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To cite this article: Corey Robinson (2023): Offshoring and Outsourcing Anti-Smuggling Policy: Capacity Building and the Geopolitics of Migrant Smuggling, *Geopolitics*, DOI: [10.1080/14650045.2022.2159385](https://doi.org/10.1080/14650045.2022.2159385)

To link to this article: <https://doi.org/10.1080/14650045.2022.2159385>



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Published online: 18 Jan 2023.



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# Offshoring and Outsourcing Anti-Smuggling Policy: Capacity Building and the Geopolitics of Migrant Smuggling

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## ABSTRACT

Using an analytic of problematisation that incorporates insights from governmentality studies and migration studies, this article documents and conceptualises the role of capacity building in the offshoring and outsourcing of Canada's anti-smuggling policy. I examine the problematisation of migrant smuggling in interviews, access to information requests and publicly available texts to show how, why and with what effects, the Canadian government, in collaboration with UN agencies, engaged in capacity building across Southeast Asia and West Africa to combat migrant smuggling and interdict migrant vessels before they departed for Canada. I argue that under the technocratic banner of capacity building, anti-smuggling policy constitutes migrant smuggling as an object of discourse. Anti-smuggling policy, I contend, frames, rationalises and obscures the interdiction of refugees and the externalisation of protection as politically neutral, technocratic efforts to build capacity to combat migrant smuggling. Though capacity building may include apparently positive measures to enhance international cooperation, if it frustrates access to asylum, as this article suggests, it can be said to externalise international protection responsibilities, contrary to the principles outlined in the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees.

## Introduction

Using an analytic of problematisation that builds on governmentality studies and migration studies, this article documents and conceptualises the role of capacity-building in Canada's anti-smuggling policy. I argue that anti-smuggling policy does not simply provide technical 'solutions' to the self-evident 'problem' of migrant smuggling. Rather, under the technocratic guise of building capacity, anti-smuggling policy has constitutive effects on social reality – it brings migrant smuggling into being as an object of discourse. Capacity building – the coordination of transgovernmental networks, training and technical assistance, the dissemination of knowledge and norms and

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investment in equipment and infrastructure – renders migrant smuggling as a technical ‘problem’ of migration management, to govern in accordance with a pre-emptive rationality of risk governance. These discursive and material interventions are politically powerful; they frame, rationalise and obscure the interdiction of refugees and the externalisation of protection as politically neutral, technocratic efforts to build capacity to combat migrant smuggling. And while in some instances, capacity building may include apparently positive measures to enhance international cooperation, I argue that, if they frustrate access to asylum, these extraterritorial actions externalise international protection responsibilities and undermine the principles of human rights, responsibility sharing and solidarity outlined in the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR). While the GCM and GCR are not legally binding, these commitments are designed to make responsibility sharing more equitable. However, as I argue, the offshoring and outsourcing of Canada’s anti-smuggling policy undermines these commitments by endangering refugees and reinforcing the uneven distribution of refugees between the Global North and South.

Structurally, the ensuing analysis proceeds as follows. Section one examines the discussion of capacity building in the Global Compacts. It then outlines Canada’s Human Smuggling Envelope, a capacity building programme to combat migrant smuggling throughout Southeast Asia and West Africa, which began in response to the arrival of the *Sun Sea*. Section two briefly reviews the existing research on externalisation and governmentality in critical migration studies and scholarship on capacity building to sketch an analytic of problematisation. Section three discusses the methods adopted in this article. Section four applies the analytic to capacity building programmes implemented under the Human Smuggling Envelope in order to unsettle the state-centric account of migrant smuggling, highlight the violence of anti-smuggling policy and understand its discursive power in the externalisation of international protection.

### **Building Capacity to Combat Migrant Smuggling<sup>1</sup>**

Given the disproportionate weight shouldered by developing countries and the limited capacities of affected states, the two-pronged international framework, the GCM and the GCR – a set of non-binding agreements to promote cooperation on migration – committed signatory states and international organisations (IOs) to strengthen the capacities of affected parties to prevent migrant smuggling (GCM 2018, para. 25; GCR 2018, para. 57). While the Global Compacts are commendable for their principled stance on responsibility sharing, they are equally notable for their strategic acts of omission. For example, the GCR commits states to ‘capacity development’ to combat

migrant smuggling (GCR 2018, para. 57). Yet, the humanitarian implications of migrant smuggling are unacknowledged. These silences speak volumes about the objectives of global migration governance. Although migration scholars have demonstrated the humanitarian function of intermediaries in facilitating access to asylum (Mainwaring 2019; Mountz 2010), this topic is notably absent in the Global Compacts. Instead, the framework is animated by Euro- and state-centric concerns about the capacity of states in the Global South to counter irregular migration to prosperous countries. The Global Compacts' managerial emphasis on technical practices like capacity building reflects and reinforces a depoliticised understanding of irregular migration promoted at the UN level. In their emphasis on capacity development, the Global Compacts embody the shift in global migration governance from a rights-based approach, grounded in hard law, to a technocratic approach based in soft law and technical solutions (Micinski 2021).

Canada is a 'champion country' for the implementation of the Global Compacts (UN Migration Network 2020). Yet, this article shows, in recent years, under the banner of building capacity to counter migrant smuggling, Canada has engaged in interdiction practices that externalise<sup>2</sup> international protection responsibilities and undermine principles outlined in the Global Compacts.<sup>3</sup> Since 2011, under the Human Smuggling Envelope, Canada's anti-smuggling policy has been offshored to the jurisdiction of countries in Southeast Asia and West Africa and outsourced to affected governments and IOs with a mandate to prevent migrant smuggling. In collaboration with the International Organisation for Migration (IOM), the UN Office on Drugs and Crime (UNODC) and affected governments in regions of origin, the Canadian government engaged in capacity building to 'prevent further mass arrivals of migrant vessels' and 'identify and take early action against human smuggling organisers' (RCMP A201501244, 120). Through the deployment of expertise and the identification of 'capacity gaps', capacity building projects implemented under the Human Smuggling Envelope are said to help affected governments address 'shortcomings' in 'border management' (CBSA A201313161, 15) by enhancing their so-called 'interdiction capacity' to disrupt migrant vessels destined for Canada (GAC A201302551, 44).

