vendue sur la scène publique comme un moyen de resécuriser le système et pas assez comme un compromis entre la sécurité du système migratoire canadien et la sécurité humaine internationale (dans laquelle s'inscrit l'accueil des réfugiés et les considérations humanitaristes plus larges qui légitiment cet accueil).

Certains critiques pourraient nous reprocher le fait que ces thèmes horizontaux découlent naturellement d'un certain type d'échantillons discursifs axés sur la sécurité, alors même que d'autres échantillons discursifs axés sur d'autres tangentes, par exemple celles portant sur l'humanitarisme ou encore la politique partisane, auraient mis au jour des thèmes horizontaux tout à fait différents. De ce fait, un argument pourrait être avancé selon lequel un biais subjectif nous amène à construire notre preuve alors que les éléments discursifs existants témoignent d'une variété de thèmes beaucoup plus grande. Il devient alors aisé de « sélectionner » des échantillons qui supportent des thèmes décidés à l'avance pour appuyer notre thèse du passage au paradigme de contrôle.

La réponse à cette critique s'élabore en deux temps. D'abord, il va de soi que d'autres tangentes mettraient au jour des thèmes différents qui ont tout autant leur place au sein du discours public entourant l'enjeu des arrivées par bateau. Nous avons nous-mêmes à répétition souligné l'existence (ou la relative absence, dans plusieurs cas) du discours humanitariste au sein d'un cadre donné.

Cependant (et c'est là le point clé à notre contre-argument à cette critique), nous avons au sein de cette recherche évalué les effets d'entraînement au sein de la réponse gouvernementale, laquelle est fondée sur les changements législatifs et réglementaires que nous avons repéré. Ces changements sont des éléments factuels qui s'alignent ou non avec des échantillons discursifs dérivés de cette variété de tangentes (sécurité/contrôle, humanitarisme, politiques partisans, etc.). Dès lors, les thèmes que nous avons élaboré au sein de notre analyse ne sont pas qu'une projection d'éléments discursifs cadrant au sein de la tangente sécurité/contrôle, ils sont en alignement direct avec les changements législatifs et réglementaires qui, eux, sont tout à fait objectifs et participent à la mise en place de la dépendance de parcours et du paradigme de contrôle.

Avoir mis au jour des thèmes liés à la tangente humanitariste n'aurait pas permis de constater la même dépendance de parcours allant dans le sens d'un plus grand alignement des politiques canadiennes avec le respect des droits humains ou du droit à la liberté de mouvement. Au contraire, les changements législatifs et réglementaires (rappelons-le, des éléments factuels objectifs), éloignent le Canada de ces valeurs humanitaristes.

Au maximum, nous pourrions avancer que les engagements humanitaristes demeurent inchangés. Les mécanismes de contrôle engageant un effet d'entraînement, eux, s'imbriquent bien les uns aux autres et participent à un changement politique

d'envergure. Dans ces circonstances, il est plus réaliste d'avancer que les engagements humanitaristes du Canada se « décolorent », s'effacent à titre de résultats politiques comparativement à un processus d'implémentation de ces résultats radicalement différents.

Nous n'avons pas prouvé ici que le nombre d'échantillons discursifs alignés avec le passage au paradigme de contrôle est plus élevé que le nombre aligné avec les engagements humanitaristes. Cependant, nous avons prouvé que ces échantillons qui s'alignent avec le passage au paradigme de contrôle cadrent avec beaucoup plus d'intensité aux caractéristiques maîtresses des changements législatifs et réglementaires constatés, cadre après cadre.

C'est bien sur cette preuve que nous asseyons notre argument selon lequel s'est mis en place une dépendance de parcours axée sur les mécanismes de contrôle (et non sur la quantité d'échantillons participant à cette tangente sécurité/contrôle à comparer de la tangente humanitariste).

Notre intérêt envers les effets d'entraînement et la dépendance de parcours qui caractérise les changements au sein des politiques canadiennes a permis de mettre au jour une dynamique passée sous silence jusqu'ici. Bien évidemment, quantité d'études ultérieures pourraient être entreprises pour pousser plus loin cette réflexion.

Notre perception d'un glissement graduel vers une perception négative des arrivants par bateau au sein de la population canadienne est-elle correcte ? Les grands titres médiatiques et le discours d'élus ne nous apprennent pas toute l'histoire sur cette question. Peut-être ces perceptions sont-elles beaucoup moins négatives qu'elles ne l'apparaissent dans le discours d'acteurs publics individuels. Les mécanismes législatifs et réglementaires introduits ne modifient peut-être pas tant les perceptions publiques qu'ils permettent en réalité à certains acteurs de broser un tableau des perceptions publiques qui leurs conviendra pour légitimer leur grille d'action.

Qu'en est-il des expériences des arrivants eux-mêmes également ? L'introduction de mesures législatives et réglementaires s'est-il véritablement soldé par un changement dans l'expérience vécue par les demandeurs de 2009 comparativement à ceux arrivés en 1986 et 1987 ? S'agit-il au contraire de mesures « de scène » visant à créer une impression de contrôle quand en réalité la demande elle-même continue de tenir le haut du pavé au sein de l'expérience de ces demandeurs ?

Dans tous les cas, l'approche de la dépendance de parcours et son emphase sur l'aspect incrémental du changement possède un fort potentiel pour ajouter à la compréhension de la réponse canadienne aux arrivées par bateau. Au final, cette prise de conscience sur l'impact insoupçonné de ces phénomènes discursifs obscurs est la première étape d'une démarche normative plus large visant à éviter les dérapages de la dépendance de parcours et chercher à régler un enjeu en ses termes, en prenant du recul par rapport au poids de l'histoire.

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8. ANNEXE 1

| Citation | Auteur (parti) Gris =Gouvernement | Session parlementaire (parlement, session, volume) | Page | Date (jj/mm/aa) | Événement discuté |
|---|---|---|------|--------------------|-------------------|
| Mr. Speaker, I have the honour to present two petitions this morning. The first petition calls for the tightening of immigration regulations because of the admission of 155 Tamil boat people into Canada. | Don Blenkarn | 33, 2, 1 | 401 | 16/10/1986 | 1986 |
| Mr. Speaker, over the past summer I spent most of my time talking with my constituents. (...) As Your Honour can imagine, there was a variety of subjects which were concerning them over the course of the summer. I am sure you will not find it a surprise that they talked with me about the Post Office, the question of capital punishment, the Tamil refugees, (...). Despite all those things, if there was one over-all recurring problem about which they spoke with me most, it was the whole question of gasoline prices. | Alan Redway (Con) | 33, 2, 1 | 180 | 07/10/1986 | 1986 |
| <p>John N. Turner I call to the attention of the prime Minister his very eloquent words with which I agreed at the time of the entry of Tamil refugees on to the shores of Newfoundland. At that time the prime Minister said: "If we err, we will always err on the side of justice and compassion."</p> <p>Brian Mulroney Mr. Speaker, I am informed that the conclusion which my right hon. friend draws may in fact be quite inaccurate. Be that as it may, my right hon. friend draws an analogy to a group of citizens who arrived in boats off the coast of Newfoundland and Labrador last summer. Indeed I indicated that such people would never be turned away from Canada. They were hopeless people seeking exile and some possible future in Canada. (...) Canada welcomes legitimate refugees at all times. This Government has increased the number of people eligible for refugee status, and we shall do more. We are committed to a progressive and open policy which will help refugees come to Canada, but that means being fair with other legitimate refugees who are lining up to come to Canada. That means applying objective criteria as fairly and compassionately as we can. That in turn means from time to time that not everyone can get in. We regret that. However, we must have a reasonable policy which guarantees access for those most in need.</p> | John. N. Turner (Lib) Brian Mulroney (Con) | 33, 2, 2 | 1693 | 02/12/1986 | 1986 |
| <p>Ross Belsher Mr. Speaker, my question is for the Minister of Employment and Immigration. Once again we are hearing of a possible influx of Tamils. In light of the rumours that there is a continuing influx of Central American refugees from the United States will the Minister please tell us what we are doing to prevent further abuse of our immigration and refugee policies?</p> <p>Benoit Bouchard Mr. Speaker, I think this is an excellent question. All I can say about rumours concerning a boat load of Tamils is that it is the kind of constant rumours we get regularly from European countries. All we can do for the time being is keep in touch with German authorities particularly in an attempt to be aware of the latest developments. Now, if we hear about it when the boat has already reached Canadian waters or its passengers are on Canadian soil, the usual regulations apply, which means that we do not expulse citizens of Sri Lanka, we automatically give them a permit to stay, as we did last year. However, you know that the Government intends to introduce legislation - very soon, we hope - to clear up this issue and eventually enable us to improve the procedure to handle such cases. I can even say that we are now working on temporary measures to help us get a handle on the problem to which the Hon. Member is referring.</p> | Ross Belsher (Con) Benoit Bouchard (Con) | 33, 2, 3 | 3293 | 10/02/1987 | 1986 |
| <p>Mr. Speaker, there are reports that Tamils who reside in West Germany will be attempting another journey to Canada to claim refugee status. It should be made clear that these individuals are not legitimate refugees, for they already reside in a country which gave them first asylum. Consequently, the Tamils do not have the same status as individuals who flee to Canada directly from a country torn by strife. (...) Canada cannot have its immigration system open to such abuse that it is creating a state of anarchy in the system. Our ability to help genuine refugees is being threatened, since costly social support services are being used to help individuals who make bogus claims. I urge the Government to alter regulations to admit only those who are legitimate convention refugees. Those who lie and cheat do not deserve the humanitarian and compassionate consideration which distinguishes Canada from other nations.</p> | John Oostrom (Con) | 33, 2, 3 | 3319 | 11/02/1987 | 1986 |
| The recent actions of the Tory Government are cause for grave concern. In a few short months, Tory initiatives have begun to undo our country's hard-earned reputation in the area of refugee policy. Canadians are witnessing a Government preoccupied with fabricating a refugee immigration crisis and thereby manipulating public opinion in a desperate attempt | Sergio Marchi (Lib) | 33, 2, 4 | 4486 | 24/03/1987 | 1986 |

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| <p>to bolster its sagging popularity in every part of the country. (...) Whatever happened to the prime Minister's announcement of August 19 last year when he said in reference to the plight of refugees "...and if we err, we will always err on the side of compassion, and on the side of justice."</p> | | | | | |
| <p>As of February 20, the Government also requires transit visas for refugees from some 98 countries who plan to stop over in Canada en route to another destination. People from these 98 countries include refugees who used to be on our non-deportable list. The countries include Afghanistan, El Salvador, Guatemala, Iran, Cambodia, Lebanon, Sri Lanka, and Vietnam. Just to recite the names of these countries tells us that they are countries torn by violence and war to which our Government, up until now, considered it too dangerous to deport refugees. They are countries, Mr. Speaker, in which neither you nor I would want to live and would think twice about visiting these days. Last August, the Prime Minister (Mr. Mulroney) urged Canadians to show compassion toward the Tamil boat people who arrived on our shores. At the time, he said "It is not the presence of 155 frightened human beings searching for freedom and opportunity that is going to undermine Canada or our immigration policies." Never a finer statement was made by the prime Minister (Mr. Mulroney), but it begs a question. If 155 Tamil boat people will not upset our whole immigration policy, why would a few thousand bus people from Central America over the Christmas holidays upset it?</p> | David Berger (Lib) | 33, 2, 4 | 4525 | 24/03/1987 | 1986 |
| <p>Canada, like many other countries, has developed a system for examining people who come to our borders claiming to be refugees to see whether, in fact, they are real refugees. Our obligation is not to return a real refugee. Therefore we cannot exercise that obligation, or we cannot keep that pledge unless we find out whether the person arriving at one of our airports, an American border-crossing point, a sea port or on our shore is a real refugee or not. We must not send him back directly or indirectly to the country where he claims he would be persecuted unless we have found out to our satisfaction and according to our laws that he is not a refugee. That is what is at issue in the Bill. Unfortunately, those good objectives which I read are not carried out in the rest of the clauses of the Bill. With respect to preserving access, what the Bill does is limit access. With respect to controlling abuse, the Bill falls far short, even after the Government accepted some amendments originally proposed by members of the Opposition. Detering smugglers was mentioned in the Minister's press statement of last month. He made much of smugglers. Smugglers are mentioned in the objectives yet they are nowhere mentioned in the Bill. There is no adequate provision action to be taken against them. With respect to security, yes there is action. However, it is not the security of those international persons called refugees who we are obligated to protect but, rather, some other unnamed persons, as well as the security of Canada. Given the evidence, and the lack of evidence, about the dangers, I would say that the Government's provisions greatly over-react on that point. / How does the Bill limit the access of people to our refugee determination system? It does so mainly by threatening detention and deportation on suspicion of terrorism. (...) Thus it is clear that the Government wants to send out the message, "Refugees not wanted in Canada". The message is that refugees are not wanted unless our overseas officers have selected them and they are economically and politically considered advantageous to Canada as immigrants. Otherwise, they are not wanted. The message is "Do not come to our shores if you are in trouble, we intend to shut the door." (...) The Government has said that there needs to be bigger penalties. (...) There is already, in the Act Section 95(a), a provision that every person who comes into Canada at any place other than a port of entry and who fails to report to an immigration officer for examination as required is guilty of an offence and liable to punishment. The Act, Section 95(e), also states that every person who knowingly induces, aids or abets or attempts to induce, aid or abet any person to contravene any provision of the Act or the regulations is guilty of an offence. What the Government undertakes to do is attack people who directly, honestly and openly bring a refugee claimant or advise a refugee claimant of the truth of the Canadian laws, to come to a border point and to offer himself as a refugee claimant to our immigration authorities. That is the right way to do it, as the Minister has said in the House. But that is not what the Bill states. It states: "every person who knowingly organizes, induces (...) aid or abet the coming into Canada of a person who is not in possession of a valid and subsisting visa, passport or travel document. (...)"</p> | Dan Heap (NPD) | 33, 2, 7 | 8727-8728 | 03/09/1987 | 1987 |

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| <p>We have looked at the new piece of legislation that was introduced by the Minister and we are prepared to consider the options the Government has tabled through Bill C-84. For instance, higher penalties for so-called consultants or smugglers is not something with which my Party has a problem. If it can be proven that con artists continue to carry out their schemes and their scams, then those individuals deserve to feel the full brunt of our law, and that will send out the right message. (...) We cannot be so rigid as to suggest that anyone without documentation is suddenly and automatically a cheater. (...) While we do not condone fraudulent or misleading documentation, we are not prepared to say holus-bolus that anyone who does not arrive with documentation is automatically perceived to be a cheater. That would be counter to the reality of legitimate refugees who run for their lives because of political, religious or other pressures. (...) Canadians (They) are becoming impatient with a Government which has failed to come to grips with the problem of developing a system to help the bona fide refugee. (...) The reality is that when 174 immigrants landed off the East Coast the first reaction by Canadians was to make them tea and offer them cookies. That was the reaction. Then the media came in and the Government undertook a number of very questionable procedures. Yet the first Canadian reaction was that if they are legitimate refugees there is a responsibility on Canada to honour its obligations and traditions.</p> | Sergio Marchi (Lib) | 33, 2, 7 | 7913 | 11/08/1987 | 1987 |
| <p>Mr. Speaker, Parliament has been recalled to deal with an issue of grave national importance. A serious problem - the growing number of migrants who are entering Canada by posing as refugees - has reached critical proportions. The arrival of 174 migrants on the shores of Nova Scotia last month has created unprecedented public concerns. And rightly so, Mr. Speaker, since organized attempts to evade the immigration laws of this country are absolutely unacceptable. They endanger the physical safety of the migrants, imperil the security of Canada, and -worst of all - jeopardize public support for our immigration and refugee programs. But there is a much graver problem which has been highlighted by this latest incident. It concerns the growing influxes of undocumented persons who claim refugee status at ports of entry from one end of this country to the other. (...) People steal their way into Canada confident that although they have broken our laws, we, the people of Canada, will not break our own laws. Not only has the basic generosity of Canadians been abused, but the generosity of our entire system of justice has been abused. In these circumstances I urge all Members of the House to give rapid passage to the Bill tabled today. It is a tough Bill containing responsible measures. It will deter those seeking to enter Canada illegally. It will protect the integrity of our immigration and refugee programs, and it will safeguard the security of the country. Under this deterrent and detention legislation - Penalties against smugglers and their accomplices will be increased substantially: maximum sentences of 10 years in prison, and fines of a half a million dollars. The Minister's power to turn back vessels which disembark migrants in Canadian territorial waters will be reinforced; Authority to seize vessels and vehicles engaged in such activities will be confirmed in legislation; People who arrive with no documents can be detained until their identities are established. Fines and penalties will be increased on transportation companies bringing undocumented people to Canada. Transportation companies will pay \$5000 fines for each undocumented passenger. And finally, Mr. Speaker, this Bill will empower the Government to refuse access to the refugee determination system to those who are known criminals, or who pose a security threat. Not only will they be detained, but they will also be expeditiously removed from Canada. We must act swiftly now to guard against the possibility that we might at some later date be forced to take even tougher measures. This Bill is tough on those who would break the law. (...) While the debate over refugee determination has concentrated on refugee claims made within Canada, we must not forget that our first priority as a country is to help genuine refugees who are confined to camps overseas. These people are desperate. They have nowhere to go and no future ahead of them. They deserve our concern and compassion.</p> | Benoit Bouchard (Con) | 33, 2, 7 | 7910-7911-7912 | 11/08/1987 | 1987 |
| <p>Unfortunately, ever since the Government announced its intention to recall the House, it has been accused of either overreacting or being irresponsible. They are never satisfied. Either we are going too fast or not fast enough. I am, of course, referring to comments by Opposition Members. I believe it would have been irresponsible not to act in this kind of situation. If we had not taken action, it would have meant the steady deterioration of a situation that affects our system for determining refugee status. We cannot tolerate further occurrences. Doing nothing, Mr. Speaker, would have been telling the world that Canada allows its laws to be broken. (...) We must put a stop to the organized and systematic abuse of our system for determining refugee status. We must take measures to put a stop to the exploitation of human misery by people who could be qualified as refugee traffickers. (...) For most Canadians, the dramatic arrival of 155 Tamils in Newfoundland one year ago was their first inkling that we have a refugee problem. (...) Our studies show that last year 70 per cent of refugee claimants were not refugees at all, and that many others had already found safe haven elsewhere before seeking refugee status in our country. The arrival of the Tamils reinforced our resolve to take action to stem the flow of phoney refugees. Quick action was necessary because of wide media interest in the Tamil boat people. The predictable happened - more and more illegal aliens poured into Canada. (...) Mr. Speaker, everyone knows why we have been called to this place. It is because of a system already over-loaded by a backlog of applications which is being exploited by queue-jumpers who are not legitimate refugees in need of our protection. Unscrupulous racketeers are also taking</p> | Richard Grisé (Con) | 33, 2, 7 | 7918-7919 | 11/08/1987 | 1987 |

advantage of the situation and misleading men and women into believing that they will be able to get them the papers required to gain admission to Canada. Those racketeers bring these people to Canada under conditions which are often intolerable, unnot of the present system, which they believe to be incapable of putting an end to these abuses. acceptable even for animals, and absolutely shocking in the case of human beings. Legitimate refugees suffer from delays in the system and are put at a disadvantage because of the increasing number and cleverness of fraudulent claims. Mr. Speaker, Canadians are getting more and more concerned about the inequity of the present system, which they believe to be incapable of putting an end to these abuses.

Why then, has the Parliament been recalled ? Does the public interest demand that the House of Commons sit merely to deal with the issue of the 174 Sikhs, particularly in view of the fact that there is already legislation before the House dealing with the issue? The Government had advance notice of this. It should have taken control of the situation. Instead it allowed it to happen the way it did.

Why wait to declare an emergency session of Parliament when, in the previous three years, the Government failed to reform the refugee determination system (...) ? Why did the Government wait until May of this year, almost a full year after the boatload of Tamils landed last summer, to introduce Bill C-55 before the House of Commons ? Why did it bring Bill C-55 before the House for second reading debate only in the dying days of the June session? Why did the Government allow a total of only three hours debate? Where was the urgency? Where was the crisis? Where was the need to deal with it now?

