

Major Research Paper

JUSTIFYING IRREGULARITY: THE SECURITY CONFLICT AROUND IRREGULAR
MIGRATION IN CANADA

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Introduction

In January 2022, a family of Indian migrants was found frozen to death near Emerson in Manitoba at the Canada-U.S. border, victims of a human smuggling operation that was meant to circumvent border regulations to allow the group to cross the border irregularly and request asylum in the United States.¹ The event made international news, drawing indignation for the loss of human lives that could have been avoided had border security and immigration laws been more permissive towards asylum-seekers.² The tragedy was made especially poignant by how it followed only a short time after the end of the almost two-year policy, which both Canada and the United States had agreed upon temporarily in March 2020, to turn back asylum-seekers crossing irregularly between ports of entry, and occurred as international travel restrictions were finally being lifted to allow a return to pre-pandemic migration levels.³

When the pandemic hit in 2020, government leaders globally invoked emergency powers to implement drastic security measures aimed at protecting their citizens from the coronavirus; the most significant of these were restrictions on international travel and migration.⁴ Security and migration are topics that have become increasingly interconnected since September 2001 as the conventional definition of security has evolved to encompass a wider variety of international threats and challenges.⁵ The attention placed on prohibiting and controlling migration into the state for security reasons during the pandemic was not a novel concept, but rather the intensification of existing standards and processes that

¹ Hina Alam, Fakiha Baig, and Brittany Hobson, "'It's about Money, Not People': Immigration Experts Describe Human Smuggling Business," *Global News* (January 27, 2022), accessed April 1, 2022, <https://globalnews.ca/news/8542238/indian-migrants-dead-manitoba-border/>.

² Holly Honderich and Roxy Gagdekar, "The Family That Froze to Death a World Away from Home," *BBC News* (February 11, 2022), accessed April 1, 2022, <https://www.bbc.com/news/world-us-canada-60290955>.

³ Anna Mehler Paperny, "Canada Ends COVID-19 Policy Turning Back Asylum-Seekers between Border Crossings," *Reuters* (November 23, 2021), accessed April 1, 2022, <https://www.reuters.com/world/americas/canada-ends-covid-19-policy-turning-back-asylum-seekers-between-border-crossings-2021-11-22/>.

⁴ Alan Greene, "State of Emergency: How Different Countries Are Invoking Extra Powers to Stop the Coronavirus," *The Conversation* (March 30, 2020), accessed April 1, 2022, <https://theconversation.com/state-of-emergency-how-different-countries-are-invoking-extra-powers-to-stop-the-coronavirus-134495>.

⁵ Alexandra Ghenciu and William Curti Wohlforth, *The Oxford Handbook of International Security* (Oxford: Oxford University Press, 2018), doi: 10.1093/oxfordhb/9780198777854.001.0001, 5.

maintain a strict control over who crosses state borders. In a world where people are constantly on the move, governments have turned irregular migration into a key security issue that is rigorously legislated, monitored and enforced. The Emerson tragedy serves as a harsh reminder of the complexities involved in managing irregular migration while balancing security obligations.

Irregular migration, the “movement that takes place outside the regulatory norms of the sending, transit and receiving country,”⁶ has become a priority subject within both security studies and international relations discourse. States view irregular migration as a security threat, and accordingly respond by implementing preventive and reactive measures stringently enforced by multiple security infrastructures. The United States spent over 330 billion dollars between 2003 and 2021 solely on immigration enforcement, while the European Union allocated 14.2 billion euros between 2014 and 2020 on migration-related spending and Canada spent almost 350 million dollars on irregular migrants in 2018 alone.⁷ States spend considerable amounts of their security resources towards the management and control of irregular migration. And yet, irregular migration is generally driven by socioeconomic insecurity, political instability, persecution and violent conflicts,⁸ which suggests that the migrants are themselves in need of considerable security protections from the state. Migrants in irregular situations are especially vulnerable to “discrimination, exploitation and abuse,” and are more likely to be victims of organized crime, human trafficking and migrant smuggling.⁹

⁶ International Organization for Migration, *Global Migration Indicators 2021* (Global Migration Data Analysis Centre, 2021), accessed June 19, 2022, <https://publications.iom.int/books/global-migration-indicators-2021>, 37.

⁷ American Immigration Council, “The Cost of Immigration Enforcement and Border Security,” American Immigration Council (January 20, 2021), accessed April 1, 2022, <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security>; Teresa Wright, “Irregular Migrants on Track to Cost Canada Almost \$400 Million, Watchdog Says,” CTV News (November 29, 2018), accessed April 1, 2022, <https://www.ctvnews.ca/canada/irregular-migrants-on-track-to-cost-canada-almost-400-million-watchdog-says-1.4197552>; European Parliament, “EU funds for migration, asylum and integration policies,” Directorate General for Internal Policies of the Union (April 2018), accessed April 1, 2022, <https://www.europarl.europa.eu/cmsdata/147324/20180516-migration-funding-study-updated.pdf>, 15.

⁸ Francesca Vietti and Todd Scribner, “Human Insecurity: Understanding International Migration from a Human Security Perspective,” *Journal on Migration and Human Security* 1, no. 1 (March 1, 2013): 23; 26, accessed January 29, 2022, doi: 10.1177/233150241300100102, 23.

⁹ UNDESA, “Irregular Migration, Human Trafficking and Refugees” (UNDESA, January 27, 2014), accessed April 1, 2022, https://www.un.org/en/development/desa/population/publications/pdf/policy/InternationalMigrationPolicies2013/Report%20PDFs/k_Ch_5.pdf, 91.

The tragic migrant deaths in Emerson in early 2022 and the corresponding public attention they received could have resulted in policy changes in Canada's management of irregular migration, a shift towards a more humane approach to asylum seekers that favors migrant security over border security. Instead, Prime Minister Justin Trudeau declared that Canada is "doing all [it] can to discourage people from crossing the border in an irregular or illicit manner,"¹⁰ demonstrating how the Emerson events further cemented Canada's position against irregular migration. The Emerson tragedy underscores the need to better comprehend the relationship between the state and irregular migration. Why do states secure against irregular migration? What security measures do states implement for the securitization of irregular migration? It also underlines the importance of considering the real impacts of state migration management on migrants. What are the effects of state security measures on irregular migrants? What factors contribute to the differential treatment of irregular migrants by the state security apparatus? The many policies that sustain these questions appear to be interlinked with framings of irregular migration. More importantly, these questions highlight the significance of developing an in-depth understanding of the state's role in framing irregular migration to rationalize the impacts of its security practices.

How does the Canadian state justify security measures against migrants who enter Canada irregularly since 9/11? This paper argues that the Canadian state justifies the implementation of restrictive migration security measures by framing irregular migration primarily through the lens of security threat, creating a distinct 'other' migrant whose existence is dehumanized and criminalized. More specifically, the state constructs security narratives of exceptionalism that produce irregularity to excuse differential treatment of risk associated with the securitization of irregular migration flows during crises regardless of the detrimental effects of security measures on migrant security. This means that state governments develop the legal terminology, immigration laws and border controls that designate which migrants are

¹⁰ The Canadian Press, Reuters, "Trudeau Says Four People Found Frozen to Death in Manitoba Were Family from India" (The Winnipeg Sun, January 21, 2022), accessed April 1, 2022, <https://winnipegsun.com/news/news-news/trudeau-says-four-people-found-frozen-to-death-in-manitoba-were-family-from-india>.

irregular, thus producing irregularity through the application of security threat discourse, with little regard for the repercussions on migrants themselves, the complexities involved in legal migration, and the exclusionary nature of migration security policies.

The research paper uses qualitative and quantitative secondary sources, such as books, journal articles, published statistical reports and public government data to conduct a literature review supplemented by a discourse analysis of three Canadian case studies. The theoretical framework of the research paper will be oriented towards the integration of scholarly work on the migration-security nexus with commentaries on migration management practices and irregularity. The exploration of these key concepts will allow for a more in-depth analysis of the mutually-interacting relationships that exist between the state and irregular migrants, and of the role of security in shaping this relation. The objective is to develop an understanding of how state rationale can produce irregularity and affect the way irregular migrants are treated by the security infrastructures in Canada.

This paper will first describe the migration-security nexus and present the positions of expert scholars on securitization and migration. It will then provide a comprehensive analysis of irregular migration that sets the foundational argument for why irregular migration is perceived as a security threat. The means by which states secure against irregular migration will then be outlined, and the effects of these security measures on irregular migrants described. From there, the theory of irregularity will be explained, and applied to elucidate three specific case studies of well-known incidents of irregular entry into Canada of migrants by air, sea and land. The first case study will focus on migration into Canada by air after 9/11, reviewing the migration security regulations that emerged immediately after the terrorist attacks and then arguing that the state framed this crisis in a way that allowed it to implement additional restrictions on irregular migrants and air travel. The second case study will look at the arrival of the MV Sun Sea in 2010 and assert that the state used the exceptional circumstance to impose an antipathetic discourse that is still used to rationalize security measures against irregular migration. The final case

study will centre around the Roxham Road crossing in Summer 2017 to illustrate how the state responded to the crisis and the policies that have emerged as a result, arguing that the state linked migrants to criminality to justify imposing stricter regulations on travel by land. Each case study will review how the Canadian state framed irregular migration, the resultant security measures that were born of these security narratives, and the impacts of the state production of irregularity. The paper will conclude with an acknowledgment of the role of risk, race and ethnicity in shaping Canadian migration management.

Understanding Migration

Migration is not a novel concept; the evolution of humankind is rooted in the great migrations of peoples across large geographic boundaries. Our nomadic ancestors moved around in pursuit of game thousands of years ago which eventually allowed for the development of civilizations. Early communities established settlements near waterways to facilitate displacements by ship over long distances and built roads to simplify movements. Nomadic, pastoral, military, mercantile, slave and religious migration are but a few migration patterns that emerged and have remained a consistent reality of human history for millennia.¹¹ The term ‘international migration’ is a relatively recent construct that only appeared with the emergence of nation-states, and thus nations, state boundaries and border security.

The International Organization for Migration (IOM) defines international migration as “the movement of persons away from their place of usual residence and across an international border to a country of which they are not nationals.”¹² An international migrant is therefore “any person who changes his or her country of usual residence” regardless of their legal status or their cause of movement.¹³ In 2020, the number of international migrants was estimated to be 281 million, comprising 3.6% of the

¹¹ William H. McNeill, “Human Migration in Historical Perspective,” *Population and Development Review* 10, no. 1 (1984): 1–18, accessed June 19, 2022, <https://doi.org/10.2307/1973159>.

¹² International Organization for Migration, “Key Migration Terms,” International Organization for Migration (January 17, 2020), accessed June 19, 2022, <https://www.iom.int/key-migration-terms>.

¹³ International Organization for Migration, “Key Migration Terms.”

global population.¹⁴ Canada remains one of the top 10 destinations for migrants and 21.3% of its population in 2019 was made up of international migrants.¹⁵ Most individuals migrate abroad for reasons related to work, study or family reunification and account for more than 2/3 of the global migrant stock.¹⁶ These are generally referred to as voluntary migrants, since they have the sufficiency and information to make a thoughtful, non-coerced decision to relocate for individualized reasons.¹⁷ Their circumstances usually permit them to engage in legal immigration processes. Comparatively, forced migrants are persons who have been forcibly displaced from their countries due to persecution, conflict, human rights abuses, violence and natural disasters.¹⁸ Between 2000 and 2020, the number of forced migrants doubled from 17 to 34 million and accounted for “about 16 per cent of the total increase in the number of international migrants worldwide during this period.”¹⁹ Forced migrants consist of mostly refugees and asylum-seekers, and they are extremely vulnerable to exploitation and abuse. Their circumstances are usually dire and unplanned, which means they often find themselves attempting to circumvent state immigration and border security regulations. While states readily welcome voluntary migrants, they are significantly less receptive towards forced migrants and the security threat they can pose. The distinction between voluntary and forced migrants is nonetheless often blurred and is rarely as clear-cut as one would expect, a fabrication deriving from state framings of migration.²⁰ Migrants, whether voluntary or forced, are subject to strict migration management policies that are the result of state security narratives birthed from a specific threat-based understanding of security.

¹⁴ UNDESA, “International Migration 2020 Highlights,” (UNDESA, January 2021), accessed June 19, 2022, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/international_migration_2020_highlights_ten_key_messages.pdf

¹⁵ Marie McAuliffe and Binod Khadria, eds., *World Migration Report 2020* (International Organization for Migration, November 2019), accessed June 19, 2022, https://publications.iom.int/system/files/pdf/wmr_2020.pdf, 23; 26.

¹⁶ McAuliffe and Khadria, *World Migration Report 2020*, 19; 33

¹⁷ Valeria Ottonelli and Tiziana Torresi, “When Is Migration Voluntary?” *International Migration Review* 47, no. 4 (2013): 796-802, accessed June 19, 2022, <https://doi.org/10.1111/imre.12048>.

¹⁸ International Organization for Migration, “Forced Migration or Displacement,” (Global Migration Data Analysis Centre, 27 May 2022), accessed June 19, 2022, <https://www.migrationdataportal.org/themes/forced-migration-or-displacement>.

¹⁹ UNDESA, “International Migration 2020 Highlights.”

²⁰ Vietti and Scribner, “Human Insecurity,” 23.

Understanding Security

Scholarship on international security has transformed significantly over the past decades and recent approaches have emphasized constructivist and critical perspectives that underline the role of actors, interactions and social structures in framing security. While security remains essential to ensuring states have the power to protect and preserve their territorial integrity, sovereignty, and political independence from foreign states that seek their destruction,²¹ the definition of security increasingly incorporates a wider variety of non-traditional dimensions to address new globalized threats.²² Security has emerged as a form of discourse and practices that include diplomacy, economic development, international aid, eco-sustainability, etc. as means by which to protect the state from non-traditional threats like terrorism, transnational crime, environmental degradation, demographic changes and cyber-conflict.²³ This more modern approach to security also attributes greater value to the responsibility of the state to defend the sovereignty of its people, values and way of life, and to protect its nation and national identity from destruction.²⁴ Security paradigms that shift the focus away from the state and towards individuals have also gained ground in recent years. These models favor actions that protect the fundamental freedoms and integrity of all human beings from internal and external threats, whether traditional or non-traditional, across all geographical boundaries regardless of state borders.²⁵ Studies on practices of security are now much more complex due to these wider understandings of security and threat, which has in turn had consequences on securitization studies, particularly on understandings of the securitization of migration.