The stated objective of such measures is to 'empower other nations' to 'target and disrupt networks that facilitate irregular migration' (Interview #21). Here, the managerial language of empowerment is part of a discursive strategy. This state-centric script of anti-smuggling policy shifts the focus from the violence of border controls to the risks of irregular migration, while legitimising such actions declaredly aimed at disrupting criminal networks and protecting migrants. But in this scenario, who is being empowered? These actions are rationalised as technical exercises to build state capacity in regions of origin. However, far from being apolitical, I argue that the offshoring and outsourcing of anti-smuggling policy enhances the capacity of the Canadian

government to remote control migration and interdict refugees before they reach sovereign territory (Robinson 2022). In other words, the offshoring and outsourcing of anti-smuggling policy leads to what Hyndman and Mountz (2008) call *neo-refoulement*—the interdiction and return of asylum-seekers in regions of origin before they can claim asylum on the territory of a signatory state of the 1951 Convention and the 1967 Protocol.

The Human Smuggling Envelope was developed after the arrival of two boats, the *Ocean Lady* and the *Sun Sea*. On October 17, 2009, the *Ocean Lady* arrived off the Pacific coast of Canada. The 76 passengers, all members of the Tamil minority from Sri Lanka, sought refugee protection under Canada's asylum system. Less than a year later, on August 12, 2010, another ship arrived off the coast of Vancouver Island, British Columbia. A Thai cargo ship with 492 Tamil refugees from Sri Lanka on board, the *Sun Sea* reached Canada after nearly three months at sea on a gruelling voyage from Thailand. After the arrival, the passengers claimed refugee status, citing fear of persecution in Sri Lanka by government security forces in the aftermath of the civil war (Canadian Council for Refugees 2015).

In the wake of the arrivals, the Conservative federal government of Prime Minister Stephen Harper wanted to send a clear message that Canada would not tolerate 'abuse' of its refugee system by criminal and terrorist networks allegedly engaged in 'migrant smuggling' (Quan 2020). The Canadian government claimed the Liberation Tigers of Tamil Eelam, a government opposition force in Sri Lanka, classified as a terrorist organisation in Canada since 2006 (Noble 2008), facilitated the *Sun Sea* operation. According to the Canada Border Services Agency (CBSA), the arrival raised fears about security and the possibility of terrorist groups and war criminals gaining entry to Canada, as well as concerns about the 'negative optics of "queue jumping"' in which migrants use 'inappropriate means to enter Canada and take advantage of the asylum process' (CBSA A201313161, 184).

Despite the Harper government's attempt to frame the passengers as 'bogus refugees', smugglers and terrorists, since the *Sun Sea* arrived, there has only been a single criminal conviction (Quan 2020). Furthermore, the majority of the passengers' refugee claims were accepted, at a rate of 63% (Canadian Council for Refugees 2015). In stark contrast to the Harper government's claims about those onboard, in 2010 Canada granted refugee status to Sri Lankans at a rate of 79% (Rehaag 2011). According to the UNHCR, on account of their perceived political opinion and ethnicity, Tamils fleeing Sri Lanka likely require international refugee protection (UNHCR 2012, 6).

Canada is relatively insulated from the geopolitical effects of forced displacement. Historically, boat arrivals are relatively rare. Yet, Canada's historical response to boat arrivals is a story marked by restriction and exclusion. The *Komagata Maru* in 1914 or the *MS St. Louis* in 1939— events that ended in tragedy – reveal a racist legacy of state responses to those seeking refuge on

Canadian shores. So too did the xenophobic reaction to the *Amelie* in 1987, the *Yuan Yee* in 1999 and more recently, the *Ocean Lady* and *Sun Sea*. These events have played a constitutive role in the transformation of the refugee label (Zetter 2007) in Canada as well as the material development of a sophisticated architecture for interdiction abroad (Crépeau and Nakache 2006; Mountz 2010). Despite the historical parallels between past and present, the arrival of refugees to Canada shores is no longer considered a humanitarian issue. Rather, it is framed as a ‘problem’ of migrant smuggling, a self-evident evil to combat through pre-emptive techniques of risk governance.

Before proceeding, I will provide a brief example to help illustrate the capacity building methods employed in the Human Smuggling Envelope and the discursive framing used to justify interdiction. From 2013 to 2015, the Strengthening Border Management and Building Regional Capacity to Prevent Human Smuggling in Southeast Asia programme included activities across Thailand, Malaysia, Indonesia, Laos, Cambodia, Vietnam and Myanmar designed to bolster the capacity of affected parties to interdict migrant vessels. With technical and financial assistance from the Canadian government, in this ‘train-the-trainer’ initiative, aimed at ‘preventative policing’, the IOM trained nearly 4000 front-line police officials in criminal investigations, surveillance and intelligence analysis and provided technology and equipment to enhance their ability to detect and disrupt migrant smuggling ventures. Under this programme, Canada advised Myanmar on the development of legislation on migrant smuggling and provided technical assistance to combat ‘illegal migration’. With the IOM, it created the Document Examination Support Centre in Bangkok, Thailand, which provided front-line officers from across the region with training, institutional resources, technology and forensic experts to review suspicious travel and identity documents (IOM 2015, 28).