(...) Public opinion on the refugee issue has been manipulated by the Government. There have been selective leaks that there may be terrorists among the recent arrivals off Nova Scotia. There was a massive phoney search for a mysterious vessel reputedly carrying more people to this country. It turned out to be not true and a farce.

When the Tamils arrived off our shores about a year ago, the Prime Minister said people who arrive in lifeboats off our shores are not going to be turned away. "We are not", he said, "in the business of turning away refugees and", he added, "we never will under this Government". That promise was kept for all of one year. (...) He said one thing a year ago and his Government is doing just the opposite today. I will tell the Minister why I say the Prime Minister is turning his own promise upside down. He said he would not turn them away if they got to shore, so what is he going to do now? He is going to send Canadian ships out to stop them before they get to shore. That is playing with words. The Minister knows it, the Prime Minister knows it, and the people of Canada are tired of this kind of hypocrisy. It is not merely an absence of justice, it is a travesty of justice.

(...) It is in effect a turning away of the ships before they get here. More than that, the kind of process the Government is using compounds the unfairness, from our perspective. It says that that a representative of the Coast Guard is going to make the decision. He or she is going to be boarding the ship and ultimately deciding whether the people concerned are in a condition to be turned away. What that means in effect is that these people will have no chance for any kind of hearing on whether or not they are bona fide refugees. (...) A second concern of Canadians, and a deeply felt and legitimate concern, is about the profiteering which has been going on. People want to exploit the desires of others to come to our land. They have made money based upon the suffering of these people and their desire to come to this country. Well, we in this Party favour an intensification of the punishment of fines and imprisonment for those who profiteer in this way to get around or break Canadian law. If the goal is or ought to be the putting to an end of that kind of profiteering and the effective curbing of some of the abuses, one would have hoped that the Bill we have before us would deal effectively with that. It does not deal with profiteering as such at all. It contains a provision which could lead to the imprisonment or imposition of serious fines on church people, representatives of (...) totally sincere and empathic human beings who are devoting a good part of their lives to try to facilitate the entry into Canada of legitimate refugees.

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| John N. Turner (Lib) | 33, 2, 7 | 7949 | 11/08/1987 | 1987 | |
| Edward Broadbent (NPD) | 33, 2, 7 | 7996 | 12/08/1987 | 1987 | |

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| <p>However, this summer the boat people came to the shores of Nova Scotia. Although this has not changed the position of the Government, because it had already decided not to act on the recommendations of parliamentary committees, it has changed the impetus and the hysteria with which the Government has decided to deal with this issue.</p> <p>We all have our own views, and we can talk about motives, but that does not take us very far. The fact is that both the Government and its spokespeople, and I must say certain back-benchers and even the media, have inflamed this whole situation of 174 people who came unannounced to the shores of Nova Scotia. Every night with the news broadcasts there were dramatic pictures. I suggest because there was little other news during the summer doldrums, and there is no question that Canadians became very concerned. We have all received hundreds of angry phone calls to our offices. People were and still are concerned. I am sure we all agree that they have legitimate concerns.</p> <p>However, the fact that the 174 newcomers wore turbans and ceremonial knives, had dark faces, and came from a strange religion, unfortunately inflamed racism in many people. I am very, very sad that many calls to my office reflected this. In their hysteria, I am sure that few people stopped to question whether or not some Sikhs from Pakistan who came via Europe still may be legitimate refugees. We do not know that. That is why we need to have hearings.</p> <p>The reaction of the Government and back-benchers escalated the hysteria, called for a special session of Parliament, and encouraged these feelings and prejudices. I will not accept the racism that I heard in the voices of many people who called my riding office.</p> <p>(...) Why did the Prime Minister (Mr. Mulroney) make judgments in advance of obtaining the facts? Did he know whether or not there were legitimate refugee claimants present when he classified the boat people who came recently as "illegal aliens"? He repeatedly used this term in a generalized, negative, and derogatory fashion. Why did he reverse his views? Once again, what does this say about our Prime Minister? Last summer, when referring to the Tamils, he stated in very strong terms that we should never turn our backs on refugees and we would never turn them away from our shores. He was right. We should not turn refugees away from our shores.</p> | Margaret Mitchell (NPD) | 33, 2, 7 | 8084 | 14/08/1987 | 1987 |
| <p>Canadians felt that what was wrong was that an organized effort was made to bring people into Canada illegally by people who were making a profit on dealing in human flesh and misery. They felt it was wrong that the people who came ashore were subjected to danger in the water and in the dark. They felt it was wrong that people were making a profit on the project. They felt it was wrong and on the basis of media reports, Canadians were told that these people who did not come to a legal port of entry were thus evading not only immigration authorities and processes but a health check and a security check; and that these people came from countries where, it was alleged by the media, they already had safe haven and were allegedly denying this and had in fact destroyed documentation that might have proven it.</p> | Roland de Corneille (Lib) | 33, 2, 7 | 8094 | 14/08/1987 | 1987 |
| <p>I do not think you can make a rule to cover every circumstance, I believe that people who are seeking refugee status are likely to be coming into Canada by all means. The transportation carriers and the passport control systems and so on are not such as to encourage or facilitate refugees moving from place to another.</p> <p>(...)</p> <p>We must look at this situation with some perspective. This was a rather dramatic case of 174 people made more dramatic because there was not a lot of other news at that particular time. It was perhaps dramatized as well because the people who came in happened to be Sikhs. They look different. They wear turbans and so on. (...) The question is whether we make law on the basis of a sudden sharp reaction to one particular incident, or whether we make law in a measured way as was proposed by the standing committee more than two years ago. That is what should have happened. It is the mark of an incompetent and ineffective Government that it has panicked into action now when it should have acted a year and a half ago.</p> | Mike Cassidy (NPD) | 33, 2, 7 | 7926 | 11/08/1987 | 1987 |
| <p>We are sending out a strong message. It is that trafficking in human flesh cannot be accepted. It is deplorable, and that kind of smuggling, keeping people in sub-human conditions and forcing them to risk their lives, will be stopped. We will put those people who mass market in that way out of business.</p> | Gerry Weiner (Con) | 33, 2, 7 | 8000 | 12/08/1987 | 1987 |

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| <p>Bill C-55 allows the Government, under the so-called third country concept, simply to deport claimants to that country without considering how that country may treat such individuals. The Government does not care if it ships someone to a third country from which that person could immediately be sent back to his or her own country to face persecution, death, torture or imprisonment. Our proposal is that we would not return anyone to a third country unless that person had refugee or landed immigrant status in that country. (...)</p> <p>Sections 19 through 32 of the Immigration Act, 1976, declare persons with a criminal record or those likely to engage in criminal activity, inadmissible to Canada.</p> <p>In order to be deported under those sections, persons must first be given an oral hearing. There is also Section 95(1), (j) and (n), which allow for prosecution of consultants and other profiteers.</p> <p>Section 95(n), which was used to prosecute the captain of the Amelie, provides, on an indictable offence, for a fine not exceeding \$5,000 or imprisonment for a term not exceeding two years or both, and, on a summary conviction offence, for a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months or both. As well, the fraudulent sections of the Criminal Code have always been available to the Government. What are the effects of this cumulative remedy?</p> | John N. Turner (Lib) | 33, 2, 7 | 7950, 7951 | 11/08/1987 | 1987 |
| <p>Let me review a letter from the Ethnocultural Council to the Prime Minister over the matters that led up to the so-called crisis that brought this Parliament back this summer. The council points out that after initial reaction of common courtesy and greeting with food and shelter offered by the residents of Charlesville, Nova Scotia, the Government people moved in and reporters were warned to not take pictures. It was made impossible for the media to conduct interviews. The claimants were immediately bused to a military base instead of to the usual moderate cost hotel and were kept under heavy guard providing the instant image of criminality. They were disallowed contact with the media of any further contact with community people. They were not informed of their legal right to see a lawyer. Access to lawyers was allowed only after a Toronto lawyer, Mendel Green, began proceedings for a court injunction to ensure that these people could get legal advice. When processing of the claimants began, the first and most controversial case, that of Mr. Amrik Dhinsa, person who had been deported earlier from Canada, was brought forward and made public. I think this smacked of the most flagrant attempt at creating a negative image on the part of the officials of the Department. When processing of claims began, members of the media were disallowed in a further attempt to control information. Against court proceedings became necessary to gain access to what was going on.</p> | Vic Althouse (NPD) | 33, 2, 7 | 8808 | 10/09/1987 | 1987 |
| <p>When the boatload of Sikhs arrived in Nova Scotia in July, the Government was all ready to make a huge production of it with military guards and a military base. Potential refugee claimants were held incommunicado for a week without access to the press or lawyers, in violation of our Charter. There was scary talk of an invasion of tubanned aliens and security risks. The Prime Minister and other Ministers kept calling the Sikhs and other refugee claimants "queue-jumpers", hoping to turn immigrants against them by suggesting that refugees were hindering them from sponsoring their relatives. (...)</p> <p>Specifically, the Canadian Ethnocultural Council charged that in addition to holding the Sikhs incommunicado, the Government released the most controversial person first, Mr. Amrik Dhinsa, apparently to create a negative reaction; obtained damaging statements through questionable means, faulty interpretation and use of statements out of context; leaked a confidential unfinished report on security suggesting problems with immigrants, leaked false information claiming that 33 Sikhs had criminal records. Then there was the musical comedy spectacle of the Canadian Navy and Air Force searching the Canadian coast for an empty freighter, the Walvis, that was anchored near England.</p> | Dan Heap (NPD) | 33, 2, 8 | 9404 | 28/09/1987 | 1987 |
| <p>Canadians were deceived by the Government. We were told that there was an emergency. Parliament was called back on August 11, several weeks after 174 Sikhs arrived on the shores of Nova Scotia. The Government held them in detention for several weeks. Extraordinary measures were implemented. Canadians were led to believe that we were subject to various threats to our security. In the final analysis every single person was released by an adjudicator who came to the conclusion that the Government had no grounds whatsoever for holding these persons in detention.</p> | David Berger (Lib) | 33, 2, 8 | 10096 | 16/10/1987 | 1987 |

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| <p>Leon E. Benoit People smuggling is rampant in Canada. Boatloads of human cargo land on our shores. Our airports are increasingly becoming sieves for illegal migrants and the government does not even care enough to prosecute the captains involved in people smuggling. Canadians, especially new immigrants, have called on the government to make this issue a priority, yet there is no mention of it whatsoever in the throne speech. Why is the smuggling of human cargo, the enslavement of thousands of people and the infiltration of organized crime not important to the government?</p> <p>Elinor Caplan The throne speech identified that people smuggling as a great concern to the government. We will not tolerate trafficking in human lives. The concerns we have when it comes human smuggling is that not only does it endanger the lives of the people who are in the hands of transnational organized crime but it diverts our attention from genuine refugees. Nine people have been charged and they are presently before the courts. We have the toughest laws and we are looking at making them even tougher to ensure that smugglers know they will not succeed in Canada.</p> | <p>Leon E. Benoit (Con) Elinor Caplan (Lib)</p> | <p>36, 2, 2</p> | <p>x</p> | <p>13/10/1999</p> | <p>1999</p> |
| <p>When we examine the policies and actions of the government we find them lacking in commitment to this principle. Let me take the classic illustration of this point from the events of this summer. Federal law, as everyone in the House knows, provides for the legal entrance into the country of immigrants and genuine refugees. However those laws were repeatedly violated this summer by international gangsters smuggling illegal entrants into Canada on our west coast. This people smuggling is not only illegal but is a gross affront to the hundreds of thousands of legitimate immigrants and legitimate refugees who have waited patiently in line and fulfilled everything we have asked of them—all the hoops, all the paperwork, all the time delays—in order to have legitimate legal standing in the country. The points I am making have been pointed out by official opposition critics for immigration and justice, but I want to repeat them again. The official opposition has called for expedited procedures to detect, detain and assess illegal immigrants and to immediately deport those who are not genuine refugees. In doing so we are not calling for something unusual or draconian. This is what the 1987 amendments to the 1976 Immigration Act were supposed to accomplish. However there is a problem which those and subsequent amendments to the Immigration Act have not remedied. Many members in the House know what it is. Why do we not do something about it? The problem is that in 1985 the Singh decision by the supreme court ruled that the Charter of Rights and Freedoms applies to everyone who is physically present in Canada, even if they got here illegally and even if they have no legal standing whatsoever. So we hand to those engaged in people smuggling and to illegal entrants, regardless of their status, all the legal tools required to fight deportation hearings, deportation procedures and deportation orders. They can fight it for years to the point where the whole process of dealing with illegal immigrants and refugees becomes a farce. This is an issue of law and order. It is an issue of criminal justice. We look to the federal government for a solution to make its laws enforceable so that rights granted to persons without legal standing in our country and violating its laws, are not allowed to tarnish or diminish the rights and privileges of those who fully comply with our laws.</p> | <p>Preston Manning (Ref)</p> | <p>36, 2, 2</p> | <p>x</p> | <p>13/10/1999</p> | <p>1999</p> |
| <p>Pier 21 is a very important living, breathing memorial to the contribution immigrants have made. It is a very timely reminder of that important immigrant history and that reality in Canada at a time when there have been some very unhappy sentiments aroused and fears generated around the arrival of Chinese refugees on our shores over the last several months. We have seen less than a welcoming, compassionate response to the plight of many of those people who in some cases are young children who have been exploited by a criminal element for reasons of profiteering. We need to be very much on guard against the kind of fearmongering that has been generated toward many of those exploited and desperate people.</p> | <p>Alexa McDonough (NPD)</p> | <p>36, 2, 2</p> | <p>x</p> | <p>13/10/1999</p> | <p>1999</p> |
| <p>We have the crisis in the west coast with respect to the abuse of our refugee system and all the questions that raises. Have we seen any action yet that would maintain the integrity of our refugee system while at the same time attack and address the fact that this system is being abused? No. I do not know what the government is waiting for, and no one else seems to know.</p> | <p>Bill Blaikie (NPD)</p> | <p>36, 2, 3</p> | <p>x</p> | <p>14/10/1999</p> | <p>1999</p> |

John Bryden

In my six years in the House I think I have only once heard a suggestion from the Reform Party that I fully agreed with and that was the suggestion that the migrants should be detained until their cases are disposed of and it is determined whether they are refugees or not.

This seems like a harsh thing to do. We are actually keeping people confined, as they would be in any kind of detention, which is a type of jail. The alternative is too much to even contemplate. What we are really dealing with is trafficking in human beings. So long as these people are released back into the community—and I know the Department of Immigration has already experienced this—they are immediately drawn into absolute slavery. The condition of their passage is to work it off in one manner or another.

In that sense I think the hon. member is entirely correct, even though the prospect of detaining people is very unpalatable to anyone who wants to give people the benefit of the doubt and freedom in the process thereof.

While I am certainly in agreement that the refugee system needs fixing, I do have to acknowledge that the problem really is with the charter of rights, which unfortunately gives the full rights of citizenship to anyone who sets foot on Canadian soil. It is that which is the root cause of the problem. I wonder if the member would comment on that.

Leon E. Benoit

Mr. Speaker, the member has hit on a key point. The Singh decision and other decisions have said that those who arrive at our borders or even in territorial waters are entitled to the full set of rights that a citizen would be entitled to. I believe that decision does have and impact on this situation.

However, I believe that even with those restrictions in place, this government, if it had the will, could speed up the process to the point that it could process people coming illegally in days or weeks rather than months or years as is now the case. Then detention is not such a big issue. People then are detained for days or weeks. If they choose to appeal it could be longer, but we could speed up the appeals process rather than detaining them for months or years. Therefore we deal with both problems.

We also deal with sending the message to those involved in people smuggling that if they want to make money smuggling people into Canada they are no longer going to be able to do it because, by gosh, Canada deals with these situations quickly, firmly and we act on the hearings while still respecting the UN convention on refugees.

We have to move away from the voluntary compliance system within the immigration system when individuals claim the protection of Canada. They can come, claim refugees status and then be told to appear tomorrow or next week at a hearing.

Those who are not true refugees will abuse that and often do. They disappear and do not go to their hearings. That is a problem. We need a system that addresses that, a system that has individuals maintained in an area until it is determined whether they are really refugees or not.

That process needs to be expedited. It cannot go on for years and years and years as it currently does. Members know that refugee cases go on for years. People's lives are in limbo. It is not fair to them and it is not fair to Canadians.

That process needs to be determined quickly, in a matter of days and weeks, not months and years. It needs to be done quickly, and once a decision is made, then it should be acted upon. If the person is determined not to be a refugee, then they should be removed from our country post-haste. If a person is determined to be a refugee, then they should be integrated into our communities as quickly as possible.

The Liberal government's approach is to leave people's lives in limbo, to allow people who are not refugees to be here and then to go after people who are true refugees and deport them. The system is broken at both ends and this Liberal government is failing.

The facts are in. The perception across our country is that this government does not think it is a problem. The Prime Minister himself said there is nothing wrong with our immigration laws and there is nothing wrong with our refugee process. He said that this summer. In light of what is happening on the west coast, it is unbelievable. It is absolutely shocking that this government, in the light of information, details and facts from its own people, fails to act. It is unbelievable.

Another missed opportunity that is self-evident for me because it is in my critic area is immigration. All summer long, for the past six months, we have been seeing an hysteria about immigration whipped up by my colleagues in the Reform Party and their right wing counterparts in western Canada. They are trying to convince us that we have an emergency on our hands because 400 or 500 Chinese migrants have drifted to our shore. I have heard terms like this is the biggest breach to national security since the FLQ crisis. That is one of the points they have made. I do not know how to say balderdash or poppycock in terms that are parliamentary, but I have never heard such nonsense in my life. I guess I just did.

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| John Bryden (Lib) Leon E. Benoit (Con) | 36, 2, 3 | x | 14/10/1999 | 1999 |
| Grant McNally (Ref) | 36, 2, 4 | x | 15/10/1999 | 1999 |
| Pat Martin (NPD) | 36, 2, 5 | x | 18/10/1999 | 1999 |

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| <p>Deborah Grey Mr. Speaker, of the 600 Chinese migrants who arrived by boat this summer only six of them have been processed so far. It is hardly breakneck speed.</p> <p>The minister just basically admitted that these people were rejected as refugees. We know that. They were then set totally scot-free. The minister seems to think that unless they just come forward and admit that they will run away she will not detain them at all.</p> <p>Why is the minister releasing bogus refugees here on Canadian soil?</p> <p>Elinor Caplan Mr. Speaker, while I will not discuss individual cases I will tell the member that the individuals she was referring to who have been part of the accelerated process, which was part of the IRB decision, were not in detention prior to their hearings.</p> <p>They had met all their obligations. They had shown up for all their hearings. Because they were entitled to a judicial review before the federal court, there was no reason to assume that they would not continue to meet their obligations.</p> <p>Deborah Grey Mr. Speaker, it is fine if they are not detained beforehand, but if they are deemed bogus refugees perhaps it would be wise to detain them after. The minister does not have a sweet clue where these people are.</p> <p>It is impossible for anyone to try to understand the logic behind a system that releases migrants after the hearing regardless of whatever it was that hearing determined. Due process should not mean disappearance instead of deportation.</p> <p>Why will the minister not stop this little game of catch and release?</p> <p>Elinor Caplan Mr. Speaker, I want to be very clear. The government will uphold the charter of rights and freedoms. We stand for due process of law. Unlike the Reform Party, we are not attempting to throw out compassionate and humanitarian traditions. We will not rip up our charter of rights and freedoms. We will not walk away from our international obligations. We offer people due process. The individuals she is referring to had the right to a judicial review with the federal court. It is not the policy of the government to detain all failed refugee claimants before they have received due process.</p> | <p>Deborah Grey (Ref) Elinor Caplan (Lib)</p> | <p>36, 2, 7</p> | <p>x</p> | <p>20/10/1999</p> | <p>1999</p> |
| <p>David Price Mr. Speaker, the new immigration and refugee bill has just been tabled and many of the recommendations made by the Progressive Conservative Party of Canada are included, but there are some key points not in the bill, points recommended by me and the committee.</p> <p>The first is photos and fingerprints on first contact with refugee claimants. Many of our witnesses strongly suggested this as a real means of control. The second is a safe third country. It is mentioned in the bill but that is all. This has been in law since 1988, but the government has not taken steps to negotiate the necessary agreements and the bill has no teeth to make it do it.</p> <p>Appointments to the IRB are still political. This is a job that requires a very special expertise, not a political connection. Unfortunately this issue is not addressed in the bill. I hope the committee will have the backing of all parties to make proper amendments to the bill.</p> | <p>David Price (Con)</p> | <p>36, 2, 80</p> | <p>x</p> | <p>06/04/2000</p> | <p>1999</p> |

Leon E. Benoit
 Mr. Speaker, the Minister of Citizenship and Immigration has now had almost a year to deal with the boat migrants of last summer. Of the 600, fewer than one-quarter of the cases have been finalized. That is to say, they have either been accepted as refugees or deported. The rest are either still in detention—and now some are rioting—or they are quickly disappearing, including 21 children, into the hands of the smugglers who brought them here. The minister's record is shameful. She said that these cases would be finalized in six months.
 Is the minister going to step in and deport the remaining cases, or is she going to set up detention centres and refugee camps right here in Canada?