²¹ Anton Grizold, "The Concept of National Security in The Contemporary World," *International Journal on World Peace* 11, no. 3 (1994): 40, accessed December 19, 2021, <http://www.jstor.org/stable/20751984>.

²² Keith Krause and Michael Williams, "Security and 'Security Studies': Conceptual Evolution and Historical Transformation," in *The Oxford Handbook of International Security* (Oxford University Press, 2018), accessed June 19, 2022, <https://doi.org/10.1093/oxfordhb/9780198777854.013.2>, 23.

²³ Divya Srikanth, "Non-Traditional Security Threats in the 21st Century: A Review," *International Journal of Development and Conflict* 4 (2014): 60, <http://www.ijdc.org.in/uploads/1/7/5/7/17570463/2014junearticle4.pdf>; Prabhakaran Paleri, *National security: imperatives and challenges* (New Delhi: Tata McGraw-Hill, 2008), https://books.google.ca/books?id=DMzcGe0-HQwC&pg=PA64&source=gbs_toc_r&cad=3#v=onepage&q&f=false, 66.

²⁴ Brendan O'Leary and Nicholas Sambanis, "Nationalism and International Security," in *The Oxford Handbook of International Security* (Oxford University Press, 2018), accessed February 24, 2022, <https://doi.org/10.1093/oxfordhb/9780198777854.013.27>.

²⁵ Vietti and Scribner, "Human Insecurity," 22; Roza Pati, "Human Trafficking: An Issue of Human and National Security," *U. Miami Nat'l Security & Armed Conflict L. Rev.*, 4, no. 2 (2014): 32, accessed February 24, 2022, <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1057&context=umnsac>.

The Migration-Security Nexus

There has been sustained attention to securitization in relation to migration throughout both academia and policy research. The Copenhagen school established an understanding of securitization theory that describes the process by which state actors transform a seemingly regular political issue into a security matter by framing it as an existential problem or threat.²⁶ The securitization of migration therefore involves state actors manufacturing migration as a security issue by framing it as a security threat. Bigo adds that the securitization of migration is a “political technology” used by state institutions to encourage the structural unease and insecurity that reaffirms the role of the state as a provider of “protection and security.” This securitization emerges from political speech acts, mobilization against groups of people, the practices of security agencies, and administrative procedures, such as profiling, risk assessments and category creation.²⁷ Securitization theory was applied to migration discourse after the Cold War and further transformed in the post 9/11 environment,²⁸ but the state practice of linking migration, security and threat has much older origins. Foucault notably explores how the 16th century European nation-states adopted systems of “permanent registration” and “anti-nomadic techniques” to prevent human migratory movement within their established territories, which they saw as a danger to society.²⁹ Torpey, who wrote some of the foundational contributions to literature on technologies of control, similarly adds that the passport was a means for the nation-state to monopolize movements and distinguish the “national/citizen” from the undocumented “alien.”³⁰ It is, nonetheless, the institutionalization of police authorities into border management that formally linked international migration to criminality, and marked the beginning

²⁶ Barry Buzan, Ole Wæver, and Jaap de Wilde. *Security: A New Framework for Analysis*. Boulder, CO: Rienner, 1998.

²⁷ Didier Bigo, “Security and Immigration: Toward a Critique of the Governmentality of Unease,” *Alternatives* 27, no. 1_suppl (February 2002): 65. Accessed June 19, 2022. <https://doi.org/10.1177/03043754020270S105>.

²⁸ Andrea C. Bianculli et al., *Report – Security-Migration Nexus* (GLOBE Project, 15 March 2021), accessed June 19, 2022, https://www.globe-project.eu/security-migration-nexus_11426.pdf, 12.

²⁹ Thanh-Dam Truong and Des Gasper, *Transnational Migration and Human Security: The Migration-Development-Security Nexus* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2011), accessed June 19, 2022, https://doi.org/10.1007/978-3-642-12757-1_4-5.

³⁰ Truong and Gasper, *Transnational Migration and Human Security*, 5.

of the state securitization of migration that has characterized much of the 20th and 21st centuries.³¹ It is only in recent history that attention has been placed on the social and moral ethics of state migration policies and their security implications on migrants. Given the increasing number of people moving globally, the migration-security nexus has become a focal point of research in political spheres, with priorities divided between the security concerns that arise from the movement of people and the security issues that affect migrants themselves.³²

States generally view migration as a threat to their security. The literature proposes three main threat factors that explain this rationale: sovereignty, personal security, and national identity. The first threat posed by migration is to state sovereignty. Fiona Adamson explains that cross-border migration can threaten state sovereignty, the balance of power and the nature of international conflicts, three core elements central to state security interests.³³ States can use migration as weapons to interfere in the domestic affairs of other states and to undermine international power and prestige. Migration-related tensions can also impact grand strategy and foreign policy decisions in the international liberal order and affect the bilateral relations of states. Migration management is thus a key challenge that requires balancing the interests of the state with the effects of migration flows on security.³⁴ The second threat that arises from migration is to the personal security of the citizenry. Policymakers are increasingly concerned with the relationship between the movement of people across borders and international terrorism, particularly since 9/11.³⁵ This is notably explored by Bove and Böhmelt, who consider whether immigration induces terrorism and find that migrant movements can spread terrorism while

³¹ Truong and Gasper, *Transnational Migration and Human Security*, 5.

³² Philippe Bourbeau, *Handbook on Migration and Security* (Northampton, MA: Edward Elgar Pub., 2017), accessed April 1, 2022, <https://doi-org.proxy.bib.uottawa.ca/10.4337/9781785360497>.

³³ Fiona B. Adamson, "Crossing Borders: International Migration and National Security," *International Security* 31, no. 1 (2006): 167, accessed February 24, 2022, <https://doi.org/10.1162/isec.2006.31.1.165>.

³⁴ Adamson, "Crossing Borders," 168, 198.

³⁵ Adamson, "Crossing Borders," 165-166.

simultaneously decreasing terrorist attacks.³⁶ Similarly, a study by Milton et al. links refugees to the dissemination of terrorism across state dyads.³⁷ Migration is also discursively associated with criminality, and the impacts of massive refugee flows and mobilized diasporas in fueling violent conflicts, splitting political loyalties and reducing domestic security remain a serious concern to states.³⁸ The third threat posed by migration is aimed at national identity. International migration changes the demography of a state and can lead to the questioning of the “cultural basis of a state’s identity.”³⁹ Ole Wæver analyzes the effects of mass migration movements on domestic state security and develops the concept of “societal insecurity” to account for perceived threats to the collective ethno-national identity of a people that arise from migration.⁴⁰ Similarly, Myron Weiner describes how international migrants affect the internal stability of a state, notably through impacts to cultural identity, which in turn threaten its security.⁴¹ Christopher Rudolph expands on these ideas, suggesting that the “politics of migration” impact state geopolitical interests, material production and internal security, and thus foster societal insecurities linked to national identity that can only be addressed through strong images of state control.⁴² The scholarship on the security concerns that arise from the movement of people across international borders is plentiful and is often used by pro-security state actors to support the augmentation of migration security practices.

Human rights organizations and an increasing number of scholars perceive migration favorably and consider international security policies a threat to migrants. This newer literature shifts the focus away from securing the nation-state and emphasizes the need to protect migrants from the real

³⁶ Vincenzo Bove and Tobias Böhmelt. “Does Immigration Induce Terrorism?” *The Journal of Politics*, Vol. 78, no. 2 (2016): 584, accessed February 24, 2022, <https://doi.org/10.1086/684679>.

³⁷ Daniel Milton, Megan Spencer, and Michael Findley, “Radicalism of the Hopeless: Refugee Flows and Transnational Terrorism,” *International Interactions* 39, no. 5 (2013): 621, accessed February 24, 2022, <https://doi.org/10.1080/03050629.2013.834256>.

³⁸ Adamson, “Crossing Borders,” 166.

³⁹ Adamson, “Crossing Borders,” 181-182.

⁴⁰ Ole Wæver, *Identity, Migration, and the New Security Agenda in Europe* (New York: St. Martin’s Press, 1993), accessed February 24, 2022, <https://www.europenowjournal.org/partners/secureu/resources-and-tools/identity-migration-and-the-new-security-agenda-in-europe/>.

⁴¹ Myron Weiner, “Security, Stability, and International Migration,” *International Security* 17, no. 3 (1992): 98; 110, accessed February 24, 2022, <https://www.jstor.org/stable/2539131>.

⁴² Christopher Rudolph, “Security and the Political Economy of International Migration,” *The American Political Science Review* 97, no. 4 (2003): 618, accessed February 24, 2022, <https://doi.org/10.1017/S000305540300090X>.

insecurities and survival issues that plague them. Alexander Betts coined the term “survival migration” to describe people who move outside of their country of origin due to existential threats and human rights deprivations. Since their lives do not meet a minimum threshold of fundamental securities within their territory of origin, he argues that the international state community should provide support to survival migrants attempting to cross international borders.⁴³ Vietti and Scribner add that strict migration-security regulations force migrants into positions of vulnerability where they are often subject to sexual and physical violence, exploitation by smugglers and denial of due process. They note that implementing legal protections for migrants and considering their human security is more effective in curbing the problems that drive mass migration.⁴⁴ Ariane Chebel d’Appollonia identifies another type of threat posed by security policies on migrants: marginalization. The state securitization of migration actually creates exclusionary policies that exacerbate domestic tensions and foster radicalism. Strict migration management and the absence of decent integration measures leads to a collective sense of otherness that fuels racism and discrimination while encouraging migrant alienation.⁴⁵ Audie Klotz views the ambiguity that surrounds migrant rights due to the deference to state regulations as especially problematic, as are the Eurocentric and gendered policies that develop from it. The “myth of Westphalia” positions the state as a paternalistic protector by virtue of its sovereignty, and ignores the real threat the state can pose to migration-related interstate, societal and human security.⁴⁶ The scholarship on the security issues that affect migrants has gained significant traction over the last decade and has obliged states to at least consider migrant security when developing their security practices.

⁴³ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca: Cornell University Press, 2013), accessed February 24, 2022, <https://doi.org/10.7591/9780801468964>, 4-5

⁴⁴ Vietti and Scribner, “Human Insecurity,” 26, 18.

⁴⁵ Ariane Chebel d’Appollonia, *Immigration, Integration, and Security: America and Europe in Comparative Perspective* (Pittsburgh, PA: University of Pittsburgh Press, 2008), accessed February 24, 2022, <https://www-jstor-org.proxy.bib.uottawa.ca/stable/j.ctt5vkgr2>, 3, 6.

⁴⁶ Audie Klotz, “Migration.” In *The Oxford Handbook of International Security* (Oxford University Press, 2018), accessed February 24, 2022, <https://doi.org/10.1093/oxfordhb/9780198777854.013>.

While the migration-security nexus can appear irreconcilable due to its diametrically opposed theoretical foundations rooted in divergent understandings of security, the multiplicity of claims made are ultimately framed to suit their respective security narratives and objectives.⁴⁷ The securitization of migration is politically framed by both sides of the migration-security nexus to affect how “identities of us and them, and perceptions of security and threat, are conceived.”⁴⁸ However, since framing migration through the lens of security threat remains the dominant rhetoric in state migration discourse, migration management policies reflect similar logics, which has significant impacts on how the state addresses one of the most vulnerable populations: irregular migrants.

Irregular Migration

Irregular migration is defined as the “movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State.”⁴⁹ It is a subcategory of international migration that encompasses various types of migrants, both voluntary and forced, such as economic migrants, family migrants, asylum-seekers, refugees, environmental migrants, victims of trafficking and smuggled migrants.⁵⁰ The term ‘irregular migration’ is often used interchangeably in public discourse with the words ‘illegal’, ‘undocumented’ and ‘unauthorized’ migration, all of which are considered to be conceptually problematic.⁵¹ The term ‘irregular migration’ is, however, the vernacular adopted by international organizations and is therefore the one used in this paper. The issue of terminology does, nevertheless, reflect the difficulties in obtaining reliable data on irregular migration on

⁴⁷ Christopher S. Browning, “Security and Migration: A Conceptual Exploration,” In *Handbook on Migration and Security* (Edward Elgar Publishing, 2017), accessed June 19, 2022, <http://wrap.warwick.ac.uk/83323/7/WRAP-security-migration-conceptual-exploration-Browning-2017.pdf>, 2.

⁴⁸ Browning, “Security and Migration,” 2.

⁴⁹ International Organization for Migration, “Key Migration Terms.”

⁵⁰ Omar Grech and Monika Wohlfeld, “Managing Migration in the Mediterranean: Is the EU Failing to Balance State Security, Human Security, and Human Rights?,” *OSCE Yearbook 2015* (2016): 312, <https://doi.org/10.5771/9783845273655-309>; UNHCR, “Irregular Migration and Mixed Flows: IOM’s Approach,” UNHCR, MC/INF/297 (October 2009), accessed June 20, 2022, <https://www.unhcr.org/protection/migration/4bf6870b9/irregular-migration-mixed-flows-ioms-approach.html>, 1.

⁵¹ Khalid Koser, “Irregular Migration, State Security and Human Security,” *Global Commission on International Migration* (September 2005), accessed June 20, 2022, https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP5.pdf, 5.

a global scale. States each adopt their own vocabulary, regulations and data-gathering methods when administering irregular migration, resulting in inconsistencies in identifying irregular migrants across states and over time. Furthermore, the vulnerability of their circumstances often push irregular migrants to intentionally remain hidden and unrecorded to avoid state reprisals.⁵² Some estimates, nonetheless, tentatively suggest that there were 58 million irregular migrants worldwide in 2017.⁵³

Research on irregular migration is further constrained by the different categories into irregularity: irregular entry, irregular residence, and irregular employment.⁵⁴ The latter two refer to migrants who are in violation of the terms of their visas and permits, and thus “remain in a country in contravention of [its] authority.”⁵⁵ The former refers to migrants who enter a country clandestinely outside of official border crossings or with fraudulent documentation. Migrants can “go in or out of irregularity” as their status changes, notably by regularizing their status or overstaying their authorizations.⁵⁶ This makes it especially difficult to measure irregular migrant stocks, and is the main reason for the uncertainty in establishing clear global estimates on irregular migration numbers. Irregular flows of migrants, the movement of persons in an “undocumented fashion,”⁵⁷ are easier to calculate given the widespread border security measures implemented by states as part of their migration management policies. While irregular migration has become a major security concern in countries with the largest migrant stocks,⁵⁸ states generally consider the regulation of migrant flows and irregular entries to be the more pressing security issue.