Internal assessments frame these projects through a securitised narrative of pre-emptive risk governance. In this view, capacity building measures successfully ‘increased awareness of the threat, enhanced the ability of border officials to identify and prevent human smuggling’ and helped to disrupt migrant smuggling ventures ‘before illegal migrants reach our shores’ (GAC A201302709, 9). However, this framing of ‘illegality’, I argue, is deceptive. While internal documents state that all ‘training and support offered through this project will be consistent with Canadian human rights standards and obligations’ (GAC A201302709, 10), as Goodwin-Gill explains (2003, 196), signatories to the Refugee Convention are not permitted to exclude refugees from seeking to access international protection on account of their ‘illegal entry’, which has been interpreted to include instances in which refugees enlist the services of smugglers to reach safe territory.

The official rationale for an international approach premised on capacity building is summarised in a confidential memo for Canadian diplomats

entitled ‘Unplanned Encounters with Migrant Smuggling Stakeholders at the UN General Assembly’, designed for meetings with officials from Southeast Asian governments.

In our efforts to eliminate this criminal, dangerous and unfair activity, we recognise the necessity for a comprehensive international approach (GAC A201101931, 114).

The document outlines the reasoning behind capacity building efforts. Here, as elsewhere, forced displacement is effectively silenced. Instead, asylum-seeking is recast as a criminal activity – migrant smuggling for profit. It is constituted as a problem of security, law and order – of ‘migration management’ rather than a symptom of a shrinking humanitarian space, caused by deterrence policies that force asylum-seekers to enlist smugglers:

*Canada appreciates that resources and capacity to counter this criminal activity are stretched. Canada would consider favourably providing assistance through the relevant international organisations to counter this type of transnational organised criminal activity and to assist States in meeting the challenges of illegal and irregular migration, in a manner consistent with international law (GAC A201101931, 116, my emphasis).*

The emphasis on enhanced coordination, capacity building and international law may seem like a progressive move towards greater responsibility sharing, as envisioned in the Global Compacts. However, I argue that anti-smuggling discourse is a form of ‘anti-politics’ (Li 2007) that contains challenges to the status quo of international migration. In reaffirming the geopolitical consensus of exclusionary policies across the Global North, it fails to challenge the deterrence regime. Under the deterrence regime, states work to remote control forced displacement in the Global South by supporting its management through transnational ‘partnerships’ in regions of origin (Hyndman and Reynolds 2020, 68–69).

The availability of tailored services, offered by the IOM, the UNODC and other IOs in the field, has functioned to delegate migration management towards non-state actors and, as Geiger argues (2016, 266), to ‘spatially shift’ migration control beyond territorial borders. For prosperous states of destination like Canada, this cooperative approach has made it possible to pre-empt the departure of refugees while offshoring border management to regions of origin and outsourcing the violence of borders on to interdicting states. In the act of offshoring and outsourcing border control, Canada’s anti-smuggling measures externalise international protection responsibilities and displace the effects of forced migration to the Global South by delegating responsibility to affected states and IOs in regions of origin – whose actions are less constrained by international laws to protect refugees.

Extraterritorial actions under the Human Smuggling Envelope predate the ratification of the Global Compacts. However, these capacity building programmes are ongoing. The Government of Canada reportedly uses a ‘GCM



lens' to evaluate the Human Smuggling Envelope, to assess whether it is consistent with GCM principles (UN Migration Network 2020, 11). Yet, I argue that these capacity building efforts constitute externalisation because they limit the ability of people to reach Canada and access asylum. Follow-up reports that evaluate Canada's implementation of the GCM endorse the Human Smuggling Envelope as a policy that meets GCM objectives, but they do not specify what measures will be taken to protect the human rights of interdicted migrants and refugees (Atak and Nakache 2021).

By framing migrant smuggling as a technical 'problem' of migration management, anti-smuggling policy legitimises interdiction and thus externalisation as politically neutral efforts to build capacity. Capacity building places the debate about the facilitation of irregular migration into the bureaucratic world of expertise, diplomacy and border enforcement, where it is less constrained by public deliberation as well as Parliamentary and judicial scrutiny. To make the politics of migrant smuggling visible and highlight the violence of anti-smuggling policy, in what follows, the article adopts an analytic of problematisation, outlined below.

### **Analytical Framework: Towards an Analytic of Problematisation**

The extension of border enforcement beyond territorial borders is a key development in the management of migration since the Second World War (Zolberg 1999). The literature on externalisation contains a wealth of insights to understand this trend (Boswell 2003; Lavenex 2015; Reslow and Vink 2015). Scholars have examined different aspects of externalisation, such as the diffusion of offshore processing (Flynn 2014), the delegation of migration control to private actors (Bloom 2015), the role of international law (Spijkerboer 2018) and the expansion of 'remote control' strategies in response to the apparent growth in migrant smuggling (Samers 2004). While IOs have received relatively more scholarly analysis in this literature on remote control (Geiger and Pécoud 2014), little attention has been paid to capacity building and its role in externalising protection. As part of a collective effort to address this gap, this article analyses the role of capacity building in the offshoring and outsourcing of Canada's anti-smuggling policy.

The article builds on research in critical migration studies (Dini 2018; Fine 2018), which provides an alternative analysis of capacity building, one that foregrounds the performative power of problematisation – the process of designating an issue as in need of a policy solution. By examining the problematisation of migrant smuggling, this article examines the constitutive and discursive power of anti-smuggling programmes and practices. This critical approach was initially sketched by Michel Foucault and subsequently developed in governmentality studies and critical migration studies (Aradau 2008; Foucault 1990; Geiger 2013; Soguk 1999). Problematisation is not 'the



representation of a pre-existent object, nor the creation through discourse of an object that doesn't exist', rather, it can be defined as the discursive practices through which something enters into 'the play of the true and false', which constitute it as an object of 'thought' (Foucault 1988, 257).