Elinor Caplan
 Mr. Speaker, unlike the party opposite, this party believes in due process. We believe in our charter of rights and freedoms. We are not going to scrap our charter. We are not going to embarrass Canada internationally by ripping up the Geneva convention. We are going to live up to our legal obligations and ensure that anyone who comes to us making a serious claim and asking for protection under our refugee protection act will receive the due process of the law.

Leon E. Benoit
 Mr. Speaker, I believe in due process, too. However, this minister's ill-advised delay in processing is making the situation worse for the migrants, to the point that they are rioting. They languish in detention centres at taxpayer expense. Now it is too late to do anything that will act as a deterrent for boats coming this summer. The minister's weak response to this new slave trade, people smuggling, has exacerbated an already serious situation.
 Will the minister commit today to cleaning up the backlog from last summer, or is she planning on setting up permanent refugee camps right here in Canada?

Elinor Caplan
 Mr. Speaker, the only thing that has caused a delay has been this member and his party's rhetoric in delaying Bill C-31, which is presently at committee. With their help we could pass that bill more quickly so that we could streamline our processes.
 Unlike the member opposite, this party believes in the charter of rights and freedoms. We believe in the due process of law. We support the Geneva convention. We will not humiliate Canada internationally. We are proud of our humanitarian and compassionate response.
 If he and his party want to be helpful, they could help pass Bill C-31, which will streamline our processes.

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| Leon E. Benoit (Con) Elinor Caplan (Lib) | 36, 2, 114 | x | 14/06/2000 | 1999 |
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| <p>Don Davies Mr. Speaker, the Sri Lankan government is making life unbearable for the Tamil population, especially those who remain in detention camps. New Democrats have long called on the government to pressure the Sri Lankan authorities to respect the Tamil people's human rights. Its failure to do so has only increased the desperation and attempts of these people to flee. Now there are 76 Tamil refugees on the coast of British Columbia and we are hearing that the right to counsel within 48 hours is being violated. Will the Minister of Citizenship, Immigration and Multiculturalism ensure that this is corrected and that there is fast, fair and legal adjudication of these men's claims?</p> <p>Jason Kenney Mr. Speaker, I can assure the House that any individual who arrives in Canada will be processed in full accordance with our Immigration and Refugee Protection Act. That means that people will undergo a screening for their admissibility and their eligibility to come to Canada. It means that if they are detained, they will have access to the IRB for detention hearings at the 48 hour, 7 day and 30 day stages and, of course, they have the right to legal counsel. I understand that in this particular incident legal counsel has been offered to the 76 foreign nationals being detained in Maple Ridge, British Columbia.</p> <p>Olivia Chow Where is the Canada of mercy and fairness, Mr. Speaker? Shiploads of Irish and Vietnamese refugees helped build this nation. Last year, Canada accepted the smallest number of refugees in 10 years. An audit showed that a majority of refugee board members are not appointed based on merit and proper values. Coupled with a \$4 million funding cut, we have a mess on our hands.</p> <p>Jason Kenney Mr. Speaker, without reference to any particular cases, we already have what the UN High Commissioner for Refugees calls one of the most fair and generous refugee determination systems in the world. It is a system with an acceptance rate for asylum claims that is twice as high as in comparable democracies, such as France and Britain. This government has acted to fill vacancies in the IRB, now at about 94% of its full occupancy. Last year we welcomed over 20,000 refugees to this country, including those whom we brought from UN camps abroad, like the 5,000 Karen refugees who we are bringing from Burma. Instead of blaming people seeking shelter from violence and hunger, will the minister guarantee the Tamils a fair refugee hearing?</p> | <p>Don Davies (NPD) Jason Kenney (Con) Olivia Chow (NPD)</p> | <p>40, 2, 96</p> | <p>x</p> | <p>20/10/2009</p> | <p>2009</p> |
| <p>John McKay Mr. Speaker, as the House knows, the 76 Tamil people who landed in British Columbia are claiming refugee status. The Tamil people seek refuge due to the injustices they experience each and every day from their government merely because they are Tamils. Even as we speak, over 250,000 people are languishing in displacement camps exposed to the elements and in unsanitary conditions. In that context, these Sri Lankans seek refuge and justice in Canada. Justice must not only be done but it must be seen to be done. I would urge the government not to get distracted by immediate irrelevancies but to apply the law swiftly and fairly. Each individual on Canadian soil is guaranteed the security of his or her person and cannot be deprived thereof, except in accordance with the principles of fundamental justice. Each of these 76 cases will be unique and the law must be applied fairly to each according to its merits. People fleeing Sri Lankan injustice and seeking Canadian justice have a right to expect the expeditious application of our laws.</p> | <p>John McKay (Lib)</p> | <p>40, 2, 99</p> | <p>x</p> | <p>23/10/2009</p> | <p>2009</p> |

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| <p>Mr. Speaker, I have to beg your indulgence today. The allergies are getting the upper hand on me. I am hearing things in this place that throw me for a loop, but I am comforted by the words of an amateur politician from many years ago who said, "Don't believe anything you hear and only half what you see". That amateur politician was Abraham Lincoln.</p> <p>In this debate and for the last number of years, we have seen the abuse of the word "terrorist". The justifications for sacrificing the rights of Canadians on the altar of terrorism, and fighting the war on terror, are reprehensible. Recently, I was sitting in my home, watching a ship full of Tamils coming to our west coast seeking refuge. I remember the government standing up and saying that terrorists were aboard that vessel. If that was true, the government should have stopped the ship long before it ever got to Canada. What evidence did it have?</p> <p>(...)</p> <p>The reality is that the government had no evidence at that time. This is the issue before us today, the fundamental rights that we have in this country.</p> | Wayne Marston (NPD) | 40, 3, 66 | x | 20/09/2010 | 2010 |
| <p>On that subject, let me point out that we are very concerned about the way the new arrivals on the boat full of Tamil refugees are being treated. The government seems to be sniffing around and contemplating the idea that people who arrive as a group should be treated differently somehow from people who arrive as individuals. I put it to my colleagues from the Conservative Party, it is a slippery slope to apply the rights of the refugee and immigration act differently to people just because they arrived en masse. Each should be treated as if they set foot on Canadian shores as individuals. That is not exactly in keeping with Bill C-35, but it is along the same lines.</p> | Pat Martin (NDP) | 40, 3, 68 | x | 22/09/2010 | 2010 |
| <p>Madam Speaker, I am proud to open the debate on Bill C-49, An Act to amend the Immigration and Refugee Protection Act, whose purpose is to combat the serious crime of human smuggling.</p> <p>I am pleased to introduce this bill. Canada is very proud of its long tradition of being a place of migration for people from around the world. We receive more newcomers than any other country in the developed world, 0.8% of our population, every year as new permanent residents.</p> <p>We are also proud of our long humanitarian tradition of being a place of protection and refuge for victims of persecution and violence, those who need our protection. This goes back long into our history, in fact to the days of the arrival of the United Empire Loyalists, the Black Loyalists, the Underground Railroad, the eastern European refugees before the war, the refugees from Hungary and Soviet and Communist oppression after the war, and, most famously, the over 60,000 Indo-Chinese who were welcomed by Canadians in 1979 and 1980. This underscores our long and deep humanitarian tradition as a place of protection.</p> <p>Canada receives more resettled refugees than any other developed country in the world. This is so important to Canadians that our government announced earlier this year an increase of 20% in the number of resettled refugees who we will receive. That means that, beginning next year, we will welcome some 14,000 refugees in need of our protection each and every year, which is in addition to those who come to Canada making asylum claims that are assessed by our Immigration and Refugee Board and through various appeals and administrative appeals in our legal system.</p> <p>One of the problems this Parliament recognized was the abuse of that asylum system, which is why Bill C-11, Balanced Refugee Reform Act, was adopted unanimously by this Parliament following all party co-operation in the spring in order to significantly speed up the process of refugee determination, providing protection to bona fide refugees and the removal of those who seek to abuse Canada's generosity.</p> <p>However, Canadians are deeply concerned with a particularly pernicious crime, a crime that exploits vulnerable people in their dream to come to Canada, the dangerous crime of human smuggling.</p> <p>In the past year, it is well known that Canada has received two large vessels on our west coast, together carrying nearly 600 illegal migrants to our shores, people who, based on our intelligence, had paid criminal smuggling syndicates some \$50,000 each in order to come to Canada in the most dangerous and exploitative way possible.</p> <p>The remarkable openness of Canada to immigration in general and refugee protection in particular, which makes possible our very generous approach to immigration, is dependent on public confidence in the system. I submit that Canadians demand an immigration system that is characterized by a sense of fair play and a rule of law. What disturbs them deeply about these mass illegal smuggling operations is precisely that they undermine those principles of fundamental fairness and the rule of law.</p> <p>The position of Canadians and the position of this government is and ought to be that we will be a country of openness, we will be a country that provides protection to those who are in need of it and we will lead the world in the moral obligation of refugee protection, but we will not be treated like a doormat by criminal networks that seek to profit from, frankly, encouraging people to come to this country illegally in a fashion that puts them and others in moral danger. We know that every year hundreds and potentially thousands of people around the world fall victim to the dangerous ruse of smuggling syndicates.</p> | Jason Kenney (Con) (1 of 3) | 40, 3, 88 | x | 27/10/2010 | 2010 |

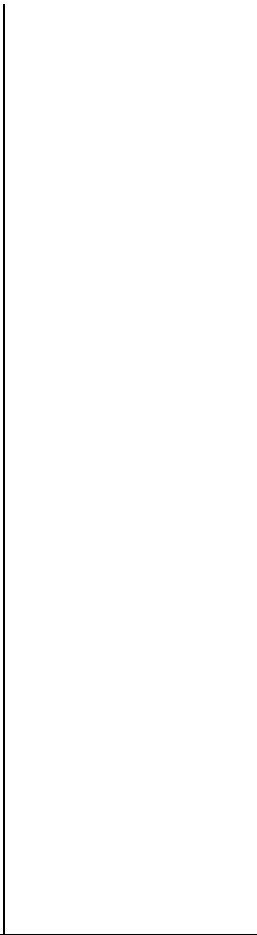
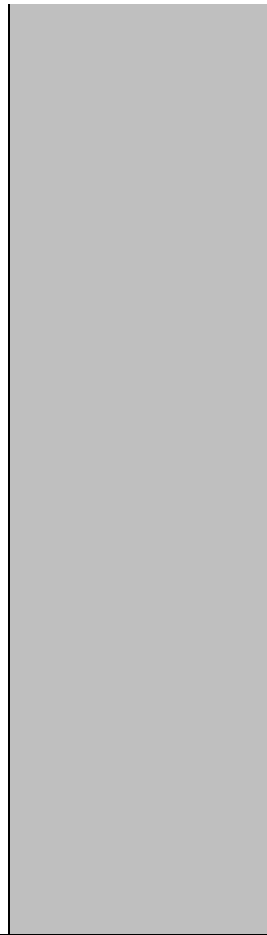
Let me be very specific about the problem we face and then allow me to identify the strong but fair remedies that we propose in Bill C-49 and in certain associative operational actions that are taken by this government and its agencies.

First, I came back last month from a visit to Asia, including to Southeast Asia, where I met with counterparts in various foreign governments. I met with our own Canadian intelligence police, border security and Immigration officials and learned a great deal about the vile trade of human smuggling in that region.

What I learned was the following. There are approximately three or four criminal syndicates operating in that region that have a long history of being involved in the arms smuggling trade. Because there has been an end to hostilities in the Sri Lankan civil war, those syndicates have now decided to smuggle and to traffic a different commodity, which is human beings. They have refocused their logistical ability to selling people the opportunity to be smuggled illegally to Canada.

I have been told by our partners in the region that they believe these syndicates have the capacity to deliver several large steel hulled vessels with the ability to bring in each hundreds of illegal smuggled migrants to Canada each year. Prospectively thousands of people are being smuggled to our country in this dangerous fashion.

This government, any government and any minister of immigration, as my friend from Toronto knows well, has a profound responsibility to maintain public confidence in the immigration system. What we have seen since the arrival of the last smuggling vessel is a fundamental and very disturbing decline in public support for immigration in general and refugee protection in particular.



According to the most recent polling that I have seen, over 60% of Canadians say that our response to this threat to our sovereignty, our laws and the fairness of our immigration system should be to prohibit these vessels from entering Canadian territorial waters. Fifty-five per cent of Canadians have said that even if these vessels land and some of their passengers subsequently attain refugee protection under our laws, that those people should be returned to their country of origin, notwithstanding a positive legal determination on their asylum claim.

That is the public opinion environment. Imagine how much more vigorous Canadians would feel about this, if we actually had several vessels arriving, which I am informed is within the logistical capability of the criminal organizations involved.

We cannot allow that to happen. The easier path is to do nothing. The easier path is to mouth platitudes. The easier path is to take no difficult decisions. However, the necessary and responsible path is to take firm and meaningful action that does everything we reasonably and legally can to deter and disrupt the smuggling networks, to reduce both the pull and the push factors in this illegal migration so that it stops. To do otherwise is to put at risk the broad public consensus, which has historically existed in Canada in favour of immigration and refugee protection, and I will not allow that to happen on my watch as minister of Immigration.

Some would have us believe that we can successfully deter the smuggling operations simply by focusing on the smugglers. How I wish that were true. How I wish it were true that we did not have to, at the same time, address the demand side of the equation in the smuggling enterprise. However, to pretend that is the case, to pretend that we can avoid disincentivizing the customers of the syndicates from paying \$50,000 to come to Canada is naive in the extreme. Therefore, let me present the general approach of the government and then the legislation in particular.

First, it is evident there are legitimate refugees in need of protection in Southeast Asia. It is also true, according to the United Nations High Commissioner for Refugees, that it is always preferable to find a local or regional protection solution for those who are bona fide refugees and to do everything possible to prevent them from being exploited by trafficking syndicates. That is why we have begun preliminary discussions with our international partners, including Australia, which obviously has a great stake in this issue, and with the United Nations High Commissioner for Refugees to pursue the possibility of some form of regional protection framework in the Southeast Asian region.

In part that would entail encouraging the countries now being used as transit points for smuggling and trafficking to offer at least temporary protection to those deemed by the UN in need of protection and then for countries such as Canada to provide, to some extent, reasonable resettlement opportunities for those deemed to be bona fide refugees, which is something we are pursuing.

However, to be honest, that is a mid to long-term solution. Working on that with the UN and our international partners will not stop the fact that criminal networks in Southeast Asian countries are planning to smuggle their customers to Canada. They are in the process right now. People have already paid their upfront fee and are sitting in waiting positions in parts of Southeast Asia. Vessels have been acquired. Officials have been, shall we say, induced to co-operate with these networks. The operations are not abstract. This is not a possibility. This is not a theory. This is a real and present reality and we must react with real, present and current action to disincentivize the smuggling networks.

It is also true, insofar as we are talking about a flow of illegally smuggled migrants of Tamil origin, that we acknowledge Canadians have a stake in seeing a just and durable peace in Sri Lanka. We acknowledge that the Tamil people have legitimate aspirations and that they deserve to be protected from violence and persecution. That is why, through the Department of Foreign Affairs, our High Commission in Colombo and through multilateral institutions, we continue to strongly encourage the government of Sri Lanka to make every effort to find a just resolution to the legitimate aspirations of its Tamil minority. That is one important issue. A regional protection framework is another important issue.

Perhaps the most important element in combatting the smuggling is to stop the boats from leaving the transit countries in the first place. That is why our government has directed relevant security and intelligence agencies to increase their presence and capability in the transit countries, partly to assist the transit countries in improving their capacity to detect fraudulent documents and smuggling networks and to gather better and actionable intelligence to prevent people from being loaded on to the vessels in the first place.

In this respect, I would note that two weeks ago the Royal Thai Police detained some 150 individuals who were in the country illegally, without status. Apparently they were planning to board vessels to be smuggled possibly to Canada. Therefore, that work is being done as well. There is increased and improved police and intelligence co-operation in the region among ourselves, the Australians and the transit countries.

However, should a vessel successfully leave a transit country, and we are talking about these leaky, decommissioned cargo vessels that people are loaded onto like cattle to take the dangerous voyage across the Pacific, and arrive in our territorial waters, Canada, after the adoption of Bill C-49, will continue to fully honour our humanitarian, domestic and

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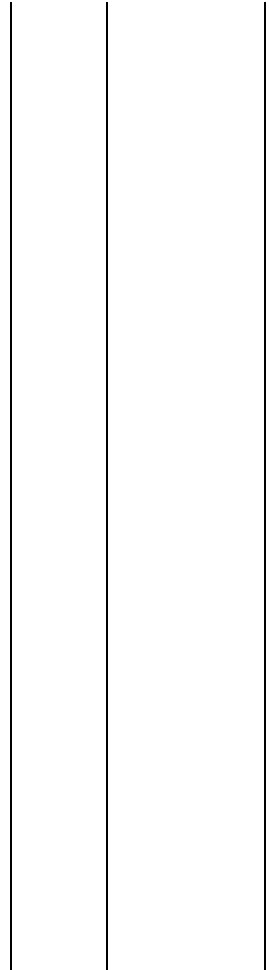
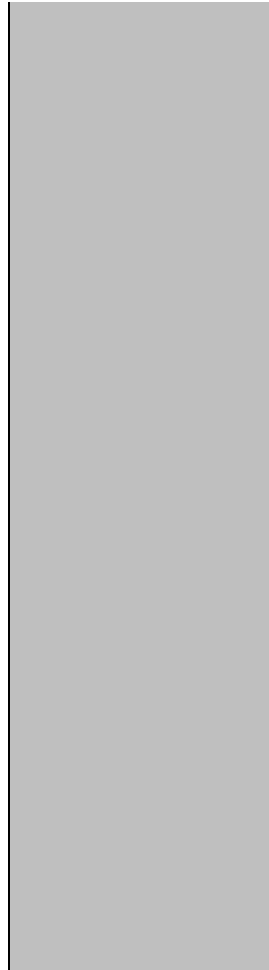
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international legal obligations to provide refugee protection.



We will not endanger the lives of people, as some would have us do, to prevent them from entering Canadian waters. Nor will we violate our international obligations under the convention for refugees and torture or our domestic obligations under the Charter of Rights and Freedoms to provide protection to those who are deemed by our legal system to be in need of it, to have a well-founded fear of persecution in their country of origin. This is to say that we will not, in the technical term *refoulement*, send back to the country of origin someone who has arrived even through this dangerous, illegal and irregular form of marine migration.