⁵² Koser, “Irregular Migration, State Security and Human Security,” 7.

⁵³ International Organization for Migration, *Global Migration Indicators 2018*, Global Migration Data Analysis Centre (2018), https://publications.iom.int/system/files/pdf/global_migration_indicators_2018.pdf, 30.

⁵⁴ International Organization for Migration, “Irregular Migration,” (Global Migration Data Analysis Centre, 20 May 2022), accessed June 20, 2022, <https://www.migrationdataportal.org/themes/irregular-migration>.

⁵⁵ International Organization for Migration, “Irregular Migration;” Koser, “Irregular Migration, State Security and Human Security,” 6.

⁵⁶ International Organization for Migration, *Global Migration Indicators 2021* (Global Migration Data Analysis Centre, 2021), accessed June 19, 2022, <https://publications.iom.int/books/global-migration-indicators-2021>, 37 Koser, “Irregular Migration, State Security and Human Security,” 7.

⁵⁷ International Organization for Migration, “Irregular Migration.”

⁵⁸ UNDESA, *International Migration Policies: Government Views and Priorities*, UNDESA ST/ESA/SER.A/342 (January 2014), accessed June 20, 2022, <https://www.un.org/en/development/desa/population/publications/policy/international-migration-policies-report-2013.asp>, 92.

Irregular Migration as a Security Threat

Irregular migration epitomizes all of the most pressing security concerns espoused in the migration-security nexus by those who view migration through the lens of security threat. Irregular migration, particularly the flow of irregular migrants, threatens the central tenets of traditional security: territorial integrity, sovereignty, and political independence. Contemporary tenets of security, namely personal security and national identity, are also threatened by these irregular movements. Borders and territoriality are of primary concern to states; controlling “who enters and remains on their territory” is essential to protecting the citizenry from foreign threats and the state from foreign interference in domestic affairs.⁵⁹ Irregular migration, by its very nature, involves breaching the territorial boundaries of a state using channels that disregard established laws and regulations. This breach in territorial integrity can allow criminals, terrorists, foreign agents, and diseases to physically enter state territory and endanger the citizenry within. Smuggling and trafficking operations can be especially problematic in posing a “genuine threat to [state] law and order.”⁶⁰ Furthermore, since controlling movements across borders is one of the “basic functions of a state,” irregular migration undermines state sovereignty.⁶¹ Sovereignty implies that states have “the ultimate authority to take decisions” within their space and that other states recognize this right.⁶² States thus have a “sovereign right to determine their national migration policy” and a prerogative to govern within their jurisdictions free from foreign interference.⁶³ Since irregular migration is essentially a failure to control access to territory, it can damage the reputation, power and prestige of a state internationally, and can be weaponized by foreign rivals to interfere in domestic affairs and generate instability. Failure to control migration also risks breaking public confidence in government policy and

⁵⁹ Vietti and Scribner, “Human Insecurity,” 23.

⁶⁰ Grech and Wohlfeld, “Managing Migration in the Mediterranean,” 314-315; Khalid Koser, “When Is Migration a Security Issue?” Brookings (Brookings, March 31, 2011), accessed June 20, 2022, <https://www.brookings.edu/opinions/when-is-migration-a-security-issue/>.

⁶¹ Grech and Wohlfeld, “Managing Migration in the Mediterranean,” 314-315.

⁶² Neil MacFarlane and Natalie Sabanadze, “Sovereignty and Self-Determination: Where Are We?” *International Journal* (Toronto) 68, no. 4 (2013): 611, accessed June 20, 2022, <https://doi.org/10.1177/0020702013511184>.

⁶³ International Organization for Migration, *Global Migration Indicators 2021*, 71.

can threaten the “social and economic fabric” of the state.⁶⁴ Large flows of irregular migrants, particularly migrants of different sociocultural backgrounds, can also challenge social cohesion and threaten national identity.⁶⁵ Large shifts in ethnic and demographic compositions can create tensions domestically that affect the political stability and independence of the state. These can lead to a rise in “existential anxieties” and xenophobic sentiments from native populations, growing the us vs. them marginalization divide which often precedes political violence and civil unrest.⁶⁶ Mass movements of irregular entry also have practical implications on the allocation of resources and the effectiveness of welfare institutions that can weaken state governments.⁶⁷ The state ultimately secures against irregular migration because it adopts a threat-based understanding of the migration-security nexus that positions irregular migrant flows as a substantial threat to the security of the state. This positioning creates an opportunity for state actors to engage in the securitization of irregular migration, essentially allowing the state to frame irregular migration as an urgent security issue that requires extraordinary methods of resolution.

States implement security measures to prevent, regulate, and punish irregular migration that are expansive and proportional to perceived threat levels. This practice relies heavily on techniques of control that can be divided into three categories: pre-frontier policies, border enforcement and post-entry processes.⁶⁸ Pre-frontier policies have proliferated globally and are the key method for preventing irregular migrants from ever reaching the territory of the destination state.⁶⁹ The externalization of migration involves moving power beyond borders to establish practices of remote security control outside

⁶⁴ Koser, “When Is Migration a Security Issue?”; Grech and Wohlfeld, “Managing Migration in the Mediterranean,” 315.

⁶⁵ Koser, “When Is Migration a Security Issue?”

⁶⁶ Maria Njaim, “Migration Dilemma: Security versus Humanitarian Nexus,” *Granite Journal: A Postgraduate Interdisciplinary Journal*, no. 2 (November 2018): 27, accessed June 20, 2022, <https://www.abdn.ac.uk/pgsr/documents/Migration%20Dilemma%20Security%20versus%20Humanitarian%20Nexus,%20Nijaim,%20%20pp%2025-32.pdf>.

⁶⁷ João Esteves, “Human (In)security and Irregular Migration: The Atlantic Basin,” In *Evolving Human Security Challenges in the Atlantic Space* (Brookings Institution Press, 2019), accessed February 24, 2022, https://transatlanticrelations.org/wp-content/uploads/2019/10/ch05_Esteves.pdf, 12.

⁶⁸ Ben Hayes, “Migration and Data Protection: Doing No Harm in an Age of Mass Displacement, Mass Surveillance and ‘Big Data,’” *International Review of the Red Cross* 99, no. 904 (March 21, 2018): 185, accessed June 20, 2022, doi:10.1017/S1816383117000637; Koser, “Irregular Migration, State Security and Human Security,” 14.

⁶⁹ Hayes, “Migration and Data Protection,” 186.

of the state.⁷⁰ These practices manifest in various ways, the simplest of which are immigration requirements. Passports, visas, permits and biometrics are required by any persons intending to travel to a different country to allow the destination state to identify, investigate and pass judgement on the security risk posed by potential migrants. These activities are nowadays mostly processed offshore in embassies and high commissions, and each state establishes its own immigration rules. Additional extraterritorial controls have also been established to ensure irregular migrants are unable to make it to destination, such as port liaison officers, carrier sanctions and safe third country agreements.⁷¹ Border enforcement measures involve controlling the territorial jurisdiction of the state by regulating who is permitted to enter. This technique of control is perhaps best exemplified by the terrestrial barriers, such as walls, fences, border checkpoints and grey or militarized zones, that are built to physically prevent migrants from entering irregularly. Training qualified border guards, developing profiling and biometric capabilities, and ameliorating migrant identification and surveillance technologies are also important security measures essential to managing the border.⁷² Post-entry processes are often the most politically controversial and seek to penalize migrants for their irregularity. It usually involves the criminalization of irregular movement, which can lead to arrests, detention and deportation, as a means to protect the citizen population from potentially dangerous migrants. Restrictions on due process, appeals and review are also relatively common, as are limitations on access to work, social services and housing.⁷³ These security measures are multi-purposed, since they attempt to discourage irregular migration, encourage legal migration and prevent disturbances to domestic social cohesion and services. Irregular migrants are

⁷⁰ Ruben Zaiotti, *Externalizing Migration Management: Europe, North America and the Spread of "Remote Control" Practices* (London: Routledge, 2016), accessed April 1, 2022, <https://doi.org/10.1177/136078041602100403>, 4; 13; 261.

⁷¹ Koser, "Irregular Migration, State Security and Human Security," 14.

⁷² Koser, "Irregular Migration, State Security and Human Security," 14.

⁷³ Koser, "Irregular Migration, State Security and Human Security," 14; Ben Saul, "Migration, Displacement, Security, and International Law," in *The Oxford Handbook of the International Law of Global Security* (Oxford University Press, 2021), accessed June 20, 2022, <https://doi.org/10.1093/law/9780198827276.003.0024>.

usually only given temporary protections that comply with international human rights expectations before they are subject to state securitization processes.

This quick overview of state rhetoric on irregular migration and the consequent security practices employed to counter irregular migration flows demonstrates that states adhere to a security framework which positions irregular migration as a threat to state security. The security narratives that emerge from this framing permit the implementation of extensive security measures against irregular migration with little regard for the detrimental effects on the migrants themselves.

Implications of Securitization on Irregular Migrants

State security measures against irregular migrants are increasingly controversial and met with substantial opposition from human rights organizations due to their impacts on the human security and human rights of migrants, but also for their dehumanizing effects and ethical shortcomings. Pre-frontier policies tend to create the circumstances which push migrants towards irregularity. In many countries, threats to individuals often derive from the security institutions of their own states.⁷⁴ Individuals who would have liked to legally migrate are often constrained by their own state authorities and circumstances, along with all the visa requirements and bureaucratic processes of the destination country, resulting in a turn towards irregular travel. Since 2014, the IOM's Missing Migrants Project recorded over 48,000 deaths related to migrants attempting to reach other states, of which almost half of the bodies have never been recovered. Most irregular migrants are killed by drowning when attempting to cross the Mediterranean Sea, but hundreds every year are victims of lethal violence or dangerous living conditions.⁷⁵ Irregular migrants, particularly those in transit, are especially vulnerable to extortion, kidnappings, sexual exploitation, forced labour and physical violence due to their precarious legal statuses. A report from Amnesty

⁷⁴ Krause and Williams, "Security and 'Security Studies,'" 7.

⁷⁵ McAuliffe and Khadria, *World Migration Report 2020*, 32; International Organization for Migration, "Missing Migrants Project," Data | Missing Migrants Project, accessed June 20, 2022, <https://missingmigrants.iom.int/data>.

International in 2010 indicates that 60% of women migrating irregularly from Mexico to the United States are sexually assaulted.⁷⁶ Moreover, 65% of detected trafficking victims in Western and Southern Europe are migrants.⁷⁷ Border enforcement and post-entry processes are where irregular migrants usually experience their first direct dehumanizing encounters with state securitization measures. In countries with safe third country agreements like Canada and the United States, for example, migrants arriving irregularly at an official border crossing are refused entry regardless of their personal situations while others entering outside of a crossing point are arrested and detained. The significant discretionary power accorded to border security officials often leads to ethnic profiling and discriminatory practices that are reinforced by state security discourses. Irregular migrants are placed in migrant detention centers, denied due process protections, given limited access to legal services, endure family separation and lack of access to basic social services, and are subjected to the constant threat of deportation.⁷⁸ The human rights and security of irregular migrants are generally ignored by states, or considered of lesser importance than those of the citizenry. This demarcation establishes a clear boundary between ‘us and them,’ creating a distinctive sense of otherness that fuels dehumanization and encourages migrant alienation.⁷⁹

These effects notably have important ethical implications. States develop security regulations that endanger the lives of irregular migrants, but that better protect their own populations. They engage in dehumanizing practices that violate migrant human rights, but implement security measures to guarantee that of their nationals. Is it reasonable to prioritize the security of nationals over irregular migrants in the contemporary international order? Can human lives be attributed separate values? Who decides which migrant lives have greater importance? Why are different groups of irregular migrants treated differently by the security institutions? State sovereignty cannot “justify unlimited human rights violations based on

⁷⁶ Vietti and Scribner, “Human Insecurity,” 26.

⁷⁷ UNODC, *Global Report on Trafficking in Persons 2020*, United Nations Publication, E.20.IV.3 (January 2021), accessed June 20, 2022, https://www.unodc.org/documents/dataand-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf, 4, 10.

⁷⁸ Vietti and Scribner, “Human Insecurity,” 27.

⁷⁹ Chebel d’Appollonia, *Immigration, Integration, and Security*, ”3, 6.

nationality,”⁸⁰ nor can it be used to legitimize differential treatments of migrants. Victim blaming by the state that is complicit in characterizing irregularity and its consequences is an equally reprehensible response to irregular migration.⁸¹ State securitization of irregular migration ultimately participates in the perpetuation of insecurity that is difficult to excuse in the modern globalized world order. Given the effects of securitization on irregular migrants and the questionable morality of state security measures, how can states account for their treatment of irregular migrants? How do they justify the security infrastructures implemented against irregular migrant flows?

Irregularity as a Theory

This research paper proposes irregularity as the theoretical framework for understanding the state rationalization of the securitization of migration. This framework emphasizes the role of the state in establishing which migrants are irregular migrants and in controlling differential migration security narratives. Irregularity is a condition that emerges from state practices; it is a set of effects, some of which may not be intended, that are generated by state migration security policies.

States produce irregularity through their threat narratives and overall objectives, creating the legislation, regulations and standards that establish who is irregular. Similarly to how securitization theory requires state actors to construct a credible threat, irregularity arises from states perpetuating the threat of irregular movements of people.⁸² Migrant irregularity is a legal status that implies a social relation to the state, making it a “pre-eminently political identity.”⁸³ Within their sovereign jurisdictions, states establish the rules that distinguish between regular and irregular migration status using policy

⁸⁰ François Crépeau and Delphine Nakache, *Controlling Irregular Migration in Canada Reconciling Security Concerns with Human Rights Protection* (Montreal, Qué: IRPP, 2006), accessed February 24, 2022, <https://irpp.org/research-studies/controlling-irregular-migration-in-canada/>, 5; 28.

⁸¹ Margaret E. Beare, “Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?” in *Illegal Immigration and Commercial Sex: The New Slave Trade* (London: Routledge, 2012), accessed February 24, 2022, https://doi-org.proxy.bib.uottawa.ca/10.4324/9780203044551_11-15, 39.

⁸² Vicki Squire, “Chapter 11: The construction and contestation of illegality,” in *Handbook on the Governance and Politics of Migration*, (Cheltenham, UK: Edward Elgar Publishing, 2021), accessed June 20, 2022, <https://doi.org/10.4337/9781788117234.00018>, 140.