This approach examines how issues have been framed in discursive practices in order to analyse their constitutive silences and highlight the violence of representation in the construction of "subjects", "objects" and "problems" (Bacchi 2015, 5–6). In this case, through a critical exposition of how migrant smuggling is represented as a technical 'problem' of migration management – rather than a humanitarian issue of forced displacement – the analysis aims to challenge the state-centric account of migrant smuggling. To do so, this article deploys the term problematisation as an *analytic* to examine the process of problem-construction in anti-smuggling policy. Thus understood, the meaning of problematisation is twofold. It functions as both a verb and noun; in other words, it is an *act* and a form of critical inquiry (Koopman 2013). First, problematisation describes what people, researchers and governments do – to call something into question and designate it as a problem (Bacchi 2015). Second, problematisation denotes a form of analysis that interrogates our deep-seated presuppositions and unexamined ways of thinking.

In critical migration studies, a growing literature on the 'governmentality of transnational mobility' (Andrijasevic and Walters 2010; Geiger and Pécoud 2010) analyses the problematisation of migration in terms of a new rationality of governing cross-border flows through self-disciplining and responsabilisation (Geiger 2013, 32). This literature provides a theoretical vocabulary to analyse 'the rationalisation' of governance practice (Foucault 2008, 318). In this view, governance is a discursive practice in which people seek to 'act on the action of others' (Gordon 1991, 2). The neologism 'governmentality' describes the 'art' of governing – the rationalities and practices through which conduct is shaped at a distance (Foucault 2007, 108). This scholarship highlights how migration management operates 'through' subjects (migrants, states, IOs, and civil society), by moulding their agency and cultivating self-adherence to the norms of well-managed migration. Migration management, it must be recalled, came about in response to the 'over-problematisation' of forced migration in the post-Cold War period (Geiger 2013, 27). Migration management displaced the debate about asylum from the deliberative sphere of democratic politics into the bureaucratic realm of expertise (Geiger 2016). Significantly, the 'post control' style of migration management rests on an anticipatory logic of risk governance, which enables action at a distance through the 'disciplining of (current and future) realities, the construction of threats and the elaboration of the geopolitical world views that underlie them' (Pécoud 2013, 11).

Outside of migration studies, capacity building is an area of study in its own right. Research on state building has used governmentality to illuminate how

power circulates through capacity development (Joseph 2013). For Edmunds and Juncos (2020, 17), capacity building is a form of governance in which hegemonic discourses problematise recipients of capacity building as ‘incapable states’ which lack power and agency and require ‘external assistance and expertise’. This Foucauldian approach illustrates the dynamic of power/knowledge in capacity building, which operates through the diffusion of norms and best practices from Western to non-Western contexts (Edmunds and Juncos 2020, 6). Understood as a practice of problematisation, capacity building is inseparable from the framing of problems in depoliticised terms ‘amenable to technical solutions’ (Li 2007, 7).

Building on these works, capacity development can be theorised as part of a governmentality of transnational mobility, which operates by steering the behaviour of migrants and states through responsabilisation and self-regulatory actions (Kalm 2010). In this view, capacity building methods are subtle; they act at a distance. They appear not as a forceful imposition, but rather, as practices of problematisation, which induce certain behaviours and structure a field of possible actions (Li 2007, 5). In anti-smuggling policy, this entails the diagnosis of the ‘problem’ of migrant smuggling in terms of a lack of state capacity. By disseminating a discourse about state capacity to combat migrant smuggling, these actions shift the focus away from external interventions while serving to depoliticise such measures and responsibilities local agents (Edmunds and Juncos 2020, 7). This technocratic framing negates the political role of deterrence measures in reproducing displacement and containing forced migration to the Global South. In what follows, I examine capacity building programmes implemented under the Human Smuggling Envelope in which three problematisations – of policy failure, weak capacities and a lack of coordination – framed, rationalised and obscured the interdiction of refugees throughout Southeast Asia and West Africa.

### **A Note on Materials and Methods**

Problematizations are the product of discourse. Discourses, for Foucault (2013, 54), are irreducible to language; they are practices that constitute ‘the objects of which they speak’. Anti-smuggling discourses form an archive of empirical materials that can be used to analyse practices of problematisation in capacity building programmes. To this end, the following analysis triangulates semi-structured interviews with discourse analysis (Fairclough 2013) of access to information requests, public policy documents and media. This ‘live archive’ (Walby and Larsen 2011) of anti-smuggling discourse offers a way to examine how governmental actors problematise migrant smuggling. My analysis of the live archive explores Canada’s anti-smuggling policy from the perspective of federal agencies of migration management: CBSA, Immigration, Refugees and Citizenship Canada (IRCC), Global Affairs

Canada (GAC), the Office of the Special Advisor on Human Smuggling and Illegal Migration and the Royal Canadian Mounted Police (RCMP). The empirical research for this study occurred between February 2016 and April 2017 and entailed principally two research methods: (i) semi-structured interviews, both on-site and remotely and, (ii) archival research. After I received approval from York University's Ethics Review Board (Certificate #STU 2015–125), I conducted interviews with 40 individuals, current and former senior officials from federal agencies of migration management. I examined grey literature from these federal agencies obtained through access to information requests, which are referred to by their agency abbreviation and request code (see appendix). These internal documents and interviews provide insights into capacity building and anti-smuggling policy in ways that public-facing policy documents alone cannot.