We do need to send a strong message to the smugglers, which is why Bill C-49 proposes strong mandatory minimum prison sentences for those involved in smuggling operations. Those who are involved in smuggling under 50 people would face a mandatory minimum prison sentence of at least 3 years. If there are one of two aggravating factors involved, they would face a mandatory minimum of five years. If the group is over 50 individuals, they could face a mandatory minimum of 5 years unless there was an aggravating factor, such as having put the life or safety of their customers in danger, in which case a 10 year mandatory minimum. We believe this will help to cause the smugglers and the crews that work for them to think twice before targeting Canada for their sordid trade.

We also propose massive new penalties for the shipowners, those who are at the back end of this business enterprise, this terrible criminal profit-making venture. They ought to know that they stand to lose millions of dollars if they acquire a ship to be used for this illicit purpose.

Also, we have broadened the ability to make it easier to obtain successful prosecutions against people smugglers through amendments to the relevant law. We take other measures targeting the smugglers very clearly.

However, when we are talking about an illicit market, one thing history, common experience and economics all tell us is that as long as there is a sufficient demand and a sufficient price, there will always be someone willing to provide a service or a good. Therefore, we cannot be naive about the imperative of diminishing the demand side of the equation in the smuggling enterprise.

We must ask ourselves this. Why are people coming from third world countries paying \$50,000 to come to Canada in this dangerous way?

Some of the people we are talking about are actually coming from democracies like India. Recently CBC News did a report on individuals in Tamil Nadu in Chennai in the great Indian democracy who had paid smugglers to come to Canada. One of them wanted to come to Canada because he or she had heard this country provided free monthly salaries. In part, there is an economic pull factor to Canada.

It is clear to us that the capacity of someone who lands in Canada, for example, a positive refugee protection decision, to immediately then sponsor family members, means that the \$50,000 price point used by the syndicates is not just an investment on the principal applicant getting into the country, but on those family members who will then follow. Therefore, \$50,000 makes sense on the smuggling market because the price point actually will eventually allow several family members to come to Canada in reasonably short order.

That is one of the reasons why it is important to change the business model of these smuggling syndicates by disincentivizing. This is why we propose that those who have been designated to have arrived in a smuggling event and who get a positive protection decision would have temporary residency in Canada for a period of five years. I would be happy to develop that further on questions.

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| <p>Jason Kenney (Con) (3 of 3)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |
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| <p>Thierry St-Cyr Madam Speaker, the bill before us has more to do with political marketing than any true desire to change policy for the better. This bill was announced in Vancouver. It is easy to understand the political aspect because that is where the boat arrived. We also see that the minister made his announcement in English only, even though he speaks excellent French. He really is speaking to Canada.</p> <p>More to the point, this bill is a clear repudiation by the government of the Minister of Citizenship, Immigration and Multiculturalism. It was the Minister of Public Safety who introduced this bill today. In fact, he was in the House to monitor the speech by his colleague from Immigration.</p> <p>Last spring, the Minister of Citizenship, Immigration and Multiculturalism introduced, debated and defended in the House a fair and balanced—in his own words—reform with regard to refugees. He received the unanimous consent of the House. He negotiated with the other parties and four months later, he is being repudiated by his own government. By tabling this bill, the Minister of Public Safety is sending him a message that the reform he considered to be balanced is not and that other measures need to be presented to the House.</p> <p>How does the minister feel about being repudiated by his colleague from Public Safety?</p> <p>Jason Kenney Madam Speaker, there seem to be all manner of political conspiracy theories in that question and those comments. It is obvious that the intent of this bill is serious, and that it is also reasonable and fair. Let us recall that, according to surveys conducted after the arrival of the latest boatloads of illegal immigrants, the vast majority of Quebecers indicated that they wanted to send the illegal immigrants, who were brought here by a human smuggling ring, back to their country of origin. In terms of public opinion, Quebec is the most outspoken.</p> <p>Some members of the Bloc Québécois are more concerned about the values of the elite than those of ordinary people. But we must maintain the confidence of Quebecers and Canadians in the Canadian immigration and refugee protection system.</p> <p>That is why we need real measures and not rhetoric to fight the trend towards illegal immigration facilitated by these smuggling rings.</p> | <p>Thierry St-Cyr (BQ) Jason Kenney (Con)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |
| <p>Olivia Chow How would refugees from Sri Lanka, let us say Tamils, come to Canada? What queue would they be lining up in? Would they be lining up in Sri Lanka? No. Thailand? What is the proper way for Tamil refugees from Sri Lanka to come to Canada? The minister said that there are criminals there, that they have already pocketed money, and that people are ready to go on the ships. If he has all this information, and he said that he was working with the police in different parts of southeast Asia, why are the RCMP and CSIS not working to have these smugglers arrested overseas?</p> <p>I have seen reports stating that nine out of ten of these refugees are in desperate shape when they leave. They have no idea of the refugee policy in the country they are going to.</p> <p>Whatever policy we establish, it will not make a lot of difference. If refugees are desperate, they are going to try to get out somehow.</p> <p>Jason Kenney Madam Speaker, first of all, there is an assumption in the member's first question about how Sri Lankan refugees would come to Canada that I do not necessarily accept. Under this assumption, everyone coming to Canada in this fashion is in need of our protection. They are all coming here seeking protection, as opposed to family reunification, economic opportunities, or a mix of motives.</p> <p>Since the end of hostilities in Sri Lanka last year, some 100,000 Sri Lankan refugees who are resident in Tamil Nadu under the protection of the Indian government have returned voluntarily to Sri Lanka. The United Nations High Commissioner for Refugees has facilitated the return to Sri Lanka of many Tamils who were living temporarily in Southeast Asia. The United Nations High Commissioner for Refugees has declared that Tamils can no longer be presumed to be bona fide asylum claimants. According to a survey done by the Canada Border Services Agency, the majority of successful Tamil asylum claimants in Canada have since returned, at least for visits, to the country from which they fled, after claiming that they could not be there for reasons of persecution.</p> <p>I would remind the member of the recent CBC report that interviewed people who had paid these networks. Many are living not in Sri Lanka but in India. If they would like to come to Canada, they are free to fill out an application to come here as an immigrant. If they are in need of protection, they are free to enrol with the United Nations High Commissioner for Refugees.</p> <p>They should not come in the worst and most dangerous way possible, which is through a smuggling syndicate.</p> | <p>Olivia Chow (NPD) Jason Kenney (Con)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |

I am deeply concerned that any time the Conservatives are faced with a choice of considering policy, sitting down and having a rational discussion, or playing politics, they choose to play politics. There does not seem to be a headline the Conservatives are not willing to exploit.

I can remember the pardon issue, four or five years ago, when the then public safety minister said, after a sensational case, that they had fixed the pardon problem. He said they did not involve the rest of Parliament, because it was something they were able to do on their own. They refused to have any hearings. On the back of a napkin, they whipped something up and called it fixed.

And then we had Graham James. All of sudden, they feigned indignation and said they had to do something fast, forgetting that they themselves claimed to have fixed the problem some four years before.

However, this did not stop them from trying to play games with the problem again. They ratchet up the rhetoric and, on the back of a napkin, whip up a policy, instead of sitting down with Parliament and having a mature debate.

When the Sun Sea and the Ocean Lady arrived on Canadian shores, the Minister of Public Safety was eager to say this was a boatload of terrorists. He talked about intercepting boats in international waters, even though this would violate international conventions. Anywhere else this has been tried, it has been a disaster, raising fears that people would be thrown overboard to hide the evidence, that human beings would be tossed like luggage off the side of the ship to hide the fact that they were being smuggled.

So, for roughly 2% of the claimants Canada would get in a year, the Conservative government went nuclear, not because it wanted to fix something, but because it wanted to play politics and saw a great opportunity to drive a wedge.

The people the Conservatives called terrorists turned out to be mostly women and children. But that is an aside. Apparently, it did not matter much to them.

So after much floundering, including talk about going out into international waters, after throwing around a lot of rhetoric, we get this bill.

I have a lot of problems with the bill. Let me start with the fact that it is tough in all the wrong ways. It is extremely tough on claimants. It is easy on the scum that preys upon the weak and smuggles others into this country. Because of this misplaced focus, I have serious doubts about how it could be effective.

In addition, we have to realize that the government is masking the fact that the real solution rests in engaging international partners. If there is one thing the government has not been able to do, it is work with other countries.

If we want to go after the people who prey on the weak, on those who are vulnerable, then we have to work with foreign jurisdictions and ensure that we go after this scum where they are operating. Instead of being hard on the women and children who are trying to escape war-torn regions, we have to go after the people who are preying on them, trying to suck money out of them, taking advantage of their unfortunate situation, sticking them on dangerous ships and sending them across oceans to Canada. We have to stop the problem long before they walk onto that boat and begin their journey across the seas.

In this regard, and in many others, this is a placebo policy. And I wish it was only that. However, the government also plays on the public's misunderstanding of the distinction between the words "refugee", "immigrant", and "claimant", trying to mix them all up together, trying to confuse people, trying to make them think that there is some queue and that these claimants are jumping ahead of other people. The government knows this is false. That is what makes the assertions absolutely irresponsible and reprehensible.

The government's job is to inform public debate, to inform it with facts. The government is supposed to encourage honest discussion about the differences between political parties. Instead, the government capitalizes on misunderstandings, plays tricks with, let us be straight here, fake emails that go around with misinformation, and generally tries to engage in grand political games. I think this is shameful.

It is not just me who is saying these things or having problems with these bills. I will read a couple of things that some experts in these areas have been saying. Their words are worth hearing because they make the case so clearly.

There is a piece written for the Globe and Mail by Lorne Waldman and Audrey Macklin entitled, "Why we can't turn away the Tamil ships", and I will quote several excerpts from it:

Asylum seekers on boats is not a new phenomenon. In 1939, the St. Louis, filled with hundreds of refugees fleeing the Nazis, was turned away from Canada. At the time, the government tried to discredit the passengers as frauds and economic opportunists, and warned that, if the St. Louis were permitted to dock, more Jews in Europe might follow. The "line must be drawn somewhere," and it was drawn at zero. Many of the people on board subsequently perished in the death camps.

In 1969, Canada signed the Refugee Convention and undertook not to return refugees if they had a valid fear of persecution. This obligation is part of our law. Once asylum seekers reach our territorial waters and are in Canada, they

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| <p>Mark Holland (Lib) (1 of 3)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |
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cannot be sent back to another country unless their claims for protection have been denied.

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From the St. Louis onward, every new boat is accompanied by denunciation of the passengers as frauds and dire warnings of future “waves.” Yet, two boats – one filled with Tamils and the other with Sikhs – arrived in the 1980s followed by four boats with Chinese in the 1990s, and the sky did not fall in. All were given due process without creating havoc. Some were found to be refugees, some not. Other countries, including Australia and the United States, receive far more sea-borne migrants than Canada, and far more irregular migrants in general.

It goes on to talk about the bill:

Moreover, such a regime would run afoul of our Charter. Our Supreme Court has held that Canada cannot be directly or indirectly complicit in torture or other human-rights violations. By turning away boats without fairly determining whether those on board would be at risk, we would be violating refugees’ right to life and security of the person.

The article concludes by saying:

Canada receives about 30,000 claimants each year. Five hundred Tamils represent only 2 per cent of the annual intake. The rest arrive by plane or overland, so don’t elicit the same moral panic as people on boats. Although the system has experienced delays in recent times, it has managed to provide a reasonably fair determination. Failed claimants are being deported each year in record numbers. All this to say, that with a just and efficient determination system, we will be able to deal with asylum seekers arriving by boat or otherwise. And the best way – indeed, the only way – to stop any future boats from Sri Lanka is by solving the problems in Sri Lanka.

Amnesty International is also speaking with deep concern about this bill saying that the proposal violates three treaties: the 1951 Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. Amnesty says that the bill shows no respect for the equality provisions in the Charter of Rights and Freedoms. Gloria Nafziger of Amnesty International said:

It’s just a flagrant violation of so many rights, it just goes beyond the pale. Those treaties are the international treaties we signed on to and we have obligations to uphold and respect [them].

The Canadian Council for Refugees is saying that despite the government’s claim that it is targeting smugglers, the people who will suffer in this bill are the people fleeing persecution, including women and children. It asserts that measures keeping some refugees longer in detention, denying them family reunification, and restricting their freedom of movement, are likely in violation of our charter.

Professor Peter Showler, the former head of the IRB and a refugee expert, noted that there are two different targets under this bill: the human smugglers and the refugee claimants themselves. Even if a person is accepted as a refugee, which means the person fears persecution for five years, the person cannot bring his or her family members. This is not just any family member, we are talking about husbands, wives, and children who are trapped in conflict zones. Mr. Showler has characterized many of the provisions in the bill as outrageous.

What I would like to do is talk about some of the specific provisions that the bill does undertake. One of the much heralded things the bill does is it creates mandatory minimums. It defines aggravating factors where those mandatory minimums would be triggered. There are two aggravating factors. Factor one is where somebody is engaged in the activity for profit, whether or not the person is with a criminal organization. Factor two is whether or not it endangers the life of a person who is being smuggled. It gets into a formula where if there are less than 50 people and there is one aggravating factor, it is a three year mandatory minimum. If there are both aggravating factors and it is under 50 people, it is a five year mandatory minimum. If it is more than 50 people, it is a mandatory minimum of five years if it is one aggravating factor. It is 10 years if it is two aggravating factors and more than 50 people.

Here is the problem. The current penalty can be up to life imprisonment and a \$1 million fine for anybody smuggling more than 10 people. The government already has at its disposal extremely serious measures that are on the books to go after the smugglers.

These mandatory minimums are a placebo. They are held in the window to feign action, to pretend they are being tough, as the Conservatives like to say, when in reality they are little more than window dressing. In fact, the actual tools they need to go after the smugglers are already in place. The problem is they are not going after them where they need to, overseas in other countries, working with other jurisdictions.

There are some provisions in the bill that I think we could support. Looking at increasing penalties under the Marine Transportation Security Act for someone who is providing misleading information, or a failure to comply with a ministerial order and therefore be refused entry.

One of the things that is very concerning because its wording is so ambiguous first was introduced by the minister when he talked of a “human smuggling event” and all of a sudden this human smuggling event would trigger all sorts of extraordinary powers. We are not given any details of what those powers would be or how they would be exercised, but eagerly, obviously, we looked at the bill and tried to determine what those powers were.

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| <p>Mark Holland (Lib) (2 of 3)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |
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Gone was the term “human smuggling event” and now came the term “irregular arrival”. Irregular arrival has no real specificity and could just be two people, not a large group or a throng of people or hordes of people coming into Canada, but just two people. If the minister, for whatever arbitrary reason he or she decides, invokes this provision, there are suddenly two classes of refugees, those that are subject to one set of rules and those that are subject to another. It could be for no other reason than the minister does not happen to like those particular refugees, or happens to think one particular group coming from one particular region is more disliked by the public and therefore maybe the government should play games with them and play it for wedge politics.

The problem is that for that separate class, some very different rules are invoked. One of them is to invoke mandatory detention so that when someone was defined in this class he or she would be detained for a minimum of one year. This mandatory detention would not be reviewed again for another six months. Imagine women or children being in a detention centre where they are only given the opportunity once every six months after the first year to appeal that detention. While they are detained, it stops their ability to appeal to the Refugee Appeal Division. It stops their ability from making any claim on humanitarian or compassionate grounds for their situation for five years.

One of the things worth pointing out is the impact of detentions on mental health for a woman or a child who is in a mandatory detention centre because the minister arbitrarily decided to put the woman or child in that class. We can refer here to a multidisciplinary team of university researchers. The team members included: Dr. Rousseau of the Department of Psychiatry at McGill University; Professor François Crépeau, Hans and Tamar Oppenheimer Professor, Public International Law at McGill University; and the list goes on and on.

They concluded a three-year study, funded by the Canadian Institutes of Health Research on the impact of detention in Canada on adult asylum seekers. Based on their expertise in this area, they predict that the mandatory long-term detention as proposed in the bill will have a severe negative impact on refugee claimants' mental health, especially on the most vulnerable: children, pregnant women, and survivors of rape and torture.

I hear some members heckling on the other side about that. I am talking about people who might have been raped or tortured, pregnant women, children. Let us remember who we are talking about. Let us remember the people who could potentially be impacted by this detention.

Another thing we need to look at in the bill is the fact that it imposes a duty of inquiry on people who provide assistance. That may seem relatively innocuous at first, but if a church group makes a determination that it wants to help a claimant because the group thinks the situation the claimant is coming out of is desperate and dangerous, no longer will the burden be on the state to prove that there was not a violation of the Immigration and Refugee Protection Act, but rather that burden of proof would literally fall upon the church or independent organization that sought to assist that refugee, placing all that burden of proof on that individual instead of placing it on the state.

The bill would also seek, and this is quite remarkable and something we need to debate as we move forward, that even if a person is successful in claiming refugee status, even if the person finds a way to convince the government that being sent back would mean the person's certain death, torture or some other horrible outcome, the government reserves the right after five years, after the person has spent five years in Canada and has naturalized here and has established roots, to say it has changed its mind and the person is out of here. The person can spend five years here as a legitimate refugee and then after those five years, the government says, “See you later”, and the person is back out. For those five years the person obviously will be living under a constant threat of being tossed out. How will the person be able to establish himself or herself? How will he or she be able to make a meaningful contribution to Canadian society?

During that five year ban, and again we are talking about legitimate refugees, the person is also barred from applying for permanent residence. He or she is barred from travelling outside the country for five years. He or she cannot sponsor family members. Let us remember who these family members are. They are the wife or the husband, or the person's children.

We need to proceed very carefully, because when we change legislation, it has profound implications. There is no question we need to get tough with those who would smuggle the most desperate and the most weak out there, but the bill, full of its flaws, appears to me to be infinitely more about playing politics than it is about finding solutions.

People who hoped as they read headlines that the bill would be the thing that would save us from future situations such as we saw, will be sorely disappointed when they look beneath the veneer, because like so much of what the Conservative Party puts forward, it is about the talking points and it is not about the substance.