⁸³ Nicholas P. De Genova, “Migrant ‘Illegality’ and Deportability in Everyday Life,” *Annual Review of Anthropology* 31, no. 1 (2002): 422, accessed June 20, 2022, <https://doi.org/10.1146/annurev.anthro.31.040402.085432>.

measures developed from national realities and priorities.⁸⁴ This means that irregularity can also be a condition that is produced as “an effect of the law” and is “sustained as an effect of discursive formation.”⁸⁵ The legal production of irregularity is therefore subject to sociopolitical transformative processes within states.⁸⁶ Migration management on irregular migration is dominated by the contextually-specific social, economic and political conditions of states, and the subjective decisions of their leaders, bureaucracy and security institutions. Irregularity is ultimately a “produced phenomenon,” rather than a grand strategy, that expresses the political responses of host states towards “unwanted migrants.”⁸⁷ The practical effects of this irregularity are that unwanted persons are deemed irregular, ultimately criminalizing their existence.

States exploit irregularity to exculpate differential treatment of risk. The politics of migration allow state actors to harness irregularity to create “exclusionary distinctions between desirable and undesirable migrants.”⁸⁸ This means that migrants subject to “processes of irregularisation” are considered socially and politically “illegitimate,” and thus “criminal or culpable subjects.”⁸⁹ Designating certain groups of migrants as criminals diminishes their agency and dehumanizes them, reshaping their image from fellow humans in need of assistance to a distinct “other” that is deemed a threat to the collective security of the nation. Irregularity thus provides a medium through which states can provide differential policy treatments towards migrants, even within the category of irregular migration itself, that are supported by the citizen population, regardless of the negative effects on the migrants themselves. These differential treatments can also vary by migrant group type based on categorisations of risk, which

⁸⁴ International Organization for Migration, *Global Migration Indicators 2021*, 71.

⁸⁵ De Genova, “Migrant ‘Illegality’ and Deportability,” 431.

⁸⁶ De Genova, “Migrant ‘Illegality’ and Deportability,” 419.

⁸⁷ Squire, “Chapter 11: The construction and contestation of illegality,” 138.

⁸⁸ Vicki Squire, *The Contested Politics of Mobility: Borderzones and Irregularity* (New York: Routledge, 2011), accessed June 20, 2022, <https://doi.org/10.4324/9780203839829>, 3.

⁸⁹ Michael Strange, Vicki Squire, and Anna Lundberg, “Irregular Migration Struggles and Active Subjects of Trans-Border Politics: New Research Strategies for Interrogating the Agency of the Marginalised.,” *Politics (Manchester, England)* 37, no. 3 (2017): 245, accessed June 20, 2022, <https://doi.org/10.1177/0263395717715856>; Squire, *The Contested Politics of Mobility*, 4.

are routinely rooted in racialized hierarchies and processes.⁹⁰ States also use high-profile irregular migrant crises as a way to implement restrictive migration security measures that create exclusionary geographies that render irregular migrants more vulnerable. The sensationalist visibility and language of exceptionalism that emerges from crisis discourse allows states to rationalize the imposition of bureaucratic practices and differential security initiatives that infringe on migrant rights and extend state extraterritorial powers.⁹¹

The conceptual tools which emerge from the theory of irregularity are threefold: states develop security narratives based on domestic sociopolitical transformative processes, security narratives are used to rationalize the implementation of security practices which establish processes of irregularisation through links to criminality, and irregularity is produced from the state security narratives and practices which delegitimizes migrants, ultimately dehumanizing them and excusing their differential treatments.

To summarize, the theory of irregularity proposes that the securitization of irregular migration is a political technique of control that establishes security narratives through which irregularity is produced. Irregularity is both an intended and unintended set of outcomes generated by state migration and security practices. States construct irregularity through their security narratives, creating the rules and standards that decide who is irregular. They then use irregularity to explain differential treatment of risk, allowing the state to excuse the cantankerous effects of its security measures to its national population and the international community. Visibility and crisis discourse are used to create exceptional circumstances through which drastic security transformations can be justified. This paper will use irregularity as a theory through which to analyze specific occurrences of irregular migration in Canada to determine the methods used by the state to rationalize its security measures.

⁹⁰ Squire, "Chapter 11: The construction and contestation of illegality," 142, 144.

⁹¹ Alison Mountz, *Seeking Asylum: Human Smuggling and Bureaucracy at the Border* (University of Minnesota Press, 2010), accessed June 20, 2022, <http://www.jstor.org/stable/10.5749/j.cttv40b>, xvii.

Methodological Approach

How does the Canadian state justify security measures against migrants who enter Canada irregularly since 9/11? This paper's hypothesis is that the Canadian state rationalizes the implementation of restrictive migration security policies and practices by framing irregular migration as a security threat, creating a distinct 'other' migrant whose existence is dehumanized and criminalized. More specifically, the state constructs security narratives of exceptionalism that produce irregularity to excuse differential treatment of risk associated with the securitization of irregular migration flows during crises regardless of the detrimental effects of security measures on migrant security.

The case study analysis will focus on Canada because of the interesting contradictions that exist between its reputation as a world leader on multicultural immigration and human rights versus its highly regulated immigration and border security policies that aim to limit irregular migration flows.⁹² Although there are three main types of irregular migrants in Canada,⁹³ the paper will narrow the scope to focus on migrants who have entered the country clandestinely, since these are the migrants who typically receive the most media attention and are of bigger concern to the state. Canada's unique geography also means that irregular migrant entries are easier to record than in states with multiple highly porous land borders. From February 2017 to December 2021, for example, federal authorities ascertained that over 64,000 irregular migrants were intercepted entering Canada irregularly, 60,544 of which made refugee claims.⁹⁴ The paper will also focus on the period after 9/11, since this event represented a turning point in the security and migration management policies of Canada and the world.

⁹² Amelia Cheatham, "What Is Canada's Immigration Policy?" Council on Foreign Relations (August 3, 2020), accessed March 14, 2022, <https://www.cfr.org/background/what-canadas-immigration-policy>.

⁹³ Stephanie J. Silverman, "Irregular Immigration and Canada," *The Canadian Encyclopedia* (October 25, 2021), accessed March 14, 2022, <https://www.thecanadianencyclopedia.ca/en/article/irregular-immigration#:~:text=An%20irregular%20immigrant%20can%20refer>.

⁹⁴ Canada, "Irregular Border Crosser Statistics," Immigration and Refugee Board of Canada (March 4, 2022), accessed March 14, 2022, <https://irb.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx>; Canada, "Refugee Claims by Year," Immigration, Refugees, and Citizenship Canada (February 24, 2022), accessed March 14, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html>.

The paper will explore the discursive tools of justification employed by the Canadian state to rationalize its security measures against migrants who enter irregularly by examining three case studies. Each case study will scrutinize a different means of entering Canada irregularly (air, water and land) and will specifically look at incidents that received significant media attention. The first case study will consider migrants who travelled to Canada by air after 9/11 in the early 2000s. The second case study will explore the circumstances around the MV Sun Sea cargo ship that brought 492 Sri Lankan asylum seekers to Canada irregularly in 2010.⁹⁵ The final case study will survey the crisis at Roxham Road, which saw almost 9,000 migrants, most of them Haitian refugees, cross into Canada by foot from the United States in Summer 2017.⁹⁶ Using discursive analysis to review data from relevant ministerial statements, parliamentary debates, legislative documents, departmental mandate letters, memos and news articles, the examination of the case studies will show how the irregular migrant cases were discussed and framed by the state, what security practices emerged from these security narratives, and how irregularity was produced as a result. This will provide the paper with the discursive evidence to argue that the Canadian state engages in the production of irregularity during crisis events to further its security objectives. This elastic discourse analysis will trace changes in the linguistic schema of illocutionary speech acts, which act as securitization moves, and exhibit moments of transformation when migration issues are removed from “everyday politics and placed in the exceptional realm of security.”⁹⁷ Master signifiers are manifestations of the institutionalization of threat identification; they are words that are automatically associated with the “logic of danger” and thus decrease the need for “elaborate arguments on the

⁹⁵ Canadian Council for Refugees, “Sun Sea: Five Years Later,” (Canadian Council for Refugees, August 2015), accessed April 1, 2022, <https://ccrweb.ca/sites/ccrweb.ca/files/sun-sea-five-years-later.pdf>; Douglas Quan, “Five Years after the MV Sun Sea’s Arrival, Crackdown on ‘Irregular Arrivals’ Draws Praise, Scorn,” *National Post* (August 6, 2015), accessed April 1, 2022, <https://nationalpost.com/news/canada/five-years-after-the-mv-sun-sea-tory-crackdown-on-on-irregular-arrivals-still-going-strong>.

⁹⁶ Susan Ormiston, “How Thousands of Asylum Seekers Have Turned Roxham Road into a de Facto Border Crossing,” *CBC News* (September 29, 2019), accessed April 1, 2022, <https://www.cbc.ca/news/canada/the-national-roxham-road-immigration-border-1.5169249>; Clothilde Goujard, “More than 10,000 Asylum Seekers Came to Quebec in 2017,” *National Observer* (August 17, 2017), accessed April 1, 2022, <https://www.nationalobserver.com/2017/08/17/news/more-10000-asylum-seekers-came-quebec-2017>.

⁹⁷ Can E. Mutlu and Mark B. Salter, *Research Methods in Critical Security Studies: An Introduction* (Abingdon, Oxon: Routledge, 2013), 114-115.

‘securityness’ of specific cases.’⁹⁸ Research will be conducted by searching for master signifiers of security narratives, primarily through the use of key terms like “national security,” “terrorism,” “border protection” and “illegal migration.” The analysis will attempt to address a gap in the existing literature by exploring the discursive techniques used by the Canadian state to rationalize prioritizing state security objectives over migrant lives.

Canada: A Case Study Analysis

Canada is one of the world’s top destinations for international migrants, having received over 8 million migrants in 2020 which comprised 21% of its overall population share.⁹⁹ Canada is renowned globally for its multiculturalism, inclusivity and favorable stance on migration, which has led to the emergence of the idea of “Canadian exceptionalism” on immigration policy. Canadian exceptionalism is characterized by the unusually high admission of migrants on a per capita basis, consensus among the major political parties on the benefits of immigration, and significant public support for migration.¹⁰⁰ The premise of Canadian exceptionalism on migration is, however, challenged by irregular migration.¹⁰¹ Ironically, *legal* migration is a “cornerstone of Canada’s sense of exceptionalism,” and thus irregular migration is viewed as something that must be strictly regulated by the state.¹⁰² The Canadian government, as a result, expends considerable resources towards migration management, with a particular focus attributed to preventing irregular migration. The Parliamentary Budget Office estimated the total cost of irregular migrant flows to be almost \$400 million in 2019-2020, with the Canadian government spending

⁹⁸ Paul Roe, “Is Securitization a ‘Negative’ Concept? Revisiting the Normative Debate over Normal Versus Extraordinary Politics,” *Security Dialogue* 43, no. 3 (2012): 255. <https://doi.org/10.1177/0967010612443723>.

⁹⁹ Migration Policy Institute, “Top 25 Destinations of International Migrants,” (Migration Policy Institute July 22, 2021), accessed June 20, 2022, <https://www.migrationpolicy.org/programs/data-hub/charts/top-25-destinations-international-migrants>.

¹⁰⁰ Monica Boyd and Nathan T.B. Ly, “Unwanted and Uninvited: Canadian Exceptionalism in Migration and the 2017-2020 Irregular Border Crossings,” *American Review of Canadian Studies* 51, no. 1 (January 2, 2021): 95, accessed June 20, 2022, doi:10.1080/02722011.2021.1899743.

¹⁰¹ Boyd and Ly, “Unwanted and Uninvited,” 104.

¹⁰² Boyd and Ly, “Unwanted and Uninvited,” 96.

approximately \$14,000 per irregular migrant entering outside of official bordering crossings.¹⁰³ The 2019 federal budget announced an investment of \$1.18 billion over five years aimed at securing state borders and ameliorating the “asylum system” linked to irregular migration.¹⁰⁴ Canada’s strong stance against irregular migration is very closely linked to its understanding of migration as a security threat.

Canada adheres to a more traditional state-focused understanding of security. Bill C-59, the National Security Act of 2017, defines activities that endanger national security as anything which “undermines the sovereignty, security or territorial integrity of Canada or threatens the lives of the security of people in Canada” or of individuals connected to Canada.¹⁰⁵ Irregular migration thus fits under Canada’s definition of activities which endanger security. This explains why the Canadian state has implemented a national response to irregular migration that is reliant on three key steps by the state security infrastructure: interception by the Royal Canadian Mounted Police (RCMP), background security screenings by the Canada Border Services Agency (CBSA), and eligibility screening by CBSA and Immigration, Refugees and Citizenship Canada (IRCC).¹⁰⁶ The RCMP is responsible for enforcement along the border between ports of entry, while the CBSA monitors migration security at the ports of entry. Individuals caught entering Canada between ports are arrested by the RCMP or other local law authorities, and are taken to CBSA officers if they indicate their “intention to make an asylum claim.” CBSA officers will conduct interviews and background checks and decide whether persons are admissible to claim asylum under the *Immigration and Refugee Protection Act (IRPA)*. Admissible claimants regularize their legal status and become asylum seekers until the Immigration and Refugee Board of Canada (IRB) makes a decision on their refugee claim, while inadmissible claimants are

¹⁰³ Kathleen Harris, “Asylum Seekers Entering Canada Outside Legal Border Points Cost an Average of \$14K Each,” (CBC News, November 29, 2018), accessed June 20, 2022, <https://www.cbc.ca/news/politics/pbo-budget-officer-asylum-seekers-costs-1.4924364>.

¹⁰⁴ Canada, “Irregular Migration,” (Public Safety Canada, September 10, 2020), accessed June 20, 2022, <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200621/027b/index-en.aspx?wbdisable=true>.

¹⁰⁵ Canada, “Bill C-59 - First Reading - National Security Act, 2017,” Parliament of Canada, accessed December 18, 2021, [https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading, Part 5, 115 \(2\)](https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading, Part 5, 115 (2)).

¹⁰⁶ Canada, “Irregular Border Crossings – What Is Canada Doing?” (Immigration, Refugees and Citizenship Canada, February 5, 2020), accessed June 20, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/07/irregular-border-crossings--what-is-canada-doing.html>.

removed from Canada or detained.¹⁰⁷ This three-fold process is the core of Canada's security strategy on irregular migration. Unfortunately, it has faced significant pressures in recent years due to a high influx of irregular arrivals, which has led to the implementation of additional pre-frontier, border enforcement and post-entry security measures.