### **Constructing the 'Problem' of Migrant Smuggling: Policy Failure and Diplomatic Engagement**

Canada's anti-smuggling policy under the Harper government initially focused on Thailand, because the *Sun Sea* departed from the country. According to the UNODC, Thailand was a 'key transit point' for Sri Lankan asylum-seekers attempting to reach Canada by sea (UNODC 2013, 45). Internal RCMP documents also note that since the early 1990s, 'Thailand has been used as an important transit point for smuggling migrants [from Sri Lanka] to other parts of Asia, Europe, North America and Australia' (RCMP A201501244, 120). Due to the perceived need for a regional approach, the Canadian government subsequently implemented capacity building programmes in Malaysia, Indonesia, Cambodia and Vietnam. In its diplomatic engagement across Southeast Asia, Canada participated in various forums in the region, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and the Association of Southeast Asian Nations.

The Canadian government described preventing migrant vessels from reaching Canada as a 'top foreign policy priority' (GAC A201302709, 16). Following the *Sun Sea*, the Canadian government allocated more than \$23 million from 2011 to 2015 for capacity building projects, first in Southeast Asia and then West Africa, delivered in partnership with the IOM, the UNODC and other IOs (IRCC A201521196, 15–16). The geographical scope of these interventions expanded under the current Liberal government of Prime Minister Justin Trudeau in Southeast Asia (GAC 2017) and more recently, Central and South America, under INTERPOL projects Relay and Turquesa (Bureau 2020). From 2015–2018, the Trudeau government invested \$45.5 million to support a 'coordinated effort across law enforcement, intelligence, border protection and diplomatic spheres' to disrupt 'migrant

smuggling ventures before they materialise overseas' and prevent the 'threats associated with migrant smuggling', such as terrorism and transnational organised crime, 'from reaching Canada' (IRCC A201521196, 15–17). During this time, the Canadian government engaged with international partners to 'promote cooperation', particularly in countries where Sri Lankans waited in transit (ibid, 17). For the Canadian government, capacity building, framed as a technical effort to provide practical solutions and assist affected parties, enhance border control and protect migrants, offers a means of bolstering the state's capacity to monitor and intercept migration flows at a distance.

Notably, Canada's international partners in the fight against smuggling, such as Thailand, Malaysia, Indonesia and Vietnam, are not signatories to the 1951 Refugee Convention (UNHCR 2015). The most pernicious forms of deterrence policies, as Gammeltoft-Hansen and Hathaway explain (2015), rely on non-signatory states with poor human rights records, which are less constrained by legal norms. The implications of Canada's cooperation with non-signatory states became clear in the aftermath of the *Sun Sea's* arrival. Two months after the arrival, in October 2010, with assistance from Canadian authorities, Thai officials raided 17 apartments in Bangkok and arrested over 155 Tamil asylum-seekers from Sri Lanka (Freeze 2010). The would-be refugees faced abominable conditions in a Bangkok detention centre, without access to clean drinking water, food and medical assistance, where they remained for years, pending the outcome of their refugee claims (Bell 2011). Despite the claims of the Canadian government about 'bogus' refugees, of the group, 53 of the detainees have been recognised as refugees by UNHCR and are awaiting resettlement in a third country (Bell 2011).

Canada's capacity-building interventions emerged from a preoccupation with failure, animated by a liberal will to govern better next time (Foucault 2008, 320). 'Failures', Li reminds us (2007, 19), 'invite new interventions to correct newly identified – or newly created – deficiencies'. Canadian government officials emphasised the *context* of policy failure in which these cooperative efforts materialised. One official described the attempt by the Canadian government to suppress migrant smuggling abroad as an explicit response to the failure to prevent the arrival of the *Sun Sea*:

You have to think about it in the context of the *Sun Sea* . . . With the *Sun Sea*, there was a huge effort to stop it and we asked international partners to do a bunch of things, but it was unsuccessful (Interview #6).

As the passage suggests, the Canadian government called on international partners to interdict the *Sun Sea*. However, as discussed below, the lack of established networks with governments in the region and the limitations of the Protocol on migrant smuggling prevented states from intercepting the vessel. Hence the emphasis on capacity building, which enabled the Canadian

government to enrol states into interdiction efforts to prevent future arrivals from departing for Canada.

Despite the attempt to depoliticise migrant smuggling through capacity building, the offshoring and outsourcing of interdiction must be understood in the context of the intense politicisation of the *Sun Sea* and perceived ineffectiveness of existing approaches to preventing boat arrivals.

The government set out to do a number of things. Legislative things. Some of which have since been thrown out, as you probably know. However, even if you pass legislation it takes some time a) to see if it gets passed and b) to see if the courts support it. That takes time. They wanted to do something else . . . (Interview #6)

In *B010 v. Canada*, the case referred to above, the Supreme Court of Canada ruled that the definition of migrant smuggling in federal legislation was unconstitutional because it was overly broad ‘in catching migrants mutually aiding one another and humanitarian workers’ (*B010 v. Canada*, para 74). The Supreme Court contested the Harper government’s interpretation of mutual aid between asylum-seekers on the *Sun Sea* as evidence of smuggling for-profit. In this case, the Court had to determine what conduct constituted migrant smuggling because engaging in the act made a person ineligible for refugee status. The Court ultimately ruled that, in the absence of pecuniary motivations, the appellants cannot be criminalised for allegedly ‘smuggling’ because they were aiding and abetting the entry of other refugee claimants in a collective flight to safety.