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| <p>Mark Holland (Lib) (3 of 3)</p> | <p>40, 3, 88</p> | <p>x</p> | <p>27/10/2010</p> | <p>2010</p> |
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| <p>Madam Speaker, that intervention was certainly living up to the standard that we all expect of the member. In part, of course, he very casually casts the most disgusting aspersions on his adversaries. Rather than simply disagreeing on substance, he made all sorts of allegations of bad faith, which is what he does best. I commend him for that.</p> <p>For example, he implied that this government somehow politicizes against the tradition of refugee protection. Let me be very clear. This government has increased the resettlement of refugees to Canada to the highest level ever, higher than any ever under the Liberal government. We will be bringing in 14,500 resettled refugees next year. After the government to which he belonged froze the numbers for refugee resettlement, we are increasing the refugee assistance program by 20%. What kind of government that tries to politicize against refugees actually brings more of them and gives them more support?</p> <p>I have a question for him. Why did his government not do the same thing if it was really in favour of refugee protection? Why did it freeze the refugee assistance program for 13 years? Why did it freeze the number of resettled refugees? I am not going to allege that there was a bad motive in that, because I think that would be unreasonable and unfair. I am sure it had sound reasons, but then to turn around and cast aspersions on the motives of a government that is doing more to help refugees than any in recent Canadian history is very pathetic.</p> <p>However, I just want to ask him this. If he says this is not tough enough on the smugglers, I have a very simple question. What is his alternative? What would the Liberal Party do to stop the smuggling operations? We have the police and our intelligence agencies working in the transit countries. There have been detentions there. What would he do? If not mandatory minimum sentences, what is his solution?</p> | Jason Kenney (Con) | 40, 3, 88 | x | 27/10/2010 | 2010 |
| <p>Madam Speaker, let me first state, while I am not going to get into a debate on history, that I am deeply proud of the Liberal record when it comes to immigration and refugees. It is a record that speaks for itself and we have long been a party that understands that this is a nation of immigrants, based upon policies that are sound, reasonable and well considered.</p> <p>Let me suggest to the minister how he might have proceeded instead of trying to whip up this bill in a mad frenzy to create talking points that he could use. Instead of proceeding in that way, what he should have done was sit down with the experts, sit down with this House, dare I say in a minority government, sit down with the immigration and citizenship committee, sit down with the public safety and national security committee, allow us the opportunity to hear from experts and witnesses, and in a careful, considered way, using facts and real information, take the opportunity to craft a bill that really creates solutions.</p> <p>But that is not what we got. To be fair, what we got was a political reaction, and my frustration when I speak in this place, the reason I speak so passionately in opposition to what the government does, is because I have seen, time and time again, the government decide to put talking points in the window first, and beneath a very thin veneer is a complete absence of real policy.</p> <p>Worse than that, the actions that will be taken are detrimental, and I hope that in my speech, over a period of 20 minutes, I outlined all the concerns I had. I would hope that instead of torquing up the debate, instead of ramping it up, the minister would take an opportunity to have a mature conversation with us on this, allow that debate to occur and not ramp up the rhetoric.</p> | Mark Holland (Lib) | 40, 3, 88 | x | 27/10/2010 | 2010 |
| <p>Madam Speaker, I listened to my colleague's speech and I share a number of his concerns. The Bloc's position on this bill is very clear, as I will have a chance to explain in a few minutes.</p> <p>But, aside from fundamental principles, it cannot be said that the Liberal position is just as clear. Even after my colleague's speech, we still do not know what the Liberals will do when it comes time to vote on this discriminatory bill in a few days.</p> <p>This is nothing new; it is always the same thing with the Liberal Party. There are always some intellectual gymnastics and some fancy dancing. It tries to please everyone and make people believe that it is tough on crime and open at the same time.</p> <p>The member has looked at the bill long enough to make a 20-minute speech. Can he simply tell us whether he will vote for or against it at second reading?</p> | Thierry St-Cyr (BQ) | 40, 3, 88 | x | 27/10/2010 | 2010 |
| <p>Madam Speaker, I would like to thank the Bloc Québécois member for his question.</p> <p>The Liberal Party's position is very clear. We see many issues with this bill and it brings up many questions. We will take the time to speak with experts and our caucus. The government only introduced the bill three or four days ago. We need to speak with our caucus and experts to see if there is a way to save this bill.</p> <p>In a few days, once we have found the answers to our questions, the member will understand the Liberal Party's actions and see how it will vote.</p> | Mark Holland (Lib) | 40, 3, 88 | x | 27/10/2010 | 2010 |

Madam Speaker, one of the first things the new coalition government in England did was to say that putting refugees who are children or migrant children in detention causes a lot of hardship and that it is a practice it wants to refrain from because it leaves psychological scars on these youngsters. They are not really criminals, and often they are in detention because of the vicarious immigration status of their parents. It is working towards eliminating the detention of all children based on immigration reasons, whether they are the children of refugees, of migrants or of temporary workers.

I heard the member speak about the kind of suffering the children have, and not just children, that within a few days they get into a depressive state. Does the member have more information concerning the kind of long-term impact that a prolonged detention has on children, especially if it is over a year and perhaps several years.

Under the bill, the review would not occur until after one year and then six months later. So that child could be in detention for several years.

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| Olivia Chow (NPD) | 40, 3, 88 | x | 27/10/2010 | 2010 |
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Madam Speaker, I thank the member for a very good question.

I would refer the member, in my speech, to the multi-disciplinary team of university researchers who have actually done a lot of study on this very impact. I think it is something that the House should be seized with as it considers the bill and should look at further.

I think the member makes a point that is worth repeating and worth remembering. The government more often than not, as it confuses what is a claimant with what is a refugee, also likes to characterize all refugees or all claimants as somehow these big, bad terrorists, these bad people. More often than not, the people we are dealing with are children. They are women. Many times they can be people who are coming out of war-torn, terrible situations, people who might have been dealing with rape, people who might have been dealing with torture.

Can we imagine what it would be like for somebody who is coming out of that kind of horror and what psychological impacts additionally it would have to then be shoved into detention for a year and not given any opportunity during that one-year period to say, "This is wrong for me"? That child does not belong there or that woman does not belong in the situation, after all they have gone through, that after a year, if they do not make that review, they would have to wait another six months.

I think the psychological impact, particularly on these people who could potentially be very vulnerable and coming out of desperate situations, is something we need to bear in mind.

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Madam Speaker, last spring Parliament reached unanimous agreement on refugee reform. We showed that we can agree on things, when there is the will to do so. I fear we will have a hard time reaching an agreement in this case and there are probably few things we will agree on in the future.

Perhaps I will do the same as the minister today, that is, I will give my speech in only one language, except in my case, it will be in French instead of English.

I think this must have been extremely difficult for the Minister of Immigration, even though he is willing to step up to the plate to defend the bill introduced by his colleague from Public Safety. To me this feels like a serious repudiation of all the work he did, which we, as parliamentarians had recognized. We voted unanimously in favour of the refugee reform, which should have, as he said himself, lasted for decades, or for at least one generation. It was a fundamental change in how refugees would be treated.

Now just four months later, this reform, which he described as balanced and with which we agreed—we voted in favour of the reform—is being questioned by his colleague from Public Safety. We will not make a fuss, because even though the minister is here in the House today to defend the bill introduced by his colleague from Public Safety, this bill is clearly being imposed on him by his government. One of two things is true: either the balanced reform the minister defended at the time was not balanced and he knew it—he sold us on something that he knew was not balanced—or the reform was indeed balanced, but someone in his government repudiated his work because he or she did not agree with the minister's conclusion.

This is rather disturbing. At the same time, it also seriously undermines the minister's position since, at the end of the day, considering this repudiation by his colleagues, who would want to negotiate and discuss anything with him in the future, if any of his colleagues can go back on the deals he makes and propose a new bill like the one before us today?

It is even more disturbing, since this bill was only passed four months ago, it has not yet been implemented, we have not seen what kind of impact it may have, and so we cannot assume that it is already broken. It was passed four months ago. This seems to be all about political marketing. That is what we are seeing today in the House, because I do not detect any sincerity in the minister's comments. Let me be clear. I do not doubt his sincerity as an individual, but I doubt that he is convinced that the bill introduced by his colleague is the right thing to do. I say that because this is not the same man we saw last spring. When the minister introduced his balanced reform, he met with parliamentarians from the different parties to explain the reform. His officials offered us a number of technical briefings in advance to explain all the ins and outs of the bill. In a way, he was preparing us mentally. We knew what direction he was taking, but today, there is none of that.

The minister must have wanted to be sure that his bill would be defeated in the House; otherwise, he would have acted differently.

It is very clear that this bill simply appeals to some kind of unhealthy populism, that it goes after all refugees by putting them all in the same boat—no pun intended—and that it suggests simplistic solutions. I do not think that even the minister believes in these solutions.

The Conservatives always take the same approach. First, they introduce a bill with a bogus name, something they could put a trademark notice on, something that sells the bill, a crude advertisement. This time, we have the Preventing Human Smugglers from Abusing Canada's Immigration System Act. This lengthy bill has only a few measures that address smugglers; the rest have to do with the refugees themselves. The government is going after people in extremely difficult situations, instead of helping people who are in need.

It always uses the same technique to end any debate: it just says that they are terrorists. That is what it said when the boat arrived in Vancouver. It said that there were members of the Tamil Eelam, a terrorist group, among the Tamils. So the government says that anyone who is against this bill is pro-terrorist. And that is it, there is nothing more to add and no further discussion is needed. That is the Conservatives' argument.

It is even more grotesque given that 80% of the Tamil refugee claimants are considered to be genuine claimants under the Geneva convention. A few months earlier, the minister took aim at Mexican refugee claimants, saying that since only 10% of them were accepted, it was suspect. In this case, 80% are being accepted and it is still suspect. There is a problem here. You can worry about acceptance rates that are too low or too high, but not both.

Seriously, I have a very hard time believing that the Minister of Citizenship, Immigration and Multiculturalism and the people in his department thought about this and had an overall vision when they drafted this bill, especially since these same people did all this work last spring, a mere four months ago, and came up with completely different conclusions. Obviously, this bill was prepared quickly, in a purely partisan fashion, as a sort of collection of unrelated measures. They have no vision. They are not taking aim at the problem, but at refugees, which will create much bigger problems that I will come back to.

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I would like to put things into context so that the people of Canada who are watching this understand that just because the government says that this bill and its 50-odd clauses crack down on smugglers, that does not mean that it actually does. Human smugglers are not watching CPAC and are not reading the bill. This bill will have no impact on them. The government chose the title of the bill. It can give the bill any title it wants, even if it has nothing to do with the bill's content.

Now let us talk about the substance of the bill. This is a very strong reaction to what we all agree is a real problem, but the government exaggerated the problem. It is trying to kill a fly with a bazooka. Not only is it futile to use a bazooka to kill a fly, but one also risks missing the target because it is such a precise operation. In this bill, the government focuses on the means of transportation by which the person arrives.

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That has nothing to do with anything. The government also focuses on the fact that people arrive in groups of two, three, four or 100. That has nothing to do with anything either. There is no reason to believe that the people who want to cheat the system—for some people do—are more likely to come by boat than by plane or by land. Recent history suggests quite the opposite. More of the Tamils who arrived by boat were accepted than claimants who arrive by plane or by land. What is more, the refugees on board that boat were detained just long enough to verify their identity and threat level, and they have all been released since. Clearly, there is no reason to believe that people arriving by boat are less likely to be legitimate refugees than those who arrive by other means.

Nevertheless, I have to say that arriving by boat makes more of a splash. It is a bit like when a plane crashes. It makes the news because of the tragedy of hundreds of people dying at the same time. But is a plane more dangerous than a car? Any transportation specialist will say it is not. One is more likely to die while travelling in a car than while travelling in a plane.

This is when cheap political marketing and cheap rhetoric are used in an attempt to make us believe that the government is dealing with a problem. Only 2% of refugees arrive in large groups by boat. The government is grandstanding across Canada, putting on a show and telling us that it is tackling the problem of refugee fraud. Why does the government's bill target the 2% of refugee claimants who have one of the highest acceptance rates?

Suppose 98% of the claimants had been dealt with. Then we could look at the remaining 2%. Why target people who arrive by boat? There is no other justification than the fact that it is a hot issue and that when a boat arrives, the Conservatives can tell the media that they are going to deal with the situation.

It is rather crass and I am convinced that no one will be fooled. The minister likes to quote poll results to Quebeckers, but they are not happy when they realize that the government has tried to put one over on them by telling them that the refugees are all terrorists, that they have to be kicked out, and that they will take care of it. Quebeckers realize that it is not true.

Let us examine some of the measures in the bill's whimsical assortment of provisions. First, the bill will create a category of refugees: those who arrive by boat in groups of 2, 50, 100 or more. If more than one arrives by boat, it seems that they are more dangerous than other refugees. This category will be established and these people will be dealt with in a completely arbitrary and discriminatory manner. For example, the government will be able to hold them for 12 months without even determining whether they should be released. For purposes of comparison, the current timeframe is two days.

At the beginning of my presentation, I said that if the government had wanted to make improvements, it would have come to see us. Had the government told us that two days was not enough and that seven were required, we would have listened to what it had to say. Had it said that 14 days were needed, we would have studied the matter. Had it said that 30 days were needed, we would have started wondering, but we would have considered it nonetheless. Now, the minister is telling us that people who are not being accused of anything yet must be kept in prison for 365 days, before the government even determines whether there is cause to do so.

It is shameful. The founding principles of our modern, democratic societies are being attacked. Habeas corpus does not grab the attention of the media. What does that suggest?

At the end of the middle ages, people had had enough of arbitrary justice and tyranny and they decided to develop a concept whereby people could not be imprisoned without cause for an indeterminate or abusive period without having the chance to explain themselves. I am not talking about democracy writ large or the Charter of Rights and Freedoms. I am talking about a rather basic concept. It is the foundation of our societies governed by the rule of law. We do not detain people indefinitely or abusively without telling them what they are being charged with or without charging them. That is what sets us apart from tyrannies and the middle ages. The bill attacks that foundation. The government is saying, "These people arrive by boat, for some unknown reason, but we are going to keep them in prison for a year before we do anything. Then, every six months we will see whether we can release them." That is not a very good start.

There is another troubling series of elements in this bill with regard to the same people. They will have to wait five years to apply for permanent residence, and they can only do so if they have been recognized as true refugees. Why? The government wants to crack down on dishonest people who test the system and who are not real refugees. It wants to be tough on them for abusing the system. We will see whether the government is going to make any proposals to that effect. However, what happens to people who are true refugees, who have fled persecution? Why should they be penalized? There is no explaining it. Once they are recognized as refugees, the government could even continue to harass them by verifying whether they still are refugees, which is completely at odds with the very concept of what a refugee is. This concept implies that once a person is recognized as a refugee, they can rebuild their life and not spend it wondering whether they will be sent back to their country of origin.

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These people would no longer be able to travel outside Canada. The fact that it would be impossible to obtain permanent residence for five years and therefore impossible to bring one's children to Canada could even have the opposite effect. How does the minister—who is so concerned about the message we are sending to smugglers and people who abuse the system—think these people will react? Does he think people are going to cross the ocean alone even though it is going to take seven years to bring their children to Canada?

In addition to risking his own life, someone who wants to flee persecution will also have to risk the lives of his wife and children. That is what the minister is proposing with this bill. It is completely inappropriate and in the end, we could be faced with bigger boats with more women and children on board, because those who flee persecution will have no other way to keep their families together. Do people see where such an extreme measure will take us?

Lastly, to add insult to injury, the minister is denying these people access to the refugee appeal division, even though he knows that this Parliament deemed that to be a very important aspect of the reform and it was something for which I personally fought long and hard. The fact that his colleague has introduced a bill in this House that attacks the universal nature of the refugee appeal division clearly demonstrates bad faith, especially given that the refugee appeal division—by standardizing decisions and eliminating arbitrary rulings—is just as beneficial for refugees, who can avoid bad, arbitrary decisions, as it is for society. It also allows the minister to appeal bad decisions. Furthermore, it makes it possible to build a body of precedents for refugee claims and ensures a certain predictability that discourages people from testing the

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system, because they know the outcome is predictable.

Madam Speaker, this bill would allow for the decimation of the regular arrival of two or more people, it could five hundred or two, but it could also impact on, not just refugees but on visitors, on immigrants who are arriving, on students or on business people who are coming in as entrepreneurs. It would have an impact on all foreigners arriving in Canada, whether by boat, by car or by air.

Is that the interpretation that the member has and, if so, does he not think it would have a very negative impact on the reputation of the Canadian immigration system?

Madam Speaker, before answering my NDP colleague's question, I would like to say a couple of things.

First, I just realized that I told my Liberal colleague I was going to express the Bloc Québécois' intention with respect to this bill. I do not think I said we would vote against it. Just to be clear, we will vote against it.

Second, I am a little disappointed because, unlike my Liberal colleague, I did not even get an attempt at a question from the minister. I do not know if I should be flattered or annoyed. We will probably have an opportunity to talk about this again.

As written, the bill has a very broad scope. It is not limited to those submitting genuine applications for refugee status. Does this suggest that the government was in such a hurry to draft the bill that it forgot a few things? Did it do this deliberately to make the bill so unacceptable that the opposition would vote against it? Is this a trap? I do not know.

We have before us a bill that does not deserve our support as parliamentarians. It does not tackle the human trafficking problem. It is easy to give a bill a title saying that it will tackle human trafficking, but if the 36 clauses in the bill have nothing to do with the title, it will not work. Moreover, if most of the clauses do nothing more than suspend individual freedoms and discriminate against certain individuals, the title should actually be "bill to discriminate against refugee claimants arriving by boat", "bill to suspend certain individual freedoms for certain applicants", or "bill to circumvent international laws and conventions".

I would like to read a clause from the bill:

Refugee Travel Document—For the purposes of Article 28 of the Refugee Convention, a designated foreign national [the person discriminated against] whose claim for refugee protection or application for protection is accepted [a refugee under the Geneva convention] is lawfully staying in Canada only if they become a permanent resident [which means waiting five years]...

In other words, instead of dumping clause 28, this bill claims to respect it but then pretends that these people are not residents of Canada. That makes no sense.

Madam Speaker, there are far too many errors in the member's speech. And while I have a lot of respect for him, I will not be able to answer in just a couple of minutes. However, I will clarify certain points.

What he refers to as a prison is actually a detention centre for immigrants, and anyone can leave in order to exit the country. It is not a prison. Children and people who need to be released can be, by ministerial order. All detentions can be reviewed by Canadian courts.

I would like to remind the member that many liberal democracies, such as Australia, the United States, Great Britain and France, send refugee claimants to detention centres until their applications are reviewed. It is not really a question of a one-year period. A person would generally be held for a year before the IRB reviews their file. However, if the refugee claimant's application is approved before a year is up, they would be released. Based on the new refugee system that we recently passed, this decision would be made within two or three months.

The member exaggerated a lot in his speech. I would like to ask him this question: what policy would he propose to keep these criminal networks from undermining the public's confidence in our immigration system? What is his solution?

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| Olivia Chow (NPD) | 40, 3, 88 | x | 27/10/2010 | 2010 | |
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| Jason Kenney (Con) | 40, 3, 88 | x | 27/10/2010 | 2010 | |

Madam Speaker, the solution is quite simple, which should please the minister. It is simply Bill C-11, which he introduced in the House last spring, regarding the balanced refugee reform that was passed unanimously with a few amendments that everyone agreed on. It was indeed a balanced reform that gave the minister all the tools needed for action.

If he truly believes that the bill introduced by the Minister of Public Safety is the solution for dealing with illegitimate claimants, why does it only deal with those who arrive by boat? Why does it target only 2% of all refugee claimants, and moreover, those who arrive from countries that have some of the highest acceptance rates in the world? The minister says he needs legislation, but he needs it for the 2% of claimants for whom it is least needed. What is the point?

If the minister truly believed this, he would have introduced something that would target the other 98%, not just the 2% that have the highest acceptance rates.

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Madam Speaker, I am pleased to speak to this bill. The bill should be called "attack the refugees" and not preventing human smugglers from abusing Canada's immigration system act. If it was about human smugglers, then there would not be amendments to the Immigration and Refugee Protection Act to deal with the refugees and immigration portion. There are only a few pages in the act that deals with human smugglers. We prefer to attack the criminals, the traffickers and smugglers and not the victim.

The bill concentrates absolute power in the hands of the minister to decide which refugees will be subjected to draconian measures. With no clear definition on irregular arrivals, it can apply to any group of refugees, immigrants, or visitors.

The bill would also hurt legitimate refugees and those who help them. It would prevent refugees from bringing their spouses and children to Canada for at least 10 years. It would detain women and children that the minister deemed arrived in Canada irregularly for at least a year. It would repeat a shameful chapter of Canadian history by punishing and interning refugees and their children.

I will speak about the impact of detaining children, children who have not committed any crime.

A study was done recently by the United Kingdom. Over 15 months, the U.K. detained 1,300 children. On average that is 1,000 per year. There were 889 children detained for more than 28 days.

The report by the Royal College of Paediatrics and the Royal College of Psychiatrists found many elements. It found that detaining children was harmful to their mental health and that they were filled with terror. It found that children who saw their parents cry and in stress led to eating, sleeping, and learning problems. Of the children studied, 73% of those who were detained had emotional and behavioural problems. They were disoriented, depressed, anxious, confused and frightened. They had nightmares and some refused to feed themselves. A few of the children lost 10% of their body weight and one-quarter of them began bed-wetting. There was a regression of language. One child out of twenty-five became selectively mute. Many of the children had somatic symptoms like headaches and stomach pains.

This kind of treatment, putting children in jail and in detention, is callous and cruel. The U.K. did a review and the new Conservative coalition government said that it was a moral outrage that children were detained.

Canada detains six to seven children per night. If this bill passes, there would be a dramatic increase because any number of these children and their parents, whether women or men, will be part of the people designated as arriving to Canada in an irregular manner, whatever that means.

Every four weeks a judge in the U.K. has to sign a new authorization to continue to detain a child. This bill says that a child arriving on the shores of Canada, irregularly, will be detained for at least a year and then there will be a hearing every six months. A child could be detained for at least 12 months if not more.