The Canadian state's understanding of irregular migration as a security threat and the mounting pressures on the security infrastructure caused by high volume of irregular movements of people have resulted in the augmentation of state securitization processes of irregular migration. The Canadian government increasingly participates in the construction of the narrative of the irregular migrant threat, while simultaneously promoting *legal* migration. The securitization of irregular migration in Canada is often linked to important migrant crises that provide an opportunity for the state to engage in the production of new forms of irregularity through framing practices with little regard for migrant security.

Post 9/11 Migration by Air

The securitization of irregular migration manifests primarily through the development of security narratives and restrictive security regulations, deriving from sociopolitical transformative state processes, that limit migration by air. Canada has 13 designated international airports and more than 500 other airports which process approximately 450,000 travellers every day.¹⁰⁸ In 2019, the CBSA processed 35.4 million air passengers from abroad.¹⁰⁹ That same year, Canada received more than 22 million international visitors, of which 47% were from overseas countries, and 8,120 asylum claims were made by international migrants arriving at an air port of entry.¹¹⁰ Migration by air remains the most common

¹⁰⁷ Canada, "Irregular Migration," Public Safety Canada.

¹⁰⁸ Canada, "Air passenger traffic at Canadian airports, annual," (Statistics Canada, 25 August 2021), accessed July 10, 2022, <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=2310025301>; Canada, *2018-19 Departmental Report* (Canada Border Services Agency, 2019), accessed July 10, 2022, <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2018-2019/report-rapport-eng.pdf>, 5.

¹⁰⁹ Canada, *2019-20 Departmental Report* (Canada Border Services Agency, 2020), accessed July 10, 2022, <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/dpr-rmr/2019-2020/report-rapport-eng.pdf>, 6.

¹¹⁰ Canada, "Travel between Canada and Other Countries, December 2019," *The Daily* (Statistics Canada, February 21, 2020), accessed July 10, 2022, <https://www150.statcan.gc.ca/n1/daily-quotidien/200221/dq200221b-eng.htm>.

method by which immigration to Canada occurs. And yet, since the 9/11 attacks, migration by air is subject to the strictest and most rigorous security legislation, regulations and enforcement processes. Irregular migration into Canada by air is extremely difficult due to these security measures, and usually only manifests via passengers arriving at ports of entry with fraudulent documents. This first case study will consider how the state framed migration by air immediately after 9/11 and the security policies that emerged from this securitization of irregular travel by air.

As a result of the terrorist attacks of September 11, 2001, which led to the deaths of 2,977 people after four hijacked planes crashed into the World Trade Center towers in New York City, the U.S. Pentagon and a field in Pennsylvania, border security policy in Canada underwent significant changes to address the new threat posed by terrorism in an increasingly global and mobilized world. More than 15 years after the Air India Flight 182 bombing, which remains the deadliest terrorist act in Canadian history, aviation security, and more specifically, security related to migration to Canada by aircrafts and through airports, became a serious security issue that has affected the way the Canadian state manages its borders and its migration policies. In the immediate aftermath of 9/11, a myth was spread by some American policymakers that the terrorists who perpetrated the attack had entered the United States irregularly by way of Canada.¹¹¹ Consequent investigations proved these allegations to be false, but the events and the myth encouraged Canadian authorities to implement stronger security measures, some requiring greater collaboration with the US, and more rigorous migration management to further secure the borders and ensure that grounds for such accusations would be eradicated.

The Liberal Chrétien government was extremely active in effectuating security measures to better regulate migration, particularly migration by air travel, as a result of 9/11. One of the most notable measures involved the creation of the Canadian Air Transport Security Authority (CATSA) in 2002. The

¹¹¹ Janice Kephart, "No 9/11 Hijackers Came through Canada, but That Doesn't Mean Canada Is Terrorist-Free" (Center for Immigration Studies, April 29, 2009), accessed July 10, 2022, <https://cis.org/Kephart/No-911-Hijackers-Came-Through-Canada-Doesnt-Mean-Canada-TerroristFree>.

CATSA is the federal Crown Corporation responsible for the “effective and efficient screening of air travellers and their baggage,” and it is mandated with securing the Canadian air transportation system. It is fully accountable to Parliament and is funded by parliamentary appropriations.¹¹² The Canada Border Services Agency (CBSA) was founded in 2003 and similarly emerged as a necessary security initiative following the events of 9/11.¹¹³ It is considered an integral part of the “public safety portfolio” and is the government authority responsible for the management of the “nation’s borders” through the enforcement of Canadian laws on trade, travel and immigration.¹¹⁴ The CBSA has over 16,000 employees and it notably operates in Canada’s international airports while simultaneously deploying officers to 39 international locations. CBSA officers conduct verification checks on everyone entering Canada from abroad, legislating the admissibility of people and goods across state borders, and removing those deemed inadmissible by existing laws.¹¹⁵ The *Immigration and Refugee Protection Act (IRPA)* is one of these structuring laws and is administered by the CBSA, in conjunction with IRCC, since it came into force in 2002. It remains the main legislative document that establishes the parameters for regulating immigration to Canada, and it also imposes security obligations to air carriers transporting foreign nationals to Canadian soil.¹¹⁶ Transporters that carry passengers to Canada must ensure that passengers carry the proper prescribed documentation for entry, are required to pay the costs associated with the removal of any inadmissible foreign national that they carried to Canada and are subjected to penalty fees for breaches to their security obligations.¹¹⁷ The Act is also responsible for introducing links between

¹¹² Canada, “About Us” (CATSA - ACSTA, December 9, 2021), accessed July 10, 2022, <https://www.catsa-acsta.gc.ca/en/about-us>; Canada, “The Government of Canada’s Response to the Terrorist Attacks of 9/11” (Public Safety Canada, December 2, 2015), accessed July 10, 2022, <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/sptmbr-11th/gvrmmnt-rspns-en.aspx>.

¹¹³ Canada, “The Government of Canada’s Response to 9/11.”

¹¹⁴ Canada, “CBSA - Mandate - What We Do,” (Canada Border Services Agency, March 31, 2021), accessed July 10, 2022, <https://www.cbsa-asfc.gc.ca/agency-agence/what-quoi-eng.html>.

¹¹⁵ Canada, “CBSA - Mandate - What We Do.”

¹¹⁶ Canada, “Transportation Company Obligations - Guide for Transporters” (Canada Border Services Agency, June 30, 2022), accessed July 10, 2022, <https://www.cbsa-asfc.gc.ca/trans/guide-eng.html>.

¹¹⁷ Canada, “Transportation Company Obligations.”

refugee-claimants and security risks, and for establishing more stringent ineligibility provisions to prevent the entry of security threats, as well as greater penalties on those found to assist irregular migration.¹¹⁸

A careful analysis of the legislation, parliamentary documents and media reports from the time when these security measures were implemented in the aftermath of 9/11 demonstrates that the state developed a strong narrative embossed with the language of security and exceptionalism to justify these new policies and to prevent irregular migration via aircraft. The 2001 budget, which was published only two months after the 9/11 attacks, best represents the rhetoric adopted by the Canadian government to justify the adoption of new security measures in civil aviation and border security. The budget lists “enhancing security for Canadians” as one of the four priorities of government, and announces \$2.2 billion over five years to fund “air security” and \$1.2 billion for “strengthening border security.”¹¹⁹ The screening of entrants to Canada is a significant part of the budget, with \$1 billion in expenditures allocated to this task, and much of this text emphasizes the importance of providing resources to prevent irregular entry by way of fraudulent documentation and to ensure the quick detention and removal of individuals who “try to enter the country illegally” or “pose security risks.”¹²⁰ “Refugee claimants” in particular receive an inordinate amount of attention throughout the section of the budget dedicated to ameliorating security. The budget repeats the importance of preventing the exploitation of the refugee determination system by “would-be terrorists” and posits enhanced security screening as the method by which to detect this “security threat.”¹²¹ This language of security is used profusely throughout the document, perhaps most evidently when referencing the “new national security measures” outlined in the text and when depicting “protecting citizens, their property and their way of life from external threats” as

¹¹⁸ NPZ Law Group, “What Is Canada’s Immigration and Refugee Protection Act?” (NPZ Law Group), accessed July 10, 2022, https://visaserve.com/lawyer/2020/01/17/Canada-Immigration-Blog/What-Is-Canada%E2%80%99s-Immigration-and-Refugee-Protection-Act_bl39351.htm.

¹¹⁹ Canada, *Budget Plan 2001*, (Department of Finance, 2001), accessed July 10, 2022, <https://budget.gc.ca/pdfarch/budget01/pdf/bpe.pdf>, 13-15.

¹²⁰ Canada, *Budget Plan 2001*, 98.

¹²¹ Canada, *Budget Plan 2001*, 98.

one of the fundamental functions of government.¹²² The 2001 budget also references the “legacy of September 11” and its corresponding “sense of insecurity” to situate the circumstances around the implementation of its exceptional security initiatives.¹²³ Refugee claimants and others who attempt to enter illegally and circumvent the immigration system are linked to terrorism and portrayed as security threats. The 2001 budget clearly exemplifies the securitization moves employed by the state to transform the security narrative on irregular migration.

This is also observed in the language used in the *IRPA* objectives; the Act intends to “maintain the security of Canadian society” and “promote international justice and security [...] by denying access to Canadian territory to persons who are criminals or security risks.”¹²⁴ Similarly, the CBSA’s first *Report on Plans and Priorities to Parliament* in 2004 emphasizes vigilance “in preventing dangerous people and goods from entering Canada” and deterring “unlawful migration” by deploying “migration integrity officers” to intercept “illegal migrants” and “improperly documented travellers” attempting to enter Canada.¹²⁵ Parliamentary records of debates in the House of Commons in the weeks immediately following 9/11 demonstrate the presence of a push by opposition parties towards securing “borders and airports” from “professional terrorists” notably by ameliorating the “integrity of [the] refugee identification system” and penalizing “refugee claimants who break the law or people who enter [this] country illegally.”¹²⁶ Irregular migration was thus clearly framed using security language that enmeshed it into the security threat narrative, during a period when the state was experiencing sociopolitical changes caused by the exceptional circumstances surrounding the 9/11 attacks.

¹²² Canada, *Budget Plan 2001*, 94.

¹²³ Canada, *Budget Plan 2001*, 88.

¹²⁴ Canada, *Immigration and Refugee Protection Act*, (Department of Justice, November 1, 2001), accessed July 10, 2022, <https://laws.justice.gc.ca/eng/acts/i-2.5/20030101/P1TT3xt3.html>, 3(1).

¹²⁵ Canada, *Part III - Canada Border Services Agency Inaugural Report on Plans and Priorities*, (Canada Border Services Agency, 2007), accessed July 10, 2022, https://publications.gc.ca/collections/collection_2015/asfc-cbsa/PS35-4-2004-eng.pdf, 3-4; 31.

¹²⁶ Open Parliament, “Debates of Sept. 17th, 2001” (Open Parliament, October 17, 2001), accessed July 10, 2022, <https://openparliament.ca/debates/2001/9/17/jean-chretien-1/>, 11:25; 12:05; 12:20; 14:45.

The Conservative government of Prime Minister Stephen Harper, which was elected five years after 9/11, was particularly effective at using similar security discourse strategies to construct security narratives that suited government objectives on irregular migration. The Canadian government during this period established a discursive legacy of distrust which characterized irregular migrants, particularly refugee claimants, as security threats attempting to misuse and fool Canada's system.¹²⁷ The names of several legislative initiatives of the Canadian government during this period were quite representative of this position: *Preventing Human Smugglers from Abusing Canada's Immigration System Act*, the *Protecting Canada's Immigration System Act*, the *Faster Removal of Foreign Criminals Act*, and the *Zero Tolerance for Barbaric Cultural Practices Act*.¹²⁸ The government used security language to frame irregular migration as a security issue, and generated "distrust of the stranger" towards irregular migrants through these securitization processes, ultimately dehumanizing and ostracizing them within Canadian public opinion. This distrust was created by perpetuating three tropes on the motives behind irregular migration: economic migrants seeking to jump the immigration process, refugee claimants from safe third countries shopping for preferred health and social benefits, and migrants who exploit the legal immigration system to make their removal extremely lengthy and difficult. The government was especially efficient at quickly reacting to mediatized events involving irregular migrants to harness resultant sociopolitical transformative processes to justify dramatic policy changes.¹²⁹

As a result of the exceptional attention placed on air security since 9/11 and Canadian authorities framing irregular migration as a security risk, additional security measures were implemented to better regulate irregular migration by air that remain in place presently and persist in generating channels of irregularisation. Of note is the signing of the Beyond the Border Action Plan between Canada and the

¹²⁷ Peter J. Carver, "A Failed Discourse of Distrust Amid Significant Procedural Change: The Harper Government's Legacy in Immigration and Refugee Law," *Review of Constitutional Studies* 21, no. 2 (2016): 209, accessed July 10, 2022, <https://ualawccsprod.srv.ualberta.ca/wp-content/uploads/2019/08/PJCarver-21-2.pdf>.

¹²⁸ Carver, "A Failed Discourse of Distrust," 213.

¹²⁹ Carver, "A Failed Discourse of Distrust," 213-214.

United States in 2011, which expressly aimed to enhance the “legitimate flow of people” through a “perimeter approach to security and border.” Stated actions included deploying better screening equipment in airports, developing a system to share passenger manifest data, and establishing working groups to address irregular migration flows.¹³⁰ As part of its commitments to the Action Plan, the Canadian government announced in 2013 the elaboration of an electronic travel authorization (eTA) program to screen all visa-exempt foreign nationals against immigration and enforcement databases. The eTA program, which was officially implemented in 2016, was rationalized as a security measure that would “prevent those who are inadmissible [...] from travelling to Canada, while facilitating travel for low-risk individuals.”¹³¹ Visa policies have also changed significantly and additional restrictions were introduced, such that only 53 countries are visa-exempt compared to 76 in the 1980s.¹³² The eTA and strict visa regulations mean that every foreign national travelling to Canada by air, except Americans, must apply for documentation that confirms they have been minimally pre-screened before they can board a plane to Canadian soil.¹³³ This allows the Canadian state to maintain strict control over which migrant groups can travel to Canada with little media attention due to the distant remoteness of these security practices. When the state engages in exclusionary policies and differential treatments that create separate categories of migrants, these are justified using security narratives of threat risks for distant, invisible and dehumanized ‘others’ that are distinct from desirable migrants.