By framing the ‘problem’ of migrant smuggling in terms amenable to technical solutions, problematisations respond to concrete, deficient situations, when the inadequacy of established ways of doing things raises a problem to be solved; as Koopman explains (Koopman 2013, 100), they simultaneously call into question existing practices and enable the elaboration of new ones. In this case, geopolitical constraints and *B010 v. Canada* rendered old practices problematic in the face of legal limits on state behaviour. Thus, to remedy the perceived failure to interdict the *Sun Sea*, the Canadian government engaged in capacity building with affected parties in Southeast Asia, whose actions were less restricted by legal barriers to effective control.

Canada has demarched both source and transit countries in the Southeast Asia region on the issue of migrant smuggling to register our concern about this trend, including the use of Southeast Asian countries as transit points. This dialogue will continue through our missions (GAC A201101931, 294).

The Canadian government used diplomatic measures to foster cooperation and a shared understanding of migrant smuggling as a ‘problem’ of migration management and a threat to the security of states and migrants.

It made more sense to work directly with partners and build relationships which allowed you to get some results. At the end of the day, Canada can’t go to country X and enforce

our law or even their law in that country. All you can do is go to them and say ‘Ok, we have some information’ having explained what we were working against, the human smugglers and their criminal activities . . . and work with them to see if you can reach a conclusion that leads to the disruption of ventures and care for the people who are being abused, in a sense, in the process (Interview #6).

Through diplomatic outreach, the Canadian government registered its concern about state capacity, securing borders and protecting migrants. By doing so, it problematised migrant smuggling and enrolled governments into interdiction efforts. As one interviewee noted, governments in Southeast Asia were perplexed by Canada’s concerns about migrant smuggling. ‘It’s not a big deal. Everybody does it. Ok? I think they were initially surprised about the response from Canada. In Southeast Asia, governments don’t have the same level of concern for issues related to migrant smuggling’ (Interview #12). The failure to address migrant smuggling is articulated in a paternalistic and pedagogical manner, as both an instance of a lack of knowledge and an opportunity for learning. The discursive formation of a shared understanding of migrant smuggling *as* a problem was therefore fundamental to capacity building in the region.

As Frowd argues (2018, 74), through pedagogical techniques, capacity building efforts establish a ‘cognitive consensus’ about how to conduct border control and the nature of the problem to be solved. Simply put, for the Canadian government, it was essential to convince affected parties that migrant smuggling was a problem that must be rectified.

This probably sounds silly, but it’s no different than if you’re confronted with a problem, you need to go talk to people, get help, you need to convince them this is a problem, that indeed it’s a problem. Some countries you go to, human smuggling, what’s that? Why’s that a problem? Sometimes it’s as simple as conveying to people what the issues around human smuggling are, conveying to them your concern around smuggling, trying to establish a relationship at an operational and governmental level that will allow you to work with their various agencies to prevent a smuggling venture if you have information that someone in country X is trying to launch one. I mean, there isn’t anything really special about it. It’s really just if you don’t engage, they don’t know you have a problem, they don’t know you can help them (Interview #6).

An internal document from GAC, entitled ‘Irregular Maritime Migration Talking Points’ reveals how Canada engaged diplomatically to problematise migrant smuggling and thereby enrol international allies into anti-smuggling initiatives.

Canada is gravely concerned about a trend in organised criminal activity that impacts your country and ours: the use of Southeast Asian ports and waters by vessels to smuggle migrants to distant destinations. In recent months, two such vessels have arrived in Canada and we believe that further ventures targeting Canada are being developed (GACA201101931, 12).

Another set of speaking points, entitled ‘Demarche to [redacted]’ emphasised mutual security risks to persuade international allies about the shared threat posed by migrant smuggling and the humanitarian concerns it engenders.

Vessels which cross the Pacific destined for Canada may contain Sri Lankan as well as other nationals but their point of departure and route victimise other nations, such as yours. The security of both our nations, as well as the welfare of the passengers, would be improved by engaging in activities that will deter this type of activity in the future, especially because these vessels often undertake hazardous journeys in less-than-safe vessels (GAC A201101931, 243).

These passages reveal how the process of problematisation seeks to shape the social reality of migrant smuggling and establish a mutual understanding of the need for international cooperation.

### **Lack of Cooperation and Capacity**

‘Meeting Note’, an internal document for Deputy Ministers to facilitate discussion of the *Sun Sea*, outlined the ineffectiveness of governance of migrant smuggling overseas. From the perspective of the Canadian government, the limited scope of the Protocol on migrant smuggling – several governments in the region, including Thailand and Malaysia, have not ratified the treaty – prevents greater cooperation. In Southeast Asia, the ‘effectiveness of the Protocol’ is ‘limited by its lack of universality in the region, and in limitations contained within the Protocol itself’ that prevent coordinated action to disrupt vessels before they departed (GAC A201101931, 268).

The Protocol itself applies within the national jurisdiction of the States Party. Unless a State Party has created, in domestic law, authority to act outside of territorial waters, the Party cannot intervene in international waters, where these ships are usually found. We can seek to improve the universality of the Protocol through diplomatic means, and strengthen the capacity of States to meet their obligations through capacity-building – all of which we propose to do, if resources are made available (GAC A201101931, 268).

As part of its attempt to ‘improve the universality’ of the Protocol, Canada used diplomatic outreach to register concerns about the lack of capacity to counter migrant smuggling and to persuade governments in Southeast Asia about its mutual challenges and the necessity of cooperation. Still, Canadian officials understood that it was unlikely that they could convince affected governments to adopt an international treaty. In this context, capacity building served a geopolitical function; to ‘help’ states to meet their ‘obligations’ under the Protocol. Internal documents explain that capacity building encouraged ‘local authorities to adapt their priorities to place greater emphasis on anti-human smuggling efforts’ (IRCC A201521196, 16). By cultivating a sense of self-management and local ownership of the problem, capacity building



made it possible to counter migrant smuggling at a distance – and ‘at the source’ (CBSA A201313161, 21). According to official evaluations, due to the geopolitical limitations that affect the universality of the Protocol on smuggling, and because the Canadian government lacks the authority to disrupt smuggling ventures in other territories, national security depends on the capacity of governments in the region to ‘address these threats on their own’ (GAC 2012, 6).