Seeking a release after a year would have no appeal process, which would bring it to the courts. The government would not be bound by the court. I always thought Canada had a rule of law and that we should not do things in an arbitrary manner. The bill would do that.

Canada has some dark history. I previously talked about the boat, the S.S. St. Louis, that came to Canada in the late 1930s after going to the U.S. The boat arrived at Halifax harbour carrying 900 Jewish refugees who were seeking sanctuary. Tragically, because of racism, xenophobia, hatred and anti-Semitism, these refugees were sent away. Two hundred and fifty of them were murdered in the Holocaust after returning to Europe. The refugee law at that time was unjust, cruel and mean-spirited and it led to death. We have always said that never again would we practice the policy of none is too many. We have always said that we will not repeat history.

The bill would allow a boat such as the S.S. St. Louis to dock in Canada. However, those people, whether they are men, women or children, would be detained for at least a year. We may tell some of them that they are genuine refugees and they will be allowed to stay, but they will not be allowed to apply for permanent residence and therefore will not be able to sponsor their children or spouses to come to Canada for at least five years.

What would happen if the people on the S.S. St. Louis were accepted after a few years? They would have to wait for five

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years and then apply for permanent residence and bring their children over. However, because of the huge backlog, they will have to wait three to four years to bring their children over, no matter whether their children are coming from a refugee camp or another country and facing persecution. A person deemed to be a genuine refugee would have to wait at least nine years to bring a son, daughter, spouse to Canada. How many people would survive in a refugee camp, especially a child, for nine years?

Therefore, we are talking about punishing and attacking refugees, and not just those who arrive on Canada's shores. We are also talking about their relatives who are stuck back home. We are telling them that they either do not come to Canada, or if they do, they have to kiss goodbye their kids or their spouse for at least nine or ten years. They might never see them again.

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What kind of law is this? It is not about dealing with smugglers. It is about attacking the refugee claimants. What is happening with these refugees. They will be victimized three times: first, by the persecutors, whoever is hunting them down; second, by the smugglers; and finally, by Canada. It also will incur huge costs. It costs at least \$80,000 to \$90,000 per person we detain or jail in Canada. We should think of the cost that it will incur to Canadian taxpayers.

Many of them could easily work and being paying taxes. Why will we not allow them to do that, while we process their claims and process them quickly? However, that is not what we are doing. We will just detain them.

Very few refugees know about the kind of laws of the countries to which they go. They do not search them out. In fact, studies show nine out of ten of these people do not know the laws of these countries. We know that Australia, for example, has a very punitive law, but it has not stopped the boats from arriving on its shores or deterred people from arriving there.

For months we debated the issue that all refugees coming to the shores of Canada must be treated equally under one set of rules, one law. We dealt with that in Bill C-11. We said that every person must be treated equally under the law. That is our charter. However, this bill would set up two classes of refugees. One would be the designated kind and they would be treated much worse than others who somehow have arrived in Canada.

The detention, as I said earlier, is arbitrary. The minister may on discretionary grounds based on "exceptional circumstances" be able to release a few people, but we know we should not leave things in an arbitrary manner. It should be set in law so it is clear who will be jailed and who will not be.

The law basically says that all who come here in an irregular fashion will be detained for over a year. It also says that they will not have an opportunity to have an independent tribunal to review their case because if the minister decides their identity has not been established, then there would not be any independent tribunal to review their case, which again, in some ways, contrary to the charter and international law.

Why am I talking so much about detention? A few weeks ago, Toronto held a event called Nuit Blanche, which is an art extravaganza. There were a lot of art shows in different parts of town. I went into a gallery that had a big photo exhibit. The photo exhibit also had tapes and recordings of people in detention in the U.K. I have never heard these kinds of stories first hand from the people who have been detained, but the stories are phenomenal, especially from the children and young people, about the kind of suffering. On average in the U.K it is only for a few weeks, yet the kind of trauma they experience is unbelievable. These are the ones who are awaiting deportation. They have already had their cases judged against them.

In the case we are dealing with, we have not even judged against them yet. Many of them could be genuine refugees and yet we are still jailing them, including their kids. Therefore, it is not possible for us to support a bill of this kind.

Another thing about the bill is that if people's refugee claim gets rejected they would not be able to go to the Refugee Appeal Division. We debated the Refugee Appeal Division for about 10 years and we said that all refugees must have the right to be heard in front of an independent tribunal, which we were about to set up, called the Refugee Appeal Division. By eliminating the opportunity to correct errors at the first level, the bill again puts Canada at risk of violating its most fundamental obligation toward refugees, which is not to send them back to their death.

The bill has other elements that are difficult. It would prevent refugees from going outside Canada. For example, if refugees wanted to go to a United Nations war crime convention or testify to a panel dealing with war crimes, they would not be able to do so. I can understand why the minister said that it was important to ensure they do not go back to the place where they claim they are being persecuted. However, this law actually says that they would not be able to leave Canada at all because they would not be able to get a travel document. Again, that is a problem. By detaining refugees for so long, it makes it harder for refugees to integrate into Canadian society and eventually apply for citizenship. We have seen real problems with this. This was tried with the Somali refugees in the 1990s when thousands were denied permanent residence for years.

Let us look at Australia, which is where I know the minister has been. In the last three years, Australia has moved away from a policy of detention and temporary status for refugees. I do not know why we are repeating what it has moved away from.

What is really in front of us are two options. One is to see refugees, newcomers as a burden. Refugee claimants can be seen as burdens or we could care for them. We did that. We saw the St. Louis refugee claimants as burdens. We made a mistake. We sent people to their death. We cared for the Vietnamese boat people, welcomed them and allowed them to stay and they are doing extremely well in Canada. What is it that we plan to do? Do we see refugees as burdens or do we see them as worthy of our care?

I would support the elements in this bill that punish smugglers in a serious manner. Those are elements that we could definitely support because we do not want to be soft on crime, especially for people who are committing crimes against

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immigrants or refugees, and we need to punish them harshly. However, what we should not do is attack the refugees. We should not attack the victims because this will not assist Canada's reputation or we will just end up repeating a very sad, tragic chapters of Canadian history where we interned people and where we sent people to their death.

Madam Speaker, there are too many misconceptions in that speech for me to respond to at this point but I do have two points to make.

First, the member is factually mistaken when she says that the government of Australia has changed its policy with respect to detention of asylum seekers. In fact, the Australian detention policy, under the Labor government, is far more robust than that which we propose in Bill C-49. In fact, it detains all asylum seekers, regardless of whether they were smuggled to Australia or not, or the means through which they arrived, until their claims are processed. We propose to do no such thing. The Australian practice in that regard, frankly, reflects the standard practice in most other democracies that are signatories to the United Nations convention on refugees.

Having said that, what I found most disturbing and, frankly, demagogic in her speech was to draw a completely specious parallel with the tragic and unjust experience of the rejection of the St. Louis and other second world war Jewish refugees. In that case, Canada had a deliberate policy of none is too many, where we deliberately excluded Jewish immigrants as refugees. We had no refugee resettlement program and no asylum system per se.

Under the regime we propose in Bill C-49, people arriving in those circumstances would be able to enter our waters, disembark and have an asylum claim. Under the new system that we adopted this spring, they would almost certainly have

Jason Kenney (Con)

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a positive protection decision and be out of detention within a matter of a couple of months. To suggest that we would return people to their deaths is irresponsible and demagogic. Canada--

Madam Speaker, I never actually said that we would turn the boats away. What I said was that if the boats do arrive on our shore, we would detain them for over a year and we would prevent them from sponsoring their kids into Canada. They will stay in Europe and it will be at least eight years before they can get into Canada. God knows what will happen to them by that time.

The Australian Human Rights Commission, an organization created by Parliament, conducted a national inquiry into children in immigration detention and found that the children in Australian immigration detention centres had suffered numerous and repeated breaches of their human rights.

Far from deterring people, depriving refugees of their right to family reunification appears to have caused some people to arrive by boat, as later boats brought their wives and children of refugees in Australia into Australia because they were not able to bring in their families through legal channels. We in fact had more boats showing up in Australia because of those kinds of wrong policies, and certainly we-

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Mr. Speaker, I am very pleased to rise in this House in support of Bill C-49, the preventing human smugglers from abusing Canada's immigration system act.

From the day our Conservative government was first elected, we have made strengthening the criminal justice system a consistent priority. We have told Canadians that we would take action to crack down on the activities of organized crime groups and others whose activities undermine public safety and destabilize our communities. We told them that we would help build safer neighbourhoods for everyone and ensure that our streets and homes would be places where families could feel secure. Ours is a government of action. We have consistently delivered on these promises time and time again. We have passed legislation to stiffen penalties for crime, and violent gun crimes in particular. We have provided law enforcement agencies with the tools and resources they need to do their jobs. We have taken steps to ensure that violent offenders are kept behind bars, not in their living rooms.

We are here today to take decisive action again.

In August, Canadians were reminded that this country is not immune to the global activities of organized crime groups intent on making a profit from the smuggling of hundreds of foreign nationals. The arrival of 492 Sri Lankan Tamils aboard the MV Sun Sea came less than one year after the arrival of 76 Sri Lankan Tamils aboard the Ocean Lady. The fact that two such vessels have reached Canadian shores in less than 12 months clearly demonstrates that large and growing human smuggling ventures are extending their reach and expanding their logistical capabilities and that these human smuggling networks are increasingly targeting Canada.

Human smuggling is a despicable crime, and abusing Canada's generosity for financial gain is utterly unacceptable. Canada has an obligation to crack down on dangerous criminal enterprises that benefit only those who organize such large-scale ventures and do so little with regard to the human cargo which they transport.

We also know that human smuggling routes can be used to traffic narcotics and firearms. This poses a threat to public safety and erodes our communities.

The profits from human smuggling may also be used to fund other illicit criminal activities.

Our government is committed to protecting the safety and security of Canadians. We are committed to maintaining the integrity of our borders and our immigration and refugee programs. We are committed to ensuring that Canada's immigration system remains fair. That is what the legislation before us today is about.

Bill C-49 is focused on giving officials additional tools to better respond to human smuggling.

First, we are proposing targeted amendments to the smuggling offence to ensure that it captures the various ways in which smuggling can occur.

Under the current regime, prosecutions for human smuggling require proof that the accused knew the individuals being smuggled did not have the documents required by law to enter Canada. Today's amendments would expand this to include any violation of the Immigration and Refugee Protection Act, including for example bringing people into Canada in a way that avoids their presenting themselves for examination as required by the act.

Currently, only situations where the smuggler knew that the smuggled persons did not possess the documents necessary to enter Canada are captured as an offence under the act.

What does this mean in the context of smuggling? It means that a prosecutor could prove this offence by showing that the accused was aware of the substantial risks if the smuggled person was or would be entering Canada in contravention to the Immigration and Refugee Protection Act but simply did not care.

We believe these changes would improve our ability to investigate and prosecute those who contribute to human smuggling ventures.

Second, we are proposing an escalating mandatory minimum penalty scheme for persons convicted of smuggling, reflecting our government's intention to more effectively deter and denounce this criminal activity.

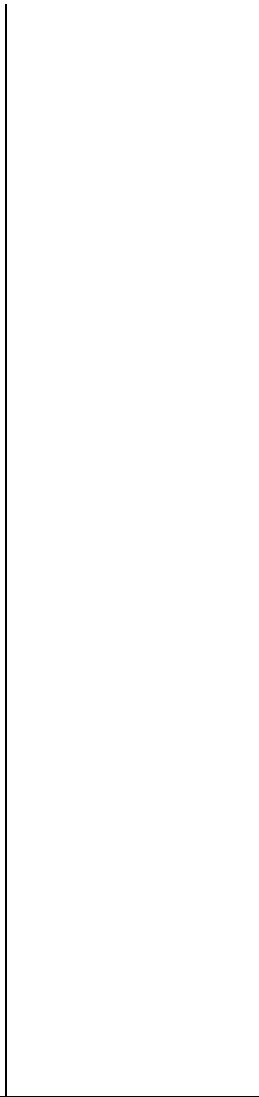
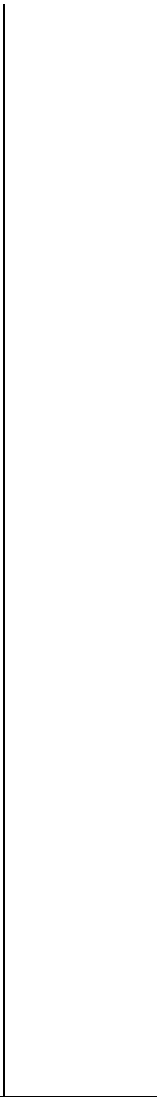
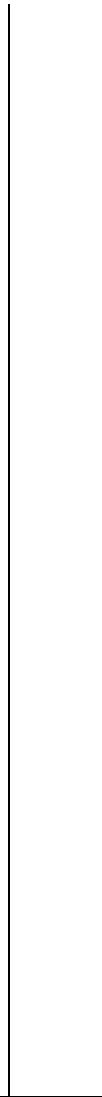
Under the proposed legislation, the number of people smuggled and the presence of aggravating facts would determine which mandatory minimum penalty would be imposed upon conviction. The two aggravating facts are: the offence was committed for profit or for the benefit of, at the discretion of, or in association with a criminal organization or terrorist group; and the person, in committing the offence, endangered the life or safety or caused bodily harm or death to any of the persons smuggled.

The mandatory penalties would be, where less than 50 persons are smuggled, three years' imprisonment if one of the above aggravating facts was present, or five years' imprisonment if two of the above aggravating facts were present. The mandatory minimum penalties would be, where 50 or more persons are smuggled, five years' imprisonment if one of the above aggravating facts was present, and ten years' imprisonment if two of the above aggravating facts were present.

These amendments send a clear message. We will not tolerate smuggling operations in Canada and such conduct will be met with strong sanctions.

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We are also proposing amendments to the Marine Transportation Security Act. For example, this bill would increase the penalties for anyone who fails to comply with the ministerial direction to not enter or leave or to proceed to another area in Canadian waters. Increased penalties will also apply to anyone who fails to submit required vessel pre-arrival information or who provides Canadian officials with false or misleading information.



The irregular arrival of a large number of irregular migrants all making refugee claims can pose significant challenges for border officials who are tasked with identifying each applicant in determining whether the individual is inadmissible to Canada and whether the individual poses a risk, due to the individual's association with organized criminal or terrorist organizations.

The sheer number of applicants combined with the increased complexity of examinations and investigations can and does overwhelm existing resources. This is why we need a new approach to the processing of irregular migrants, or one that will ensure Canada remains fair but also vigilant.

Bill C-49 accomplishes this by allowing the Minister of Public Safety to designate those who land on our shores in a way similar to those aboard the MV Sun Sea or the Ocean Lady as an irregular arrival. The minister will be able to make such a designation when he or she has reasonable grounds to believe that establishing the identity or admissibility of individuals who come to Canada as part of the arrival or other investigations cannot be carried out in a timely manner, or if he or she has reasonable grounds to suspect that the arrival of the group involved organized human smuggling activity.

Under the current rules, any foreign national or permanent resident may be detained on entry into Canada. People can be detained if an immigration officer considers such an examination necessary in order to continue an examination. They can also be detained if there are reasonable grounds to suspect that they are inadmissible to Canada, are a danger to the public or are unlikely to appear for an immigration proceeding.

The reasons for such detention however, must be reviewed by the Immigration and Refugee Board within 48 hours, and subsequently reviewed within seven days, and then each 30-day period that follows. In many cases this provides a reasonable system of checks and balances to help prevent unreasonably long detentions.

In the case of irregular arrivals however, the current system of detention review does not provide officers from Canada Border Services Agency with sufficient time to properly interview and identify each individual, or to determine whether the individual may be inadmissible to Canada or pose a risk to Canadians.

Too many resources are expended in meeting the demands of the detention review schedule rather than focusing on the required investigations and verifications needed to ensure the integrity of Canada's immigration and refugee program as well as the safety and security of Canadians.

Bill C-49 addresses this by providing for the mandatory detention of persons who arrive in Canada as part of a designated arrival until such time as they are found to be refugees by the Immigration and Refugee Board, or until 12 months have passed since they were first detained. Those persons still detained after 12 months will have a detention review hearing before the Immigration and Refugee Board to determine whether there is a basis for their continued detention. If the Immigration and Refugee Board continues detention, there will be subsequent reviews every six months. The minister will be able to order early release where exceptional circumstances exist.

Under our proposed amendments, individuals who come to Canada as part of a designated arrival will, for a period of five years, be prevented from applying for permanent resident status and sponsoring family members. Restrictions on travelling outside Canada will also apply during this period. They will also be prevented from accessing a more generous health care plan than the average Canadian currently receives, something they can do at the present time through the interim federal health plan. These are practical and sensible provisions. They address the need to properly identify individuals who come to Canada as part of an irregular arrival. They will help to keep Canadians safe by helping to ensure that dangerous criminals and terrorists are not released into Canadian society. They will also help deter human smuggling operations from targeting Canada.

We also need to deter other kinds of abuse of Canada's immigration and refugee protection program. Refugee status can be revoked when it is proven before the refugee protection division of the Immigration and Refugee Board that an individual had lied to support his or her claim for protection and that the remaining credible evidence is not sufficient to support the individual's need for refugee protection. This is referred to in the act as the vacation of refugee status.

Bill C-49 amends the Balanced Refugee Reform Act to prevent such persons from appealing decisions of the refugee protection division with regard to the vacation of refugee protection to the refugee appeal division of the Immigration and Refugee Board. The bill also eliminates appeals to the refugee appeal division with respect to the decisions the division has made that a person's need for refugee protection has ceased.

All these measures substantially enhance our ability to crack down on those who engage in human smuggling. They strengthen our ability to protect the safety and security of Canadians from criminal or terrorist threats, and they respect our international obligations and commitments to provide assistance and sanctuary for genuine refugees.

Before I end my speech, I want to address the comments made by the NDP's public safety critic last week. He compared the selfless act of those who helped slaves escape persecution to the criminal human smugglers who prey on vulnerable

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individuals and who only care about profit. That member should be ashamed and he should apologize to this House. Human smugglers are clearly targeting Canada and are treating our country like a doormat. The problem is growing and must be stopped.