The effects of the 9/11 crisis on migration by air have been the production of a form of irregularity that emerges from extraterritorial security regulations and from the expiry of legally obtained visas and

¹³⁰ Canada, “Beyond the Border Action Plan” (Public Safety Canada, June 28, 2016), accessed July 10, 2022, <https://www.publicsafety.gc.ca/cnt/brdr-strts/bynd-th-brdr/ctn-pln-en.aspx>.

¹³¹ Canada Gazette, “Canada Gazette, Part I, Volume 147, Number 49: GOVERNMENT NOTICES” (Canada Gazette, December 7, 2013), accessed July 10, 2022, <https://gazette.gc.ca/rp-pr/p1/2013/2013-12-07/html/notice-avis-eng.html#d108>.

¹³² Canada, “Entry Requirements by Country or Territory” (Immigration, Refugees and Citizenship Canada), accessed July 10, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/entry-requirements-country.html#visaExempt>; David W. Grant, “Yankee Classic: US/Canadian Border Crossings 25 Years Ago,” *New England Today*, February 24, 2009, accessed July 10, 2022, <https://newengland.com/today/living/new-england-nostalgia/border-story-1984/>.

¹³³ “An Overview of Canada’s Visa History,” Canada eTA Online Travel Authorization Agency, accessed July 10, 2022, <https://canada-eta.co.uk/overview-canadas-visa-history/>.

permits, an irregularity that delegitimizes migrants and permits the state to engage in differential treatments. The extensive security measures implemented to prevent irregular migration by air have made it extremely difficult for migrants to enter Canada irregularly. The state distinguishes between desirable and undesirable migrants to establish the criteria for irregularity before migrants even set foot into Canada. Migrants are separated into exclusionary categories that limit their ability to legally travel to Canada by air based on perceived government risk levels. The government uses visa requirements to enforce the exclusion of undesirable migrants extraterritorially. It then uses the screening phases to further exclude migrants with unwanted characteristics that are thought to be a security risk. Unfortunately, ethnic, racial and religious profiling often occurs in such cases. This is also observed in the NEXUS programme, a joint Canada-United States initiative which allows “pre-approved, low-risk travellers” to enter either country quickly at designated ports of entry after having undergone a rigorous background security check process by both state authorities.¹³⁴ Through unnoticed but rigorous security measures that regulate processes of irregularisation, would-be irregular migrants are prevented from boarding planes that would carry them to a Canadian air port of entry, thus preventing their irregularity. The migrants who do arrive at an air port of entry irregularly are limited, invisible, and unspectacular. Most irregular migrants deriving from air modes of travel are thus only subject to processes of irregularisation that render them politically illegitimate once their visas or permits, the documents that are responsible for authorizing their presence in Canada, expire. These irregular migrants who overstayed their legal permissions therefore receive little visibility in media and political discourses because of the gradual and unspectacular nature of their irregularity.

Irregularity produced covertly, by processes of irregularisation deriving from state narratives and practices, delegitimizes and dehumanizes migrants into a distinct “other” that can be treated differently by

¹³⁴Canada, “Nexus,” (Global Affairs Canada, September 20, 2019), https://travel.gc.ca/travelling/documents/nexus?_ga=2.236113410.2061719496.1653859348-28906581.1653859348; Elizabeth Thompson, “Former Deputy PM Calls on Ottawa to Investigate U.S. Cancellations of Canadian Nexus Cards,” CBC News (CBC News, July 8, 2021), accessed July 10, 2022, <https://www.cbc.ca/news/politics/canada-us-nexus-manley-1.6093817>.

the state with little fear of electoral reprisals. This lack of visibility allows Canadian authorities to quietly impose security regulations that involve differential treatments of risk for different groups of migrants with little public opposition. This was namely the case in 2009 when the government imposed new visa requirements on persons from Mexico and the Czech Republic for being “system-abusers” by legally travelling to Canada and then making asylum claims upon arrival that were mostly refused or withdrawn.¹³⁵ Irregularity, in the case of air migration, is thus produced from the invisible, extraterritorial implementation of security measures that prevent unwanted persons from ever arriving on Canadian soil, and from the security discourses that result from unremarkable migrant overstays, all framed by treating the irregular migrants as threats to state security

MV Sun Sea

The securitization of irregular migration also manifests in the elaboration of security narratives that use sociopolitical effects of crises to frame irregular migrants as threats which then justifies the implementation of security practices that impose limitations on migration by water routes. Canada has 409 marine reporting sites, 10 cruise ship operations and 10 ferry terminals managed by the CBSA.¹³⁶ In 2019, Canada welcomed over 400,000 international overnight visitors, and 3.2 million travellers overall, into the country by water mode, most of them tourists on cruise ships.¹³⁷ On average, CBSA officers receive fewer than 50 asylum claims at marine ports of entry in a single year.¹³⁸ Maritime migration to Canada, while growing, remains limited. Irregular migration by sea has been highly mediatized by politicians and scholars over the last decade or so, notably due to the large volumes of migrants risking

¹³⁵ Teresa Healy and Stuart Trew, “The Harper Record 2008 – 2015,” *Policy File* (Canadian Centre for Policy Alternatives, 2015), accessed July 10, 2022, https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/10/The_Harper_Record_2008-2015.pdf, 160.

¹³⁶ Canada, *2019-20 Departmental Report*, 6.

¹³⁷ Canada, *2019-20 Departmental Report*, 6; “Tourism Snapshot Q4 2019 - December 2019,” Destination Canada, November 2019, accessed July 10, 2022, https://www.destinationcanada.com/sites/default/files/archive/1133-Tourism%20Snapshot%20-%20December%202019/TourismSnapshot-2019-Q4_EN%20%20-%20FOR%20PUBLICATION.pdf, 3.

¹³⁸ Canada, “Asylum Claims by Year – 2018” (Immigration, Refugees and Citizenship Canada), accessed July 10, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2018.html>.

their lives attempting to reach European mainland by way of the Mediterranean Sea. Authors such as Natalie Klein, Guy S. Goodwin-Gill, and Violeta Moreno-Lax have explored the many facets of irregular maritime migration and elaborated on its relationship with the state, security and human rights.¹³⁹ Alison Mountz has been especially active in connecting this work to how Canada specifically has dealt with irregular migration at a micro-level using studies of bureaucratic practices towards maritime smuggling channels.¹⁴⁰ Due to its geographic position surrounded by oceans and with only one long, shared border with the United States, Canada has remained mostly aloof from the tense conversations around migration by sea that have festered in the West since the 2015 European migrant crisis. Canada has, nonetheless, had its own sensationalist events over maritime irregular migration that significantly affected state security policies. The second case study will evaluate how the state framed irregular migration following the arrival of the MV Sun Sea cargo ship in 2010 and the security measures that emerged from this securitization of maritime migration.

On August 13, 2010, the MV Sun Sea arrived at a naval base near Victoria in British Columbia after over three months at sea. The cargo ship contained 492 people, of which 380 were men, 63 were women and 49 were children.¹⁴¹ Reports indicated that passengers paid smugglers between \$20,000 and \$40,000 to board the ship from Thailand for Canada. Shortly after departure, the smugglers abandoned the ship and left passengers to fend for themselves with little food supply. Conditions on the ship were horrific, and one passenger died and never made it to Canada.¹⁴² The passengers on the Sun Sea derived

¹³⁹ Natalie Klein, "A Case For Harmonizing Laws On Maritime Interceptions Of Irregular Migrants," *The International and Comparative Law Quarterly* 63, no. 4 (2014): 787–814, <https://doi.org/10.1017/S0020589314000360> ; Violeta Moreno-Lax and Efthymios Papastavridis, eds, *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach* (Leiden, The Netherlands: Brill | Nijhoff, 21 Nov. 2016), doi: <https://doi-org.proxy.bib.uottawa.ca/10.1163/9789004300750> ; Guy S. Goodwin-Gill, "The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement," *International Journal of Refugee Law* 23, no. 3 (2011): 443–57, <https://doi.org/10.1093/ijrl/eer018>.

¹⁴⁰ Mountz, *Seeking Asylum*, xvii.

¹⁴¹ Canadian Council for Refugees, "Sun Sea: Five Years Later," 1-2.

¹⁴² Douglas Quan, "Five Years after the MV Sun Sea's Arrival, Crackdown on 'Irregular Arrivals' Draws Praise, Scorn," National Post (National Post, August 6, 2015), <https://nationalpost.com/news/canada/five-years-after-the-mv-sun-sea-tory-crackdown-on-on-irregular-arrivals-still-going-strong> ; Bellissimo Law Group, "10 Years On: Remembering Sun Sea, the Ship That Changed Canada's Immigration Laws," Bellissimo Law Group, August 14, 2020, <https://www.bellissimolawgroup.com/10-years-on-remembering-sun-sea-the-ship-that-changed-canadas-immigration-laws> ; Stewart Bell, "MV Sun Sea: Newly Declassified Document Shows the 'Horrible' Voyage of the MV Sun Sea," National Post (National Post, March 25, 2013), <https://nationalpost.com/news/canada/from-port-to-port-newly-declassified-document-shows-the-horrible-voyage-of-the-mv-sun-sea>.

from Sri Lanka, which had been in a violent 25-year civil war until the Liberation Tigers of Tamil Eelam (LTTE), or Tamil Tigers, were defeated in May 2009. Most of the passengers on the Sun Sea identified as Tamil and sought refuge from the Sri Lankan government and its human rights abuses against ethnic Tamil civilians. They all made refugee claims upon arrival in Canada.¹⁴³ Five years later, only 228 of the refugee claims had been accepted, and 116 were rejected, resulting in a refugee “acceptance rate of about 63%.” An additional 26 passengers had been deported for inadmissibility due to criminal histories, and 11 were found to have links to the designated terrorist group Tamil Tigers.¹⁴⁴ The Canadian government spent millions of dollars fighting to keep passengers detained and to prevent their recognition as refugees,¹⁴⁵ and adopted a negative discourse which vilified the smuggled migrants. The events leading up to and after the arrival of the MV Sun Sea had serious impacts on how the public perceived irregular migration and allowed the Canadian state to enact strong security measures to further regulate migration and borders that persist more than a decade onwards.

A review of departmental reports, ministerial statements and media records about the MV Sun Sea in the early 2010s clearly exhibits that the state framed irregular migration through the lens of security threat to transform irregular migration into a security issue and justify the adoption of a hard stance against irregular migration that would deter further irregular arrivals. This language of security allowed the state to demonize and dehumanize the migrants in the court of public opinion, thus creating an exceptional space through which the state could justify the implementation of new security policies against irregular migration by sea. The security threat discourse adopted by the Canadian government is perhaps best exemplified by the CBSA documents and directives that were issued in relation to the MV Sun Sea. Briefing documents indicate that, in July 2010, Canadian authorities were already aware of the

¹⁴³ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 1-2.

¹⁴⁴ Quan, “Five Years after the MV Sun Sea’s Arrival” ; Canadian Council for Refugees, “Sun Sea: Five Years Later,” 10.

¹⁴⁵ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 17.

approaching ship and a decision was made to use it to “create a deterrent for future arrivals.”¹⁴⁶ A memo sent to CBSA officials in British Columbia prior to the Sun Sea’s arrival in Canadian waters titled *Marine Migrants: Program Strategy for the Next Arrival* shows how officers were encouraged to “use all legal means” to detain passengers, make them inadmissible and argue against their recognition as refugees. CBSA senior management and “partner agencies” encouraged officers to ensure the irregular arrivals were detained on identity grounds and encouraged to use the Federal Court to challenge release orders by the IRB.¹⁴⁷ The reasoning behind these directives was heavily influenced by the state’s adherence to a security framework which views irregular migration as a security threat, and a means by which terrorists could cross state borders. The CBSA directives clearly hold indicators of the securitization moves adopted by the state to shift the narrative on the arrival of the MV Sun Sea migrants from a standard, everyday migration event towards a terrorist security dilemma that can only be resolved through extraordinary measures.

This is also reflected in the September 2010 CBSA report titled *Preliminary Analysis of the MV Sun Sea Migrants’ Interview Notes*, which notably lists “suspected LTTE members on ship” as the primary detected trend from the over 4,500 pages of interviews with Sun Sea passengers, and remarks that there were indications of terrorist propaganda on board.¹⁴⁸ This language remains present in another CBSA report written in January 2011, and declassified partially in 2013, titled *Sun Sea Human Smuggling Operation*, which used interviews with passengers of the MV Sun Sea to “demonstrate that the arrival of the Sun Sea [...was...] the result of an organized human smuggling operation, with probably affiliations with the LTTE [Tamil terrorist group].” Parts of the report remain classified for “national security” reasons, but the little that was made available demonstrate efforts to examine the “affiliations with the Sri

¹⁴⁶ Quan, “Five Years after the MV Sun Sea’s Arrival.”

¹⁴⁷ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 3-4.

¹⁴⁸ Canada, *Preliminary Analysis of MV Sun Sea Migrants’ Interview Notes*, National Post (Canada Border Services Agency, September 2010), accessed July 10, 2022, <https://nationalpost.com/wp-content/uploads/2011/02/mvsunsea.pdf?thumborclient=nationalpost>, 2.

Lankan rebel group known as the LTTE.”¹⁴⁹ These departmental records clearly exhibit how the rhetoric on security and migration of the Canadian political authorities during this period percolated down and initiated domestic sociopolitical transformations that influenced on-the-ground practices by the bureaucracy and security infrastructure on migration.

The Canadian Conservative government of 2010 was extremely direct and verbose in expressing its position on the exceptional circumstance of irregular maritime migration, and clearly adopted a language of security that allowed it to engage in securitization moves that excused its vilification and dehumanization of the migrants. In a speech to reporters four days after the arrival of the MV Sun Sea, Prime Minister Harper admonished the “abnormal arrival” of the ship and emphasized the related “significant security concerns” it created. He added that the government would strengthen laws since it is a “fundamental exercise of sovereignty” to be “responsible for the security of [state] borders and the ability to welcome people or not.”¹⁵⁰ Similarly, the Federal Public Safety Minister at the time released a statement which called the passengers “suspected human smugglers and terrorists” that sought to “[abuse] Canada’s refugee system,” and emphasized that smugglers were “watching Canada’s response to judge whether or not they can continue to take advantage of us.”¹⁵¹ A former Canadian High Commissioner to Sri Lanka presented a clear distinction between “genuine refugees” and the ship’s passengers, essentially repeating government logic which “fractioned the refugee label into two categories of refugee claimants,” genuine refugees and irregular arrivals.¹⁵² The Canadian state thus presented the irregular migrants as a

¹⁴⁹ Bell, “MV Sun Sea: Newly Declassified Document.”