In anti-smuggling discourse, capacity building is framed as a technical rather than a political project. The adoption of a less outwardly political approach to enrolling affected governments allowed the Harper administration to avoid public controversy and judicial contestation, as with the case of *B010 v. Canada*. The growing role of the IOM and other IOs, as Pécoud (2020, 7) remarks, in part stems from the controversial, sovereignty-laden nature of migration issues. By undertaking a technocratic approach, this article suggests, these anti-smuggling measures sidestep public scrutiny. ‘Expert opinion’, as a UNODC evaluation of the Human Smuggling Envelope puts it, ‘argues that one of the most effective ways of dealing with this problem is through interdiction of vessels prior to their departure’ (GAC A201302551, 81). Relegated to the technical realm of border management, interdiction efforts are presented as self-evident solutions to what are irreducibly political problems. Building states’ interdiction capacity to counter migrant smuggling, which prevents asylum-seekers from gaining access to protection in Canada, renders claims for protection ‘out of sight [and] out of mind’ (Anderson 2017, 388).

The passage below provides a succinct description of the official rationale behind these cooperative initiatives. It exemplifies the pre-emptive logic of anti-smuggling policy, which works by offshoring and outsourcing migration management – by ‘pushing borders out’.

Preventing the arrival of future migrant vessels requires taking *proactive* measures to *pre-empt* actions and activities planned by others. This necessitates prior knowledge of what is being planned followed by intervention to thwart it.

The CBSA mandate is focused most closely on interdiction of immigrant offences at the time of commission, and the multiple borders strategy, or ‘*pushing borders out*’. This includes the commission of crimes that may occur overseas many thousands of miles from Canada . . .

To achieve success, this strategy is reliant upon actionable intelligence, secure communications, inter-agency collaboration, and foreign law enforcement partnerships and capacity building (CBSA A201313161, 21, emphasis mine).

In this account, enhancing states’ interdiction capacity is essential to pre-empting the arrival of asylum-seekers to Canadian shores. This depiction of Canada’s proactive response reproduces a securitised narrative, in which migrant vessels are cast as a global threat that requires proactive action. By

silencing the ethical implications of combatting migrant smuggling, which in the absence of safe and legal avenues, often functions as a last resort for many refugees, anti-smuggling discourse contributes to what Macklin (2005) calls the ‘discursive disappearance’ of refugees. Instead of being considered a humanitarian issue of human rights, so-called migrant smuggling is addressed as a criminal matter to combat through pre-emptive action.

### **Building Capacity: Enrolling Actors into the Task of Anti-Smuggling Policy**

Through the Human Smuggling Envelope, introduced in 2011, the Canadian government worked with the IOM and the UNODC to develop shared frames of action and enrol affected parties into the task of anti-smuggling policy. In the problematisation of migrant smuggling, the failure to prevent the departure of migrant vessels to Canada is attributed to a lack of state capacity, knowledge and resources.

The Human Smuggling Envelope was officially aimed to bolster the ability of states to independently manage challenges related to migrant smuggling (GAC 2016, 8). Capacity building programmes implemented under the Human Smuggling Envelope were said to help the Canadian government to ‘better target and address the specific threats to Canada’ build networks throughout the region and collaborate with IOs with a mandate to address irregular migration and transnational organised crime (GAC 2016, 26). The Canadian government developed these programmes to enhance the capacity of countries where criminal and terrorist activities ‘originate and/or pass through’—countries that tend to lack ‘the resources to prevent such activities on their territory’ (GAC 2016, 8).

In total, from 2012–2016, the Canadian government developed and implemented 55 projects under the Human Smuggling Envelope throughout Southeast Asia, through multilateral programming in ‘countries that were, or were likely to become, transit points’ for migrant smuggling ventures destined for Canada (GAC 2016, 12, 18). Through capacity building programmes, the Canadian government worked to disrupt migrant smuggling operations *before* they departed by enrolling governments into interdiction efforts (CBSA A201102325, 15).

According to Canadian officials, such anticipatory and extraterritorial measures were necessary if the federal government was to avoid what officials described in terms of a futile game of whack-a-mole.

It’s whack-a-mole, you beat one down here and it pops up somewhere else. You can’t do anything in a sustained and ongoing manner. You keep whacking them – wherever you can – until they run out of money. It’s not solving the problem (Interview #12).

For the Canadian government, combatting smuggling networks required regional cooperation across Southeast Asia ‘to mitigate the risks of only

displacing major migrant smuggling routes' to other countries (GAC A201302551, 107). According to internal assessments, the most effective way to disrupt migrant smuggling was through a pre-emptive, risk management approach – through the 'interdiction of vessels *prior to departure* combined with increased, intelligence-led, investigative efforts that aim at dismantling the criminal networks and prosecuting the key perpetrators that organise and drive such migrant smuggling operations' (GAC A201302551, 107). This regional dimension of anti-smuggling policy, which links distant states and spaces and enrolls separated territorial actors into a shared understanding of migrant smuggling, reinforces geopolitical patterns of displacement in regions of origin and thus undermines responsibility sharing.