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| <p>Canadians expect appropriate measures to respond to the challenges associated with such large-scale arrivals, such as those we have recently witnessed. They want to help those in need and those who need our protection, but Canadians are not naive. They know that threats exist and that we must remain vigilant.</p> <p>That is why our government is committed to taking action on many fronts, both domestically and internationally. That is what we have done, and that is what we are going to continue to do in the future.</p> <p>We are proud of this bill. I encourage the member for Vancouver Kingsway and all members to recognize that the serious problem posed by human smuggling is growing and must be stopped.</p> | <p>Dave MacKenzie (Con) (3 of 3)</p> | <p>40, 3, 89</p> | <p>x</p> | <p>28/10/2010</p> | <p>2010</p> |

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| <p>Mr. Speaker, the Parliamentary Secretary to the Minister of Public Safety referenced two vessels, the Sun Sea and the Ocean Lady. I would like to take him back in time and reference two other ships that arrived in Canadian waters.</p> <p>Back in 1939 the SS St. Louis arrived in Canadian waters with 937 European Jews on board. Unfortunately, that ship was turned away. Those unfortunate Jews were returned to Europe, and in the subsequent years virtually all of them lost their lives in the Holocaust.</p> <p>There was a similar incident in 1914 with the SSKomagata Maru. There was 354 people on board. They were turned back. Many of them lost their lives when they returned to India.</p> <p>I ask the parliamentary secretary, under this legislation, what sort of sanctions would the ship's captain and owners of the SS St. Louis have faced?</p> | Borys Wrzesnewskij (Lib) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, I know my colleague opposite is very interested in a number of immigration issues, and I respect him for that. Let us be honest, we are not talking about 50 or 60 years ago, or even 80 years ago. These are different circumstances, different people. These are human smugglers who are doing it purely for profit. That is what we are talking about here, human smugglers who are doing this purely for profit. The intention behind this legislation is to take that issue out.</p> <p>We understand the need for legitimate refugees to be able to come to this country. We have processes that are able to handle that.</p> <p>In this situation, these are human smugglers. Large sums of money are being expended by these folks to come here. We also hear a lot of things are occurring after the fact, after some of the folks come here, about their returning to their country of origin.</p> <p>I think my friend has to recognize that these are different circumstances, different times. We are not talking about something that happened 60 years ago. We are talking about something that happened in the last few months.</p> | Dave MacKenzie (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, the point raised by the previous member is a very important one. Will the government acknowledge that a ship can be leased to transport legitimate refugees, and that these refugees may agree to pay a reasonable amount of money so that the ship can reach foreign shores? Will it also recognize the fact that the captain would be remunerated?</p> <p>How do we make a distinction between a captain who receives reasonable remuneration for the risks he is taking and the expenses he is incurring, as opposed to a captain who is doing it for profit? An investigation would have to be done after the fact. I think that the government member knows very well that in the past our welcome for refugees has been an example for the world. We have had no complaints about the refugees, because they have truly enriched our country.</p> <p>Now, in different circumstances that may appear similar, how will we distinguish between those who are charging a fair price and those who are exploiting refugees? The second kind has neither the government's sympathy nor ours, I should add.</p> | Serge Ménard (BQ) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, I know my friend is interested in immigration issues and I respect him likewise for that. But these are different circumstances. I do not think we can deal with the what-ifs and all those other things. We do know certain things are occurring in our world, and Canadians expect members of Parliament to take a stand.</p> <p>I hear in my riding, and I am sure my colleagues do, from people who have legitimately followed all of the rules and have immigrated to this country or have come as refugees in the normal sense of how these things occur. What they are not happy about is people who are paying huge sums of money, lining up on foreign shores and coming here in ships. Seemingly, in their minds, the ship owners and the captains have been immune from any prosecution. This is just putting it on the table that all of these people need to recognize before they leave their shores, if they are paying large sums of money, that the captain is going to face sanctions when he gets here, and those people who are buying their way, so to speak, into this country are going to face this process of dealing with the refugee system. It is a fair process, quite honestly.</p> <p>Canadians do not want Canada to be seen as a welcome mat for everyone who wants to come here and uses this as a reason for getting into the country.</p> | Dave MacKenzie (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, the current law in the Immigration and Refugee Protection Act, in section 117, provides for punishment of 10 years if people are smuggling in 10 or fewer people, and it provides life imprisonment if they are smuggling in more than 10 people. A life sentence is very severe. Why are those terms already in the immigration act not enough to deal with smugglers? I can see that if Conservatives want to amend the Marine Transportation Security Act, that could be possible. Why is it not introduced separately, and why is it mixed in with the immigration act, because the immigration act already has severe punishment in that section?</p> | Olivia Chow (NPD) | 40, 3, 89 | x | 28/10/2010 | 2010 |

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| <p>Mr. Speaker, again, my colleague is another member of the House who has immigration files she is interested in. I think she has a private member's bill before the House that would allow additional immigration to this country.</p> <p>If what the member is saying is in fact what she believes, she should support the bill because typically the NDP supports less in terms of sentencing than other parties. The bill is fair and reasonable, but it sends a clear message around the world to those who would engage in human smuggling for profit that they are going to be sanctioned and there are opportunities when they get to this country to face Canadian laws that deal with this. So I would ask all members to talk to their constituents. I think they will find that most of their constituents find this fair and reasonable and they expect Canada to stand up for some of these principles.</p> | Dave MacKenzie (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, the government attempts to create fairness, and one of the great mediators of fairness is the Canadian Charter of Rights and Freedoms. Would the parliamentary secretary be prepared to table in the House an opinion by the Department of Justice as to whether or not all provisions within this bill will meet the test of the charter or a charter challenge?</p> <p>Would he provide that to members of the House, so that we can review as to whether or not these provisions do indeed meet the test of fairness as prescribed by the Canadian Charter of Rights and Freedoms?</p> | Gerry Byrne (Lib) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, my colleague across the floor would know that I do not have such a document with me. Whether it exists or not, I do not know, but that is frequently an argument we hear from the opposite side, that it will not pass the test of the charter.</p> <p>We can always stand back and say it will not pass the test of the charter, and we will not know that until a court has ruled on it. However, as he knows from when his party was in power, the drafters of these bills come from within the legal branches of Justice and other branches. They have vetted it. They have brought it forward. This bill was not written on the back of a napkin or anything of that nature. It has been drafted properly, and I am sure my colleague is quite well aware of that.</p> | Dave MacKenzie (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, I thank the hon. member for Toronto Centre for his comments. He is always a thoughtful member. In particular, let me say that I agree with many of his comments with respect the conflict in Sri Lanka and the need for a just and durable settlement that respects the legitimate aspirations of the Tamil people and that responds to the many serious concerns about human and civil rights violations.</p> <p>I spoke to that at the beginning of my speech in introducing this bill yesterday, and I did discuss the ongoing efforts of Canadian diplomats and members of this government's executive branch to do everything we can to ask the Sri Lankan authorities to deal with these issues in a transparent and serious manner. I entirely agree with the member.</p> <p>Having said that, I think it is important to underscore that the bill does not deal with any particular source country.</p> <p>Second, in dealing with that issue, I wonder if the member would care to comment or reflect on the fact that, since the cessation of hostilities last year, more than 100,000 Tamil Sri Lankan refugees who were under the protection of India, principally in Tamil Nadu, have since returned to Sri Lanka. The UN High Commissioner for Refugees has said that Tamil refugee claimants can no longer be presumed to have a bona fide claim. The UNHCR has also facilitated the return to Sri Lanka of many Tamil asylum claimants who were under temporary protection in southeast Asia.</p> <p>Similarly, a CBC report last week indicated that Tamils living in India had paid smugglers to come to Canada, in part for economic reasons, in their words. Finally, according to a CBSA survey, a significant majority of successful Tamil asylum claimants in Canada have subsequently returned to the country from which they claimed to flee for reasons of fear of persecution.</p> <p>Could the member comment on the fact that the situation according to the UN and other international observers has improved appreciably from the point of view of safety? However, I agree with him that there continue to be very serious issues that must be dealt with.</p> <p>Finally and very briefly, the analogies to the St. Louis and Komagata Maru quite frankly border on demagoguery. Neither of those situations has any relevance to this. We would—</p> | Jason Kenney (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |

Mr. Speaker, the minister is very kind. At one point in his speech he says how thoughtful I am and at the end of his speech he calls me a demagogue, so I am not sure which it is. I wish the minister would make up his mind. I can handle the praise and the criticism, either one, but I just wish he would make up his mind. A thoughtful demagogue, I guess, is the average.

On the first point the minister is absolutely correct, that of course the situation has changed, but let us be candid. The situation has changed because there has been a considerable consolidation of power in Sri Lanka, significant centralization of power and continued repression. It is still a very dangerous place to be a journalist. It is a very dangerous place to express opposition and differing views, but it is also a constantly evolving situation.

I am not suggesting for a moment that there is an automatic presumption that any one of the people, who came over in the circumstances of the last 18 months in two boats that are the subject of this legislation, is a refugee. I am simply saying there is a need to consider their claim. There is a need to make sure we have a sufficient number of officers and people who can review the case in time to get it done. That is the approach that needs to be taken to regulate that situation.

We can debate the question of the other boats in our history. The one thing I would not want the minister to ignore is the comment that was made by former Prime Minister Mulroney at the time that the boat came to Newfoundland. At that point the government of the day decided it would grant almost immediate resident status to the people who claimed, and Mr. Mulroney said it was done in a spirit of generosity, realizing and remembering the historic traditions of the country. If I may say so, this was quite a significantly different tone than the one struck by the current Prime Minister.

(...)

Mr. Speaker, I think the central flaw in the bill, as I have tried to suggest, is this. First of all, the government did not invent the offence of human smuggling. Human smuggling is an offence that is now punishable by up to life imprisonment. We have not had many convictions of it, but nevertheless to suggest that this is some new law, some new crackdown that is taking place, is more illusion than reality. The reality is that we already have a law in place.

The other flaw is that the bill has much more to do with how refugee applicants who come over in boats of this kind are treated, that is to say detention for up to a year and being treated in a separate channel, a separate class. It creates a new class of people who have been designated by a minister because of the circumstances in which they have come. It gives extraordinary power and discretion to the minister to label a group or to label a particular circumstance, and it then puts those people in a separate stream and they are treated in a completely separate way that is entirely discriminatory in comparison to how other refugee applicants are to be treated. That is why I do not believe this meets the test. It does not meet the test.

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| Bob Rae (Lib) | 40, 3, 89 | x | 28/10/2010 | 2010 |
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Mr. Speaker, it is indeed an honour and a pleasure for me to rise and speak in favour of Bill C-49, Preventing Human Smugglers from Abusing Canada's Immigration System Act, and I would certainly like to commend the hon. Ministers of Citizenship and Immigration and of Public Safety for the good and timely work they have done in getting this legislation before the House.

Hon. members will know that in recent years the smuggling of human beings across international borders has become a multi-million dollar activity that is actually global in scope. Some estimates place the number of people who are smuggled across borders every year at 800,000. The United Nations notes that it is one of the fastest growing areas of international criminal activity.

The precise number of people who are smuggled across international borders is difficult to confirm, given the clandestine nature of these operations, but there is no doubt that human smuggling is big, big business. People can be smuggled by land, by sea or by air. Human smuggling may be perpetrated by organized crime groups or by individuals with links to terrorist organizations. This fact in itself should spur us all into action. Like many of our international allies and partners, Canada today is a target for the global activities of organized criminal enterprises that engage in this reprehensible act of human smuggling.

Canadians have recently witnessed the arrival of 492 Sri Lankan Tamils aboard the MV Sun Sea, less than one year after the arrival of 76 Sri Lankan Tamils aboard the boat the Ocean Lady.

Earlier this month, a number of people were discovered in a container at the Port of Montreal in a possible case of human smuggling or human trafficking.

Last year, the RCMP's Atlantic region immigration and passport section, working with the Integrated Border Enforcement Team in New Brunswick, arrested four people alleged to have facilitated illegal migration. Two of these individuals have since pleaded guilty and were convicted of offences under the Immigration and Refugee Protection Act, including human smuggling and misrepresentation.

Finally, Canadians previously witnessed the seizure of four cargo ships that appeared in remote west coast waters, carrying nearly 600 migrants from southern China. Many of these individuals were children and teenagers whose parents had paid sums equivalent to 10 years of their salaries to so-called snakeheads that specialize in human smuggling.

Human smuggling is a serious crime. I think all members of the House would agree with that, and the international community has taken decisive action to respond to it. The UN Convention against Transnational Organized Crime and its supplemental Protocol against the Smuggling of Migrants by Land, Sea and Air provide a broad international framework to respond to the varied threats posed by organized crime and their smuggling ventures. Canada was among the first countries to sign and ratify these important international crime treaties, and the tabling of this bill today reflects Canada's ongoing commitment to strengthening our responses to migrant smuggling.

Human smuggling undermines the integrity of Canada's borders and our immigration and refugee programs and system. It poses a threat to public safety, since the identities of smuggled individuals are often hard to establish, and in many cases, it poses a threat to national security or public safety, since human smuggling ventures are also being used to traffic narcotics and/or arms, to secure safe haven for criminals and terrorists, and to raise funds for a wide range of illicit activities, including the aforementioned terrorism.

Bill C-49 will give law enforcement officials much needed and additional tools to investigate and prosecute these individuals who organize and engage in human smuggling ventures. It will also enhance law enforcement's ability to investigate the potential national security and public safety risks posed by unidentified migrants who come to Canada as part of an irregular arrival, among whom there may be individuals with criminal and/or terrorist links.

More specifically, Bill C-49 will amend the current human smuggling offence, about which the last speaker spoke, in section 117 of the Immigration and Refugee Protection Act. The proposed amendments would make it an offence to organize, induce, aid or abet someone to enter Canada, knowing that or being reckless as to whether that entry would be in contravention of the Immigration and Refugee Protection Act. Currently, only situations where the smuggler knew that the smuggled person did not possess the documents necessary to enter Canada are captured as an offence under the act. It is clear, at least it is clear to the members on this side of the House, that by broadening the offence in this fashion our laws will now better reflect the different methods that smugglers utilize to bring persons into Canada. In addition to amending the offence, the bill also proposes tough mandatory minimum penalties of imprisonment ranging from 3 to 10 years, depending on the particular facts that are proven in court. This sends the clear message to smugglers, criminals who have little concern for smuggled persons and immigration laws, that Canada will no longer tolerate these illegal activities.

The bill also proposes increasing the penalties for the operator of any vessel who fails to comply with ministerial direction to leave or not enter Canadian waters or who fails to provide required pre-arrival information, and who provides false or misleading information to officials. Today, vessels of 300 gross registered tons or more that are bound for Canada

Brent Rathgeber
(Con)

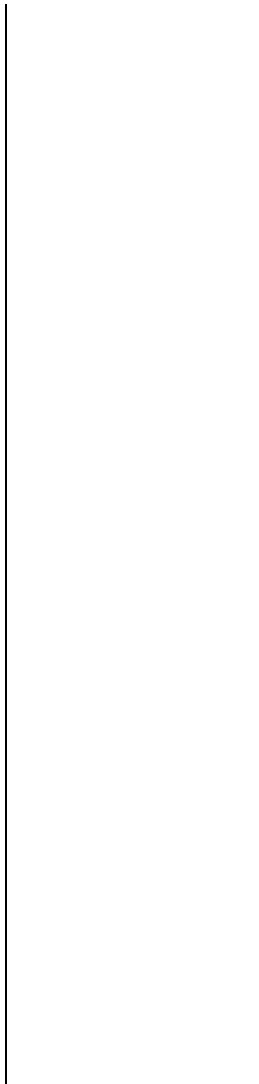
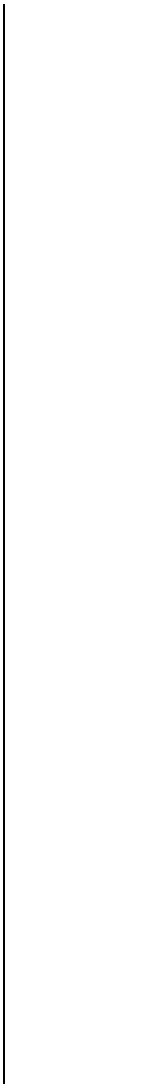
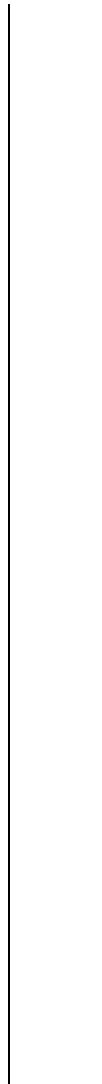
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must fill out a pre-arrival information report at least 96 hours before arriving at a Canadian port. The Minister of Transport has the authority to direct any vessel to not enter Canadian coastal waters or to travel to another area in Canadian waters when and if there are reasonable grounds to believe the vessel in question may pose a security threat. It is an offence under the Marine Transportation Security Act to knowingly make a false or misleading statement or to provide false or misleading information. Currently there are fines and a maximum one-year prison term for failure to comply with the ministerial direction or for making false or misleading statements and a maximum six-month prison term for not filing the requisite pre-arrival information report.



Bill C-49 also proposes significantly stiffer fines as a further deterrent to those considering mounting marine human smuggling ventures into Canada. Indeed, the amendments the government is proposing will mean that the operator of any vessel who fails to comply with a ministerial directive to leave Canadian waters or one who provides false or misleading information to officials will be hit much harder in the pocketbook and will face a longer prison term.

The proposed penalties for failing to comply with certain requirements of the Marine Transportation Security Act will be raised from \$10,000 to \$200,000 in the case of an individual on conviction on indictment. In case of a corporation, on conviction on indictment the penalties will be raised from \$200,000 to \$500,000.

The penalties will be even higher in the event of subsequent offences. Again, in the case of individuals, maximum potential prison terms will be raised from six months to a maximum of one year for those who fail to file the pre-arrival information report.

Stiffer consequences, stiffer fines and stiffer sentences will all send a signal to human smugglers that Canada will not tolerate their illegal and highly dangerous activities. Canada will not sit still while human smugglers calmly sail into our waters, travel across our borders or even land at our airports.

We will take action. We will work with our international partners to deter, detect and prevent these illegal activities. If they do get to Canada, we will take every step possible to hold these persons accountable.

In addition, Bill C-49 will ensure that border officials and police have the time to properly identify and investigate the organizers of human smuggling operations, as well as smuggled individuals who may pose a threat to our safety and to our security.

In particular, the bill that the government has put forward will provide for the mandatory detention of persons who arrive in Canada as part of a designated arrival until such time as they have been determined to be refugees by the Immigration and Refugee Board or 12 months have passed since they were initially detained, with exceptions for cases that involve exceptional circumstances.

This measure will prevent potentially dangerous or inadmissible persons from being released into Canada before their identity and the level of risk they present to Canadians can firmly be established. As the minister has mentioned, these amendments proposed are tough but they are also fair. They will help to make Canada a much less attractive target for human smugglers. They will help to make sure that the organizers of human smuggling operations are better held to account for this reprehensible crime.

I therefore urge all hon. members to support this legislation before us today and to work with the government to ensure its speedy passage.

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| Brent Rathgeber (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
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Mr. Speaker, the legislation is so broadly drafted that it does not differentiate between those who would smuggle humans for humanitarian reasons and those who would do it for profit.

Also, it does not differentiate between those who smuggle people and land them in Canada and the individuals smuggled are determined to have been genuine refugees and those who are strictly economic migrants.

Would the member not agree that there should be a different approach for these various categories of people, and would the government be amenable to see amendments to the legislation that would differentiate between those who are involved with human smuggling of genuine refugees and those who are strictly just economic migrants?

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| Borys Wrzesnewskyj (Lib) | 40, 3, 89 | x | 28/10/2010 | 2010 |
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I do not agree, Mr. Speaker.

Recently there have been high-profile cases of human smuggling, and Canadians are rightly outraged by these incidents and are demanding action.

The legislation is aimed at the smugglers. If individuals are legitimate refugees and are determined to be such by the Immigration and Refugee Board, they will be dealt with according to law, but this legislation is aimed directly at the smugglers. We know that too often it is a profitable enterprise to smuggle people into Canada.

With these measures and the increased fines and the added mandatory aspect of jail time, individuals will have to calculate that in their business plans before they decide that this is an appropriate venture to smuggle people into Canada.