¹⁵⁰ CBC News, “Tamil Ship Could Lead to Law Change: Harper,” CBC News (CBC News, August 17, 2010), accessed July 10, 2022, <https://www.cbc.ca/news/politics/tamil-ship-could-lead-to-law-change-harper-1.882589>.

¹⁵¹ Tamil Guardian, “10 Years Later MV Sun Sea’s Tamil Refugees Continue to Be Failed by Canada,” (Tamil Guardian, September 7, 2020), accessed July 10, 2022, <https://www.tamilguardian.com/content/10-years-later-mv-sun-sea%E2%80%99s-tamil-refugees-continue-be-failed-canada%C2%A0>; Petti Fong, “Canadian Officials Board Tamil Ship,” Toronto Star (Toronto Star, August 13, 2010), accessed July 10, 2022, https://www.thestar.com/news/canada/2010/08/13/canadian_officials_board_tamil_ship.html.

¹⁵² Quan, “Five Years after the MV Sun Sea’s Arrival.”; Corey Robinson, “Managing ‘Mass Marine Migrant Arrivals’: The Sun Sea, Anti-Smuggling Policy And The Transformation Of The Refugee Label,” PhD Dissertation (York University, December 2020), accessed July 10, 2022, https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/38210/Ranford-Robinson__Corey_J_2020_PhD.pdf?sequence=2&isAllowed=y, 125.

security threat through its possible affiliations with Tamil terrorists and encouraged mistrust and suspicion by implying that the Sun Sea passengers were attempting to abuse Canadian generosity.

This language of security was replicated in media outlets, resulting in the propagation of negative discourses on migrants that fostered anti-migration sentiments within society as escalated media coverage heightened fears and tensions. Recounting the events of the Sun Sea ten years on, the Tamil Guardian describes the Canadian press as having participated in a “campaign of fear-mongering.”¹⁵³ The Globe and Mail published editorials that claimed the MV Sun Sea exposed gaps in Canada’s “ability to deter terrorists and people-smugglers” while the Toronto Star implied that the Sun Sea was a means by which the Tigers network could rebuild their “political and fundraising bases so that they can fight another day.”¹⁵⁴ The Ottawa Sun published a particularly vicious article suggesting that the passengers of the MV Sun Sea were not migrants, but rather “queue jumpers, scam artists, back-door home invaders, plus a terrorist or two.”¹⁵⁵ This constant negative portrayal by both state authorities and the media over the following years participated in the demonization and dehumanization of the Sun Sea migrants and diminished public support for refugees while increasing xenophobic sentiments against irregular migrants. This dehumanization allowed the Canadian government to rationalize the implementation of new strict security policies to better regulate irregular migration.

Having framed the MV Sun Sea as a crisis requiring exceptional measures to limit the irregular arrival of “bogus refugees,” the Canadian government had the political and public support it needed to justify the creation of new security initiatives on irregular migration that produced channels of irregularisation. In October 2010, Bill C-49, the *Preventing Human Smugglers from Abusing Canada's Immigration System Act* was tabled with the objective of increasing criminal and civil penalties on human

¹⁵³ Tamil Guardian, “10 Years Later.”

¹⁵⁴ The Globe and Mail, “Globe Editorial: Keeping a Lookout for Tigers” (The Globe and Mail, August 11, 2010), accessed July 10, 2022, <https://www.theglobeandmail.com/opinion/editorials/keeping-a-lookout-for-tigers/article1376911/>; Canadian Council for Refugees, “Sun Sea: Five Years Later,” 2; Fong, “Canadian Officials Board Tamil Ship.”

¹⁵⁵ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 16.

smugglers and limiting abuses of the Canadian refugee system. Bill C-49 notably introduced the concept of “irregular arrivals” for groups of 10 or more persons arriving in Canada without prior authorizations, and proposed a retroactive amendment that would allow persons designated as “irregular arrivals” by the minister to be subject to mandatory detentions while waiting for their refugee claim hearings. These irregular arrivals, legally termed “Designated Foreign Nationals,” were coined such according to section 20.1 of *IRPA* if their identities were “unlikely to be ascertained in a timely manner” or if it was “suspected that their arrival was facilitated by human smuggling.”¹⁵⁶ Designated Foreign Nationals were barred from appealing a rejected refugee claim, and those attributed refugee status were to be subject to a 5-year ban on applying for permanent residence, a rule which remains in place presently. While the Act was not enacted prior to the 2011 election, it was re-introduced and became law in 2012 as Bill-C-31, *Protecting Canada's Immigration System Act*.¹⁵⁷ The Canadian state thus used the crisis of the MV Sun Sea to rationalize amendments to Canada’s migration management policies that gave the government “extraordinary new powers” that limited the basic human rights of the delegitimized irregular migrants.¹⁵⁸ This response coincided with extraterritorial initiatives against human smuggling, particularly through international cooperation with Pacific states like Thailand and Australia, regardless of the effects on the migrants, and contributed to a “profound shift in Canada’s attitude to refugees.”¹⁵⁹

The effect of the MV Sun Sea crisis was the production of a new form of irregularity that delegitimizes the presence of migrants who need protections by favoring security imperatives that exculpate differential treatment. The Canadian state’s smear campaign against the Tamil passengers encouraged the vilification and ostracism of the migrants. The new security regulations, particularly the decision not to grant permanent residency, made it difficult for many of the migrants to get jobs, visit

¹⁵⁶ Carver, “A Failed Discourse of Distrust,” 214; Quan, “Five Years after the MV Sun Sea’s Arrival.”

¹⁵⁷ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 12; Carver, “A Failed Discourse of Distrust,” 215.

¹⁵⁸ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 1.

¹⁵⁹ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 14; 1.

their families abroad and to integrate their communities. Kirushna Kumar Kanagaratnam, one of the passengers on the MV Sun Sea whose refugee claim had been denied, was the victim of a Toronto serial killer in 2015 while hiding from immigration authorities, and his body was only discovered three years later.¹⁶⁰ At least one passenger who was deported was tortured and killed upon return to Sri Lanka.¹⁶¹ The consequences of the new security measures on irregular migrants were of little significance to Canadian authorities and the general public; the dehumanization of “boat migrants” through links to terrorism and criminality made the irregular migrants of the MV Sun Sea a distinct, illegitimate ‘other’ that could be treated differently from other migrants due to their perceived higher security risk levels.¹⁶² Processes of irregularisation emerged from the spectacular display and visibility of the migrant arrivals via irregular maritime channels. Despite representing only 0.1% of the total refugees who applied for asylum that year,¹⁶³ the arrival of these unwanted boat migrants drew enough discursive attention to drive sociopolitical transformative processes within the state that led to the criminalization of their existence. Irregularity was produced through the elaboration of a highly visibly crisis discourse based in security narratives that framed flows of irregular migration by sea as threats to state security.

Roxham Road Crossing

The securitization of irregular migration also manifests through the development of state-framed security narratives on irregular migration by land that transform migration into an exceptional security issue to rationalize the development of security measures that limit irregular migration. Canada shares an 8,891-kilometer long border with the United States of America that is commonly referred to as the world’s “longest undefended border,” primarily due to the absence of military enforcement between the

¹⁶⁰ Tamil Guardian, “10 Years Later;” Michelle McQuigge, “Latest Victim of Alleged Serial Killer Bruce McArthur Led Lonely Life, Friends Say,” Global News (Global News, April 17, 2018), accessed July 2022, <https://globalnews.ca/news/4150805/kirushna-kumar-kanagaratnam-bruce-mearthur-case/>.

¹⁶¹ Canadian Council for Refugees, “Sun Sea: Five Years Later,” 17.

¹⁶² Quan, “Five Years after the MV Sun Sea’s Arrival.”

¹⁶³ Fong, “Canadian Officials Board Tamil Ship.”

countries.¹⁶⁴ More than two-thirds of all international travellers to Canada arrive from the United States, and the majority enter by car. The CBSA processed more than 55 million land travellers in 2019.¹⁶⁵ With only 117 land border crossings and 26 rail sites, however, much of the border remains unprotected and people can travel across the boundary outside of legal points of entry.¹⁶⁶ In 2019, the CBSA received over 20,000 asylum claims at land ports of entry, of which 16,503 were interceptions by the RCMP between legal ports.¹⁶⁷ Approximately 26% of all asylum claims are therefore made at unofficial land crossings, and most irregular entries into Canada are by land.¹⁶⁸ Since 2017, about 20,000 migrants per year enter Canada irregularly.¹⁶⁹ Perhaps most interestingly, 92% of irregular migration into Canada between November 2021 and May 2022 was made at the unofficial Roxham Road crossing in Quebec, with about 100 people passing through every day.¹⁷⁰ This final case study will argue about how the state framed the crisis at the Roxham Road crossing in Summer 2017 and the security measures that emerged from the securitization of irregular migration between land ports of entry.

In July and August 2017, Canada experienced a surge in irregular migration as more than 9,000 people entered the country from New York state by way of Roxham Road near the small municipality of Saint-Bernard-de-Lacolle.¹⁷¹ With approximately 250 irregular migrants using Roxham Road per day during this period, a temporary camp capable of accommodating 1,200 asylum seekers was built by the Canadian army near the road, provisional housing centres were opened in Montreal, and nearby parking

¹⁶⁴ Efrat Arbel, “The Shifting Landscape of the Canadian Border and the Politics of Refugee Exclusion,” Faculty of Law Blogs (University of Oxford, January 27, 2014), accessed July 10, 2022, <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2014/01/shifting>.

¹⁶⁵ Canada, “Travel between Canada and other countries, December 2019;” Canada, *2019-20 Departmental Report*, 6.

¹⁶⁶ Canada, *2019-20 Departmental Report*, 6; Boyd and Ly, “Unwanted and Uninvited,” 100.

¹⁶⁷ Canada, “Asylum Claims by Year – 2019” (Immigration, Refugees and Citizenship Canada), accessed July 10, 2022, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2019.html>.

¹⁶⁸ Canada, *2020 Annual Report to Parliament on Immigration* (Immigration, Refugees and Citizenship Canada, 2020), accessed July 10, 2022, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/annual-report-2020-en.pdf>, 21.

¹⁶⁹ Christian Leuprecht, *The End of the (Roxham) Road: Seeking Coherence on Canada’s Border-Migration Compact* (Macdonald-Laurier Institute Publication, 2019), accessed July 10, 2022, https://macdonaldlaurier.ca/files/pdf/20191108_MLI_ROXHAM_ROAD_Leuprecht_PAPER_FWeb.pdf, 8.

¹⁷⁰ Radio-Canada, Mordus de Politique May 11 2022.

¹⁷¹ Ormiston, “How Thousands of Asylum Seekers Have Turned Roxham Road.”

lots were filled with supply trucks and mobile clinics.¹⁷² Migrants travelled to the border, often from Plattsburgh, by bus, taxi or shuttle and derived primarily from Haiti.¹⁷³ As a result of the Trump administration's termination of the temporary protected status which had been granted to Haitians following the 2010 earthquake, waves of migrants sought asylum in Canada.¹⁷⁴ However, due to restrictive visa policies on air travel and the Safe Third Country Agreement (STCA), they could only do so by entering Canada irregularly. The STCA between Canada and the United States, implemented in 2004, aims to reduce "asylum shopping" by forcing asylum seekers to request refugee protection in the first safe arrival country.¹⁷⁵ Since the agreement only applies at designated land ports, an effect of this agreement has been to push prospective refugee claimants towards irregular migration at unofficial land crossings to avoid being returned to the United States.¹⁷⁶ More than 90% of all irregular migrants to Canada in 2017 arrived through the Roxham Road crossing, and about two-thirds of these migrants entered the United States "legally on a visa for the sole purpose of making their way to Canada." Quebec experienced a 230% increase in irregular migration due to migrant flows from the United States through Roxham Road during Summer 2017,¹⁷⁷ which led to a hardening of Canadian attitudes towards immigration and refugees. The immigration backlogs, the low rates of refugee claim acceptance, and the strain on public resources generated by Roxham Road migrant entries added to the narrative that these irregular migrants were "illegal" and a burden to Canada's refugee system.¹⁷⁸ Municipal, provincial and federal governments argued over funding costs and settlement responsibilities for the migrants, and political and public opinion was increasingly unfavorable towards irregular migration. The surge in

¹⁷² Goujard, "More than 10,000 Asylum Seekers Came to Quebec in 2017."

¹⁷³ Boyd and Ly, "Unwanted and Uninvited," 103; Kathleen Harris, "Nearly Half of Illegal Border-Crossers into Canada Are from Haiti," CBC News (CBC News, November 22, 2017), accessed July 10, 2022, <https://www.cbc.ca/news/politics/haiti-border-crossers-canada-irregular-1.4414781>.

¹⁷⁴ Harris, "Nearly Half of Illegal Border-Crossers into Canada Are from Haiti."

¹⁷⁵ Boyd and Ly, "Unwanted and Uninvited," 99.

¹⁷⁶ Boyd and Ly, "Unwanted and Uninvited," 100; Audrey Macklin and Joshua Blum, *Country Fiche – Canada* (ASILE Project, January 2021), accessed July 10, 2022, https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_CANADA_Final_Pub.pdf, 4.

¹⁷⁷ Leuprecht, *The End of the (Roxham) Road*, 4.

¹⁷⁸ Boyd and Ly, "Unwanted and Uninvited," 104.

irregular arrivals at the Roxham Road crossing in Summer 2017 has been the foundation for much of the contemporary public and political discourse around irregular migration in Canada and has allowed the state to implement additional security measures to control irregular migration at Canada's land borders.

An examination of ministerial statements, parliamentary records and poll data about the Roxham Road crossings in 2017 reveals that the Canadian state adopted a security discourse which framed irregular migration as a security threat by emphasizing the illegality of irregular land border crossings, ultimately dehumanizing irregular migrants through linkages to processes of irregularisation and criminality. The state was thus able to use this exceptional crisis and the delegitimization of the migrants to rationalize the implementation of new migration management policies at its land borders. Indicators of securitization moves are easily observed in Prime Minister Trudeau's remarks on asylum seekers in August 2017, where he repeated that while Canada welcomes migrants, it is also a "country based on laws" where rules must be followed and enforced to "protect our citizens" and "keep our communities safe."¹⁷⁹ The speech underlined that irregular migrants would not be advantaged for entering irregularly, reiterating the trend in Canadian politics to posit irregular migrants as bogus refugees and queue jumpers, and this was mirrored in the public information campaigns launched by the government in migrant origin countries to discourage unofficial entry as a "free ticket to Canada."¹⁸⁰ Minister of Public Safety Ralph Goodale reiterated a similar dialogue by highlighting the government's "commitment to take the law and integrity of [the] border seriously" when providing refuge to asylum seekers.¹⁸¹ The speeches clearly demonstrate attempts by the state to push a narrative which frames the Roxham Road migrants as security threats through linkages to lawlessness, irregular channels of entry and criminality.