Internal documents highlight the perceived 'success' of international cooperation. Collaboration and intelligence-sharing prevented the *Alicia*, which carried 87 asylum-seekers from Sri Lanka, from departing for Canada from Indonesia (Bureau and Robillard 2019). Indonesian authorities intercepted the ship on July 9, 2011, after it developed mechanical difficulties. According to the UNODC (2013, 45), the passengers refused to leave the ship until they received assurances about access to refugee protection. Internal accounts describe the interdiction of the *Alicia* as a positive example of cooperation that helped to maintain 'Canada's national security against the mass arrival of illegal migrants by sea' (GAC A201302709, 12). However, the pleas of passengers onboard the *Alicia* suggests that the Canadian government and its delegates interdicted would-be refugees under the pretext of combatting 'illegal' migration. After the disruption of the *Alicia*, the passengers were stuck in limbo in transit countries, where some of the passengers endured harsh conditions and abuse while waiting in transit for over a year (UNODC 2013, 45). Immigration Minister Jason Kenney stated that Canada's extraterritorial campaign had prevented 'three or four' ships from departing for Canada; he alleged that 'many would-be customers of smuggling syndicates' had made down payments and waited in transit (Canadian Press 2011).

Capacity building is a pedagogical endeavour that operates through the dissemination of knowledge and the diffusion of 'best practices'. These interventions, as Frowd (2018) explains, function as catalysts for change; they guide policy trajectories and structure future courses of action, hence the emphasis on equipping local actors with the sustainable capacity, such as knowledge and equipment, to manage threats independently. I argue that the use of small, 'train-the-trainer' projects, devoted to mentoring and building infrastructure, is essential to the problematisation of migrant smuggling.

For example, in January 2012, the Canadian government, in partnership with the UNODC, launched the Strengthening Operational Law Enforcement Capacity to Prevent and Combat Maritime Migrant Smuggling in Southeast Asia programme, which focused on Thailand, Indonesia and Cambodia (GAC A201302709, 6). The UNODC managed the programme in consultation with

Canadian Embassies and High Commissions throughout Southeast Asia and liaison officers stationed abroad. Project reports discuss the advantages of working with the UNODC. The organisation has expertise in migrant smuggling and a long experience of ‘capacity building in the criminal justice sectors of developing countries’, which can be ‘difficult for external law enforcement agencies to access’ (GAC A201302551, 48). Experts from the CBSA, RCMP and IRCC delivered training to local authorities with assistance from UNODC staff with regional knowledge and subject matter expertise. Staff were trained in criminal investigations as well as intelligence gathering, analysis and exchange ‘with a strong focus on international cooperation’ (GAC A201302551, 44). The overall objective of the project was to disrupt smuggling operations through the creation of Port Intelligence Units – teams of immigration officials, police and naval forces – with an ‘operational interdiction capacity’ and ability to ‘collect, evaluate, analyse and disseminate intelligence’ about migrant smuggling networks (GAC A201302551, 44, 88). Through the creation and training of Port Intelligence Units, the project aimed to establish ‘effective coordination and communication channels between the relevant national and international actors’ (GAC A201302551, 88).

Through this programme, the Canadian government equipped three inter-agency Port Intelligence Units with a ‘mobile operational capacity’ to interdict migrant vessels in Indonesia, Cambodia and Thailand (GAC A201302709, 6). The geographic reach of Port Intelligence Units extended ‘well beyond their immediate location’ through the formation of ‘channels for cooperation and coordination’ among relevant parties. This in turn enabled affected governments to respond to ‘intelligence from international as well as national sources, from border control units, at land, sea and air entry points, and from criminal police’ (GAC A201302551, 81). Through the deployment of expertise and the creation of Port Intelligence Units, the Canadian government sought to enhance the ability of affected governments to disrupt migrant smuggling ventures *before* they departed, thus augmenting Canada’s capacity to stymie the arrival of asylum-seekers.

From 2012 to 2013, the Canadian government participated in a ‘train-the-trainer’ project, the Frontline Officers’ Awareness Training on People Smuggling for Indonesia (FLOAT). In this programme, the CBSA, RCMP and the IOM trained front-line officers in the Indonesian National Police and the national immigration enforcement agency (Imigrasi) in remote regions of the country. According to internal documents, the FLOAT project sought to strengthen frontline officers’ understanding of migrant smuggling, enhance governmental capacity to effectively manage migrant smuggling cases and concerns, build the government’s capacity to conduct further training and increase institutional awareness about migrant smuggling (RCMP A201501244, 95–96). The FLOAT project sought to establish a ‘sustainable institutional capacity’ and equip Indonesian authorities with the knowledge to

train their own border enforcement agencies in criminal investigations and border surveillance. It provided training sessions that disseminated ‘standard information, concepts, cooperation and intervention processes to enforcement operatives/front-line officers assigned in remote areas of the country’, supplemented by the distribution of materials on migrant smuggling, such as enforcement guidelines (RCMP A201501244, 98).

In 2012, the Government of Canada expanded the Human Smuggling Envelope to West Africa. The Government of Ghana, with assistance from Canadian intelligence officials, intercepted the *Ruvuma* on its way to Togo and Benin in May 2012, where over 200 additional Sri Lankan asylum-seekers waited to be transported to Canada’s east coast (Humphreys 2012). In 2013, the disruption of additional migrant smuggling ventures left more Sri Lankans stranded throughout West African countries on their way to Canada (Robinson 2022). In response to these events, Canada collaborated with the IOM to implement an assisted voluntary return programme, the Global Assistance for Irregular Migrants (GAIM) Programme, which supplemented the Human Smuggling Envelope. The GAIM programme was established to ‘manage the consequences of disrupted migrant smuggling events targeting Canada’, which stranded Sri Lankans in countries in West Africa with little capacity to