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| Brent Rathgeber (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
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| <p>Mr. Speaker, I notice in clause 4, proposed subsection 117(3.2) says:</p> <p>A person who is convicted of an offence under subsection (3) with respect to a group of 50 persons or more is...liable to a minimum punishment of imprisonment for a term of</p> <p>(b) 10 years, if both</p> <p>(i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, and</p> <p>(ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group.</p> <p>I wonder if the member would agree with me that obviously the bill seeks to protect the individuals who are preyed upon by individuals for profit, as such simply to earn some money and take advantage of these people. Would the member agree with me that this sends a very big message to anybody who would do something like this, that if they come to Canada they are going to be treated very severely. Finally the Government of Canada is taking steps to go after these people who would profit on the backs of these poor individuals who are trying to come to this country.</p> | Paul Calandra (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, I would like to thank the hon. member for all the good work that he does on this file and others.</p> <p>Certainly I would agree with his supposition. Similar to my response to the last question, this legislation is aimed directly at the human smugglers, those who are involved in this enterprise, individuals who own the boats that are used to operate these types of enterprises.</p> <p>There are many victims and it is conceivable that the people who are actually being smuggled in under certain circumstances are victims. This legislation allows the department to assess who are legitimate refugees and who are part of either criminal enterprises or perhaps individuals who are trying to masquerade under the pretense of refugees to try to gain entry into Canada.</p> <p>In any event, the hon. member is correct. This legislation will make it easier to prosecute human smugglers and will impose mandatory prison sentences for those convicted of human smuggling. That is the target of the bill and I think it is very much needed and timely legislation.</p> | Brent Rathgeber (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, I find the discussion interesting. There is some concern about the time it takes to process persons.</p> <p>The member will know that people coming on boats would not expose themselves to that kind of situation unless they were, and believed that they were, legitimate refugee claimants in dire straits.</p> <p>I am concerned that the timeframe seems to be inordinate. Children could be in detention in excess of a year and then every six months thereafter.</p> <p>The member is well aware that in a number of countries from which people have come, documents either do not exist or are refused. We are not changing this law simply because of the Tamil situation. It would apply to all countries.</p> <p>Is the member at all concerned that children might be the victims of some unintended consequences?</p> | Paul Szabo (Lib) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| <p>Mr. Speaker, we should all be concerned and sympathetic about children being smuggled. This legislation takes direct aim at those involved in smuggling. There is often an overlap between human smuggling and trafficking in individuals. We have all heard the horror stories about individuals ending up in the sex industry.</p> <p>I do not agree with the premise of my hon. colleague's question. Refugee claimants or people on the boats cannot be characterized in one category. The member said that he did not think that people would put themselves in that position unless they believed themselves to be legitimate refugees. Although that is true in some circumstances, it is not universally true. We have heard anecdotes that individuals pay large sums of money to board these ships, and one becomes suspicious about how dire a person's plight can be who is able to pay \$50,000. Some individuals are not as bad off as others.</p> <p>The point is that individuals have to be individually assessed. Some are legitimate refugee claimants, and some are queue-jumpers who are trying to enter our great country without going through the normal process. Detaining them for an appropriate time would allow immigration officials to determine who is legally admissible as a refugee and who is not.</p> <p>We have to send out the message, to potential refugee claimants as well as those who smuggle them, that Canada will not tolerate this type of activity.</p> | Brent Rathgeber (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |

Mr. Speaker, I find the comments by the member from the Bloc Québécois to be completely disconnected from reality and certainly from the will of their Quebec electors, who want an immigration system that is managed well according to reasonable and fair rules. The hon. member did not say a single word about the concern with regard to human smuggling. He says it is not really an issue and that we can ignore the fact that boats have on board thousands of illegal immigrants who are coming from very dangerous situations in their country. He talks about this issue with no knowledge of the situation in Southeast Asia.

Why would someone from Southeast Asia pay \$50,000 to come to Canada, when there are in that region a number of signatory countries to the convention relating to the status of refugees that could offer protection? Why are these people not going to India?

Is he not aware that last week, the Canadian Broadcasting Corporation broadcast an interview with some Tamils from India saying that they paid human smugglers to come to Canada? Does he believe that these people are subject to persecution in India? Does he have a solution to combat human smuggling or does he think we should ignore it because it conflicts with the political correctness of the urban elite and the left-wing ideology of the Bloc Québécois?

Mr. Speaker, the minister can look at the blues. I said that the Bloc Québécois would be prepared to support a government bill that punished human smugglers. The problem is that, because of these smugglers, we are creating a new category, designated foreign nationals. That is the Conservative philosophy and ideology that the Bloc Québécois has always opposed. We should not create different categories of refugees based on their country of origin or the way they arrive in Canada. They all should be treated the same way.

That is why we were prepared to support the government's Bill C-11. We would also be prepared to support Bill C-49 if it addressed only human smugglers. The Conservatives are taking advantage of the problem with human smugglers and the media attention around the arrival of a boat to push their right-wing ideology. We will always be opposed to this Conservative right-wing ideology, under which they are incapable of treating all human beings, especially children, the same way.

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| Jason Kenney (Con) | 40, 3, 89 | x | 28/10/2010 | 2010 |
| Mario Laframboise (BQ) | 40, 3, 89 | x | 28/10/2010 | 2010 |

Mr. Speaker, I am pleased to stand today in support of Bill C-49, an act to prevent human smugglers from abusing Canada's immigration system.

Human smuggling is a transitional criminal enterprise that spans the globe and Interpol says that it is a growing global phenomena. This form of illegal commercial migration is very dangerous and it exploits those individuals who are captured within it. Human smugglers consider their passengers to be little more than cargo and the boats on which they carry their passengers are like nightmarish prisons.

Migrants are typically stranded at sea, on an overcrowded boat, with unsanitary and unsafe conditions. These conditions often lead to severe illness or cause fatal accidents. As a result of these inhumane conditions, people die in human smuggling operations every year. Nevertheless, many illegal migrants decide to risk their lives and undertake this perilous journey for their destination country.

By charging people large sums of money for their transportation, human smugglers have made a lucrative business out of facilitating illegal migration, often by counselling smuggled persons to claim asylum in the country to which they are smuggled. Once they arrive in their destination country, these migrants are often at the mercy of their human smugglers and forced to work for years in the illegal labour market just to pay off their debts to their smuggler.

The arrival of the MV Sun Sea and the Ocean Lady in a period of less than 12 months is a clear indication that Canada is becoming a favoured destination for these human smuggling networks. Interpol says that human smuggling syndicates benefit from weak legislation and low risk of detection, prosecutions and arrests compared to other transnational organized crimes. If we do not take strong action now, more vessels will arrive and more lives will be put at risk. We cannot just stand by and allow these exploitative operations to continue.

This legislation would enable us to crack down on the despicable human smugglers who prey on these vulnerable migrants, but it also aims to stop those tempted to use this perilous form of migration by introducing several disincentives. A key disincentive is that those arriving as a result of a designated smuggling event would not be able to apply for permanent residency for a period of up to five years. This would apply whether they are found to be in need of protection or not. During this five year period, persons found to be in need of protection would be restricted from travelling outside of Canada and would be unable to apply for permanent residency to Canada through other means. As a result, they would not be eligible to sponsor family members into Canada or become Canadian citizens during that time period.

The legislation also proposes mandatory detention for up to one year, which would also help ensure the safety and the security of Canadians.

When these migrants arrive on our shores, we have no idea who they are or where they are from. Often, they arrive without proper documentation and we do not whether they are criminals or terrorists who pose a threat to our safety and our security. Mandatory detentions would allow us to properly verify and confirm the identities of individuals to determine whether they are in fact admissible to Canada or whether they are involved in some form of illegal activity. This proposal is entirely within reason and it is fair.

The government's priority is, first and foremost, to protect the safety and the security of Canadians. This is the least that Canadians can expect from their government.

We are also taking measures to ensure that these individuals have access to fewer Canadian benefits. As we all know, Canadians enjoy health services that are among the best and most generous in the world. We need to ensure that illegal migrants are not receiving health coverage that is more generous than what is offered to other Canadians. It certainly will not happen under this government.

Currently, asylum seekers, resettled refugees, failed asylum seekers awaiting removal, detained individuals and victims of trafficking are provided with temporary health coverage through the interim federal health program.

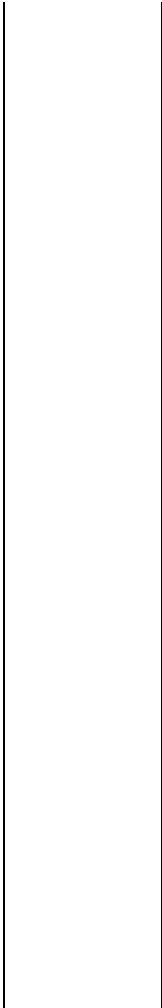
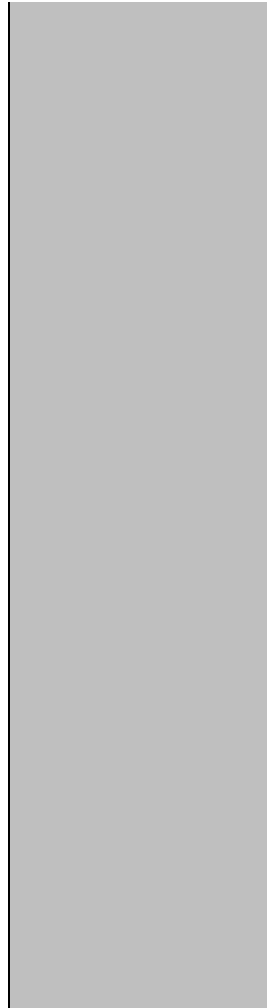
Under these proposed changes, the scope of the services provided under the IFH program would be limited for those who arrive in Canada illegally via human smuggling operations. They would receive only basic coverage, including medically necessary care and immigration medical exams that refugee claimants must take upon their arrival in order to ensure they do not pose a risk to public health or safety.

Canada's generosity should not make us a target for criminal activity such as smuggling operations. We must remove the incentives for people seeking to come here by way of human smuggling. In doing so, we will uphold the integrity of our immigration and refugee process and our programs and ensure that the safety and security of Canadians is put into place.

This has certainly taken the attention of the public over the past 12 months. We have seen two ships arrive in our country for the purposes of smuggling, which is why the scope of the bill needs to be implemented. I have heard opposition members claim that this bill is some sort of a knee-jerk reaction to what has happened. I find that compelling in a way because, if this were a reaction to what had happened, then they would have to argue that we are actually about 11 months late introducing this legislation.

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| <p>Ryck Dykstra (Con) (1 of 3)</p> | <p>40, 3, 89</p> | <p>x</p> | <p>28/10/2010</p> | <p>2010</p> |
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This legislation was put together over the past series of months to ensure that we have legislation that is strong, that is certainly consistent with the charter and with our Constitution, and, most important, that is consistent with the feelings and the positions that Canadians have held on this issue across our country.



There is no doubt that the issue in itself is a difficult one. We all know and, as members of Parliament, we have listened to the positions, arguments and stories in our readings of refugees who have claimed asylum. We have heard them say that they needed to come to Canada in order to escape the perils they faced in their country. There is no question that the reason these ships are here is that our system is so generous and open and we want to ensure that those who need protection and those who are truly refugees have a place to come to in safety where they can become Canadians, find employment, find a new way of life and raise their families in a country as democratic and open as Canada.

However, the fact remains that the only answer to solving this problem of ensuring those who are clearly refugees, clearly want to be here and clearly need to be here go through the process that we have in place.

The previous speaker mentioned Bill C-11, which is exactly what this country needed in terms of reforming our refugee legislation. We took great pains to get through that process. I know, as the parliamentary secretary, we worked hours upon hours and days upon days to get that legislation back to the House of Commons so it would be supported at third reading. When it did come back here, it in fact received support from all parties. We now have a new system in terms of refugee reform legislation that will be implemented over the next 18 months.

Bill C-49 is so well augmented with Bill C-11 that we will have completely reformed and changed the direction that this country needs to take when it comes to refugees and those who need to seek asylum here. They will need to seek asylum in a way that follows the system that we have in place, not to jump the queue and not to be forced by smugglers, who take advantage of every person on that boat, to pay for their freedom rather than earn that freedom through a process that we have in place, which is one of the most generous in the world. We cannot have it.

The Canadian people have spoken loud and clear on this issue. The one thing that we need to continue to come back to is fairness, because this is what the Canadian people understand so much better than the rest of the world. No Canadian wants to see individuals living in peril in their country. If it is important enough for us to understand that freedom of security, of governance and of democracy needs to happen here in this country and they deserve that, then our arms are wide open to them, but we have a process and a system.

There are people who are taking advantage of these individuals, charging them more money than they could ever afford in their lifetime, to get on to a boat and somehow find a way to come here. They make promises and claims. They literally push those individuals onto the vessel to get them here to Canada. They tell the individuals that Canada will accept them, that Canadian laws are so generous and in need of so much repair that when they land here they will be given the status they so want.

Those refugees who have a rightful claim and a rightful place for freedom will get that here in this country. However, those who do not are standing in the way of those who actually do.

This process of human smuggling, of bringing people into this country by crowding them onto a ship and having them land on Canadian soil, is not the way Canadians want this to happen. Canadians want to know who is on that ship and who is going to claim refugee status here.

Simply turning these hundreds of individuals loose on Canadian soil has the potential to put Canadian lives and health in peril. We do not know where these individuals have come from. We do not know if they are true refugees. We do not know if they are terrorists. We do not know if they are criminals in their own country. That is not the type of environment we want here in this country.

This bill changes all of that. It sets in place a process that will show respect for those who truly deserve refugee status. It will send a loud and clear message to countries and smugglers who live off the proceeds of these individuals that we will not be in a position as a country to accept this any more.

The Minister of Public Safety, the President of the Treasury Board, and the Minister of Citizenship and Immigration and Multiculturalism made this announcement in front of one of the ships that arrived here. They made the announcement on the west coast, but that message travelled to the east coast of our country almost immediately. There is page after page of endorsement. Group after group, editorial after editorial, Canadian after Canadian have said that this legislation is right, it is timely, it is good, it is fair. It is something that everyone in this House should be supporting.

One headline reads, "Ottawa tightens rules on human smuggling". The Headline News article states:

The bill, titled "Preventing Human Smugglers from Abusing Canada's Immigration System Act," shows that Ottawa will not tolerate abuse of the system by getting ahead of the immigration line, but stresses that the federal government of Canada will continue to welcome legitimate immigrants who could contribute to the country.

An editorial in the Calgary Herald stated:

Tough anti-smuggling legislation aimed at stopping boats of illegal migrants from showing up on Canadian shores, places the punishment where it belongs, on the smugglers.

...It's a welcome crackdown on a crime most Canadians would agree is heinous.

Ryck Dykstra (Con) (2 of 3)

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The list goes on. Another editorial on human smuggling stated:
 The government must act to safeguard the integrity of Canada's immigration system, which welcomes 250,000 newcomers a year. Polls show that the public's high level of support for immigration dipped by 20 per cent after the arrival of the Sun Sea and the Ocean Lady -- even though asylum seekers and skilled immigrants are two very different streams. That is a very important point to realize. We are a country that accepts, at the present time, per capita more immigrants than anywhere else in the world. We are open to skilled immigrants. We are open to low-skilled immigrants. We are open to seasonal workers. We are open to immigrants who want to come to this country to build a new life for themselves and their families.
 What we are not open to is those who want to come here to take advantage of our system, those who in fact want to move to the front of the line. Smugglers know this. They know that in their hearts Canadians want to help these people so they take advantage of it.
 By passing this legislation, we would at least be putting ourselves in a position where we no longer would be that country where terrorists and smugglers simply say, "We will dump them all in Canada. We will make millions and millions of dollars, and we will dump them all in Canada because Canada does not have the laws in place to prevent this from happening".
 Canadians have spoken loudly on this issue. They want to welcome new immigrants to this country. Many of us in this House have parents or grandparents who came to this country as immigrants. There are members in the House who came to this country to become Canadians. All of them have done it in a way that respects the rule of law in this country and that respects the system of fairness that all Canadians have come to accept.
 The opposition is trying to say that this is something it is not, that this is a position we hold because we want to hurt people. It is the exact opposite. That type of rhetoric has no place in this House of Commons.
 There are individuals and families who need our help, but those families and individuals are not just those who seek refugee status in our country. They are the very families and individuals who are Canadians and are here right now.
 We need a system of fairness. We need a system of equality. We need a system of acceptance. We need a system that protects Canadians, but says to those who claim refugee status that we are a country that is open, we are a country that is free, we are a country that is accepting, but let us make sure that we do it with fairness and that we do it through a system that protects the individuals who are truly refugees and that protects Canadians here.
 This is legislation we need. This is legislation that Canadians want. This is legislation that will actually put our country in a position not only to promote why this is a great country to come to, but why this is a great country in which to live.
 There are smugglers and others who take advantage of the most down and out in an attempt to profit, and there may be those in the opposition who would allow that to continue and will vote against this legislation. However, there is no one on this side of the House who will do that. We are going to make sure that we fight as long and hard as we need to in order to put this legislation in place and bring our system up to where it needs to be.

Ryck Dykstra (Con) (3 of 3)

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Madam Speaker, one of the reasons I wanted to correct the reference to William Lyon Mackenzie King was that he was the prime minister who put innocent Italians in jail, and I wanted to make sure that was recognized as being a legacy of a Liberal prime minister, not a Conservative prime minister.

Paul Calandra (Con)

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With respect to this, I find it troubling that somehow we are supposed to be proud of the fact in this country that our laws have allowed individuals to seek out vulnerable people, treat them terribly, risk their lives coming over here and sell them a bill of goods that somehow they can come in this fashion, be smuggled in, pay \$25,000 and spend the rest of their lives trying to work that off to a criminal syndicate. Somehow we are supposed to be proud of that in this country. Are we not supposed to do whatever we can to ensure that real refugees come to this country and that they are treated properly and with respect?
 Now, specifically in the bill, in proposed paragraph (3.2) it talks about the penalties with respect to people who commit human smuggling. It states that if:
 (i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, and
 (ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group
 a minimum penalty would be 10 years.
 Surely the hon. member could agree that people who commit this type of crime should not be treated with kid gloves, that they should be put in jail, that we should do everything in our power to ensure that these human smugglers pay a steep price and that our focus should be on the people who want to come to this country properly and who demand and need the help of Canada as they have for so many years in the past.

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| <p>Madam Speaker, I think what happened is that my colleague must have come in late during my speech because that is exactly what I said. So, we absolutely agree on that, that smugglers must be persecuted, must be put in jail. I said that. I thank the member for reminding everyone.</p> <p>I would like to bring my colleague's attention to the number of articles in these three bills, because in fact as I said earlier there are three bills. The total sections that impact refugees are 12. The number of sections that actually impact smugglers in this bill are 5. The number of sections that concern marine transportation are 9. So, is this a bill about refugees, 12 articles, or is it a bill about smugglers, 5 articles? I leave it for members to decide.</p> | <p>Raymonde Folco (Lib)</p> | <p>40, 3, 89</p> | <p>x</p> | <p>28/10/2010</p> | <p>2010</p> |
| <p>Madam Speaker, I found the speech of the member opposite very interesting. She referred to two ships that were turned around in 1914 and 1939. If this legislation had been in place at the time, those ships would have stayed there. They would not have been turned around. That shows why we need this type of legislation.</p> <p>There seems to be a feeling on the other side that somehow this system of smuggling people into this country is not upsetting our system. Some of the people wanting to come to Canada have been found by the UN to be clear and true refugees. But smuggling stops these true refugees from being able to set foot in our country.</p> <p>Why does the member oppose a system that works instead of one that does not?</p> | <p>Rick Dykstra (Con)</p> | <p>40, 3, 89</p> | <p>x</p> | <p>28/10/2010</p> | <p>2010</p> |
| <p>Madam Speaker, allow me to congratulate my colleague from Papineau on his appointment as the official opposition critic for immigration and citizenship. However to quote him, I do not really think that speech did anything to "enervate" this debate, or elevate it for that matter, because it was a heavy dose of demagoguery.</p> <p>What I found most disturbing about that speech was the odious suggestion that Canadians who are concerned about this prima facie violation of the integrity of our immigration system, of our laws of the principle of fairness, are somehow "anti-immigrant".</p> <p>He has seen the same polls as I have. I am sure his constituents have the same view as most Canadians. Two-thirds of Canadians have told pollsters they think Canada should not even allow the boats to enter our territorial waters if they are carrying people being smuggled here illegally. Some 55% of Canadians say we should return even those who are deemed to be bona fide refugees.</p> <p>I do not believe that two-thirds of Canadians are anti-immigrant, and in point of fact, new Canadians, those Canadians who were born abroad, feel more strongly about this violation of the integrity and fairness of our immigration system than native-born Canadians.</p> <p>I would challenge him to be very careful before he casts aspersions on the motives of those who are open, who maintain support for the most generous immigration and refugee determination system in the world but believe it should actually be governed by the rule of law and the principle of fairness.</p> <p>I would ask him this. Apart from giving speeches in Colombo and talking to other foreign governments, what concrete actions would the Liberal Party take to stop the smugglers from bringing people here illegally?</p> | <p>Jason Kenney (Con)</p> | <p>40, 3, 89</p> | <p>x</p> | <p>28/10/2010</p> | <p>2010</p> |