¹⁷⁹ Canada, "Prime Minister Trudeau Delivers Remarks about Canada's Action on Asylum Seekers" (Prime Minister's Office, August 23, 2017), accessed July 10, 2022, <https://pm.gc.ca/en/videos/2017/08/23/prime-minister-trudeau-delivers-remarks-about-canadas-action-asylum-seekers>.

¹⁸⁰ Ormiston, "How Thousands of Asylum Seekers Have Turned Roxham Road."

¹⁸¹ Canada, "Speaking Notes for the Honourable Ralph Goodale...National Fall Consultation," (Public Safety Canada, December 1, 2017), accessed July 10, 2022, https://www.canada.ca/en/public-safety-canada/news/2017/12/speaking_notes_forthehonourablerralphgoodaleministerofpublicsafet.html.

This security language was also reflected in Budget 2018, which proposed \$173.2 million to “support security operations” related to irregular migration at the land border.¹⁸² While the term “illegal” was rarely used to refer to irregular migrants after 2018, it was initially used by the Trudeau government during question periods and committee meetings before the label “irregular” was adopted.¹⁸³ This is rather indicative of the rhetoric developed by Canadian authorities; the state presented itself as welcoming towards migration by complying with the technical terminology of international organizations, but continued to treat irregular migrants as law-breakers in practice.

This state position on irregular migration was reflected in the political and public opinion that transformed the sociopolitical landscape following the Roxham Road crisis, but in a much more hostile and unfriendly manner. Political opinion on unauthorized land border crossings was divided on the appropriate state responses to the migrant crisis; the New Democratic Party and the Bloc Québécois called for the suspension of the STCA, while the Liberal Party in power wanted to adapt it and the Conservative Party argued for the closure of its “loophole.”¹⁸⁴ All Canadian political parties nonetheless agreed that Canada was experiencing a migrant crisis and that state action was needed to address it. Media reports during his period show that coverage was especially antipathetic, regularly showing images of travellers with large suitcases walking across the border towards tents to play into the image of queue jumpers and foster “substantial unease” over migrant flows.¹⁸⁵ Polls taken by the Angus Reid Institute and Ipsos in Summer 2017 indicate that Canadians were skeptical towards the legitimacy of irregular border crossers and the majority of respondents perceived irregular migrants as “attempting to skip the legal process.”¹⁸⁶ Results indicate that half of respondents believed there was substantial risk of criminals

¹⁸² Canada, *Budget 2018: Equality and Growth – A Strong Middle Class* (Department of Finance, February 27, 2018), accessed July 10, 2022, <https://www.budget.gc.ca/2018/docs/plan/budget-2018-en.pdf>, 211.

¹⁸³ Boyd and Ly, “Unwanted and Uninvited,” 105.

¹⁸⁴ Boyd and Ly, “Unwanted and Uninvited,” 111.

¹⁸⁵ Boyd and Ly, “Unwanted and Uninvited,” 104.

¹⁸⁶ Boyd and Ly, “Unwanted and Uninvited,” 105-106.

within the irregular border crossers, and 65% agreed that Canada had “too many people [...] to handle.” Federal government surveys and assessments similarly noted that Canadians were increasingly concerned with the integrity of Canadian borders and the legitimacy of irregular migrants at land crossings.¹⁸⁷ This political and public perception of the Roxham Road migrants as being illegitimate and unlawful migrants who posed a security threat contributed to the state enacting new security practices to better regulate migration by land.

With political and public sentiment towards irregular migration extremely low and increasing pressure for the state to enact concrete actions to address the Roxham Road crisis, the Canadian state could rationalize the implementation of new security measures to impose additional processes of irregularisation and further constrain migration by land. The state’s initial response was to establish the *Asylum Seeker Influx – National Strategic Response*, which was developed to enable efficient and coordinated security responses between federal and provincial partners to sudden influxes of irregular arrivals at the Canada-U.S. land border.¹⁸⁸ Other state responses over the following two years consisted of “ad hoc arrangements” by bureaucrats rather than major policy changes. The significant legislative transformations appeared in early 2019, ahead of the election.¹⁸⁹ In its omnibus budget bill C-97, which received Royal Assent in June 2019, the Canadian state notably amended *IRPA* to bar access to the “normal refugee system” for persons who have made asylum claims in countries that have an information sharing agreement with Canada, commonly referred to as the Five Eyes nations (comprised of the US, UK, Australia, Canada, and New Zealand). As a result of this amendment, affected asylum claimants, primarily those arriving from the United States irregularly, are only eligible for a pre-removal risk assessment to determine whether it is safe to return them to their homeland rather than a full independent

¹⁸⁷ Boyd and Ly, “Unwanted and Uninvited,” 107.

¹⁸⁸ Canada, “Irregular Border Crossings – What Is Canada Doing?”

¹⁸⁹ Boyd and Ly, “Unwanted and Uninvited,” 113.

hearing with the IRB.¹⁹⁰ Other changes to *IRPA* included restrictions on failed claimants to apply for other immigration permit categories for 12-months following a negative decision and the elimination of statutory timelines for claim eligibility assessments.¹⁹¹ Bill C-97 also announced substantial funding for enhanced law enforcement and the implementation of a “Border Enforcement Strategy” to intercept irregular migrants who try to “exploit” the immigration system. An official request was also made in 2019 by Canadian authorities to the United States to renegotiate the STCA.¹⁹² The Canadian state thus used the crisis at Roxham Road to establish security narratives which delegitimized migrants and provided justification for significant revisions to its migration security policies that allowed it to “cast a bigger net” through which to quickly disqualify irregular migrants from requesting asylum. The COVID-19 pandemic provided the state with an additional opportunity to further ignore its rights and obligations towards migrants by completely restricting irregular migration at land crossings.

The effect of the Roxham Road crisis on migration by land has been the production of a form of irregularity that is born from sensationalist events that erode the Canadian social contract on migration, thus legitimizing the differential treatment of migrants. The sustainability of the Canadian migration system is dependent on the social contract that expects migrants to respect the rule of law and domestic security policies in exchange for welcomed admittance into the country.¹⁹³ The Canadian state adopted a language of security that questioned the legitimacy of irregular migrants crossing between legal ports of entry during the exceptional migrant waves of the Summer months and positioned them as ethically-ambiguous law breakers, queue jumpers and system abusers who present a risk to the security of the state, its migration system and the integrity of its borders. This framing was sustained by the laws and enforcement mechanisms which require the RCMP to arrest and detain all irregular border crossers upon

¹⁹⁰ Macklin and Blum, *Country Fiche – Canada*, 4; 10; Boyd and Ly, “Unwanted and Uninvited,” 113.

¹⁹¹ Michael Saray, “Irregular Migration - House of Commons Standing Committee on Public Safety and National Security: Budget Supplementary,” Public Safety Canada (Public Safety Canada, September 10, 2020), <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200621/027b/index-en.aspx?wbdisable=true>.

¹⁹² Boyd and Ly, “Unwanted and Uninvited,” 113-114.

¹⁹³ Leuprecht, *The End of the (Roxham) Road*, 27.

their irregular entry into Canada, and reinforced by discursive formations in media that were propelled by sociopolitical transformations. These processes of irregularisation allowed Canadian authorities to mark the Roxham Road migrants as undesirable, illegitimate and culpable subjects, ultimately dehumanizing them and creating a distinct “other” that could receive differential security treatment from the state. By questioning the legitimacy of the irregular migrants entering Canada irregularly via Roxham Road, the state implied that the crisis was rupturing the social contract and that exceptional actions were needed to rectify it. The practical effects of the produced irregularity have been the emergence of state security measures, namely those in Bill C-97, which criminalize the existence of unwanted migrants from the first moment they step into Canada. Irregularity was produced through the development of a highly visible, sensationalist crisis discourse based in security narratives that framed flows of irregular migration by land as exceptional security threats.

Differential Treatment of Risk

The thorough analysis of the three Canadian case studies demonstrates how the state uses spectacular and highly visible migrant crises to frame irregular migration as a security threat that can only be resolved through the implementation of exceptional security measures. These new security regulations produce new forms of irregularity that have negative effects on migrants that are rationalized to the population through discursive securitizing practices that link irregular migrants to criminality and lawlessness, ultimately dehumanizing and delegitimizing them politically and socially. This dehumanization allows states to exculpate the application of differential treatment for migrants it has decided are a bigger security risk. The “polysemic” nature of borders, the way that borders “never exist in the same way for individuals belonging to different social groups,” is especially evident during these exceptional crises; borders are built to discriminate and provide differential experiences of security to different people.¹⁹⁴

¹⁹⁴ Étienne Balibar. *Politics and the other scene* (London: Verso, 2002), accessed August 1, 2022, https://construcciondeidentidades.files.wordpress.com/2014/09/etienne_balibar_politics_and_the_other_scene.pdf, 79, 81-83.

Unfortunately, differential treatment of risk means that the state can shape migration management based on its security narratives and objectives with little oversight, merely through securitizing acts that label a particular migrant group as a significant security risk. Differential treatment can therefore be subject to racial, ethnic and religious profiling as political authorities and security professionals determine risk-levels of migrant groups. This was noted in the case study on post-9/11 migration by air, when visas were imposed on persons from the Czech Republic and Mexico after they were determined to be at bigger risk of overstaying and abusing the immigration system. Similarly, the case study on the MV Sun Sea demonstrated how the state used possible links between the Tamil passengers and terrorism to justify its vilification of the migrants, essentially basing its risk-assessment on ethnicity. Had the boat carried passengers from Australia or Europe, its migrants would likely have received a very different treatment from the government. The case study on Roxham Road exhibits comparative racial dynamics; these migrants are often of Haitian, Nigerian or Colombian origins and are portrayed as illegal and criminal queue-jumpers abusing Canadian generosity, such that persons deriving from all three countries now require visas to travel to and enter Canada. In contrast, Ukrainians fleeing the recent war have been granted emergency visas to provide quick access to Canadian airports so that they can claim asylum upon arrival, a double-standard which is difficult to uncouple from racially-based interpretations of risk. Additional research on the role of race, ethnicity and religion in shaping migration management policy and differential treatment by state security infrastructures would be beneficial for securitization discourse.

Conclusion

The research themes of this paper were centred around the following question: How does the Canadian state justify security measures against migrants who enter Canada irregularly since 9/11? This essay first explained the migration-security nexus and the tensions that arise between state security and migrant security on the securitization of migration. It then provided a detailed commentary on irregular migration that expounded on the three factors (territorial integrity, sovereignty, and political independence) that

explain why it is considered a security threat, and then discussed the three techniques of control (pre-frontier policies, border enforcement and post-entry processes) that states use to manage irregular migration. The effects of these security techniques on irregular migrants were then elaborated, which provided the foundational logic for the main research question and theoretical framework of this paper. From there, the theory of irregularity was developed and used to establish conceptual tools to better understand the processes surrounding the securitization of irregular migration, and applied to the analysis of three case studies on irregular entry into Canada of migrants by air, sea and land. The paper concluded with an acknowledgment of the role of race, ethnicity and religion in shaping differential treatment of risk within Canadian migration security management.

This essay has argued that the Canadian state rationalizes the implementation of restrictive migration security measures by framing irregular migration principally through the lens of security threat, creating a distinct 'other' migrant whose existence is dehumanized and criminalized. More specifically, the state constructs security narratives of exceptionalism that produce irregularity to excuse differential treatment of risk associated with the securitization of irregular migration flows during crises regardless of the detrimental effects of security measures on migrant security. This argument has been substantiated by the case study analysis of three significant incidents of irregular entry into Canada over the last two decades. The first case study focused on migration into Canada by air immediately after 9/11 and assessed how the state used 9/11 to frame irregular migrants, particularly refugee claimants, as security threats linked to terrorism to justify implementing additional restrictions on air travel. The second case considered the arrival of the MV Sun Sea in 2010 and how the state used the exceptional event to impose a hostile and dehumanizing discourse that positioned the migrants as terrorist smugglers and provided an opportunity for the state to rationalize drastic changes to security policies on human smuggling, immigration and refugees. The final case study looked at the Roxham Road crossing in Summer 2017 and illustrated how the state used the language of security to tie irregular migrants to illegality and

criminality, encouraging public distrust of the ‘queue-jumping’ migrants to justify the elaboration of tighter regulations on migration into Canada by land for asylum seekers. All three case studies depicted discursive evidence of security discourse by the Canadian state during crisis events, moves that established security narratives through which irregular migrants were framed as security threats, dehumanized, and subjected to differential treatments. The securitization of irregular migration in Canada provides an opportunity for the state to engage in the production of new forms of irregularity with little regard for migrant dignity and security.

An interesting result that has emerged from the case study analysis is how the production of irregularity by the state for post-9/11 migration by air differs from that of the MV Sun Sea and the Roxham Road crossing. While sensationalism, high-visibility and exceptionalism are some of the core markers on how irregularity was produced for the latter two cases, the former saw the state produce irregularity by way of quiet, invisible and extraterritorial security practices that prevent potential irregular migrants from ever landing on Canadian soil, or from invisible permit overstays. It can be argued that this production of irregularity is as problematic, if not worse, than that produced from visible crises because it prevents migrants from ever making it to Canada to request asylum, leaving them to their dangerous situations abroad. Furthermore, it allows the state to quietly participate in ethnic, racial and religious profiling security practices that favor specific groups of migrants with little public visibility or oversight.

Nonetheless, this paper began with an acknowledgement of the Emerson tragedy and the need to better understand the relationship between the state and irregular migration, particularly the role of the state in framing irregular migration in such ways that allow it to justify the impacts of its security measures on migrants. This research paper has successfully contributed to the literature on irregular migration by moving beyond dichotomous discussions of state security and migrant security to instead determine the discursive securitization and rationalization techniques used by states to account for their security treatment of migrants who enter the state irregularly. Admittedly, this essay has focused on using

three specific incidents of irregular migration to evaluate how the state framed irregular migration and the consequent security measures that emerged. The theory of irregularity on which this paper is based could benefit from additional applications to other incidents of irregular migration both in Canada and abroad. Further research on the role of race, ethnicity and religion in shaping state perceptions of security threat and risk would also add an interesting perspective to the research on securitization of irregular migration.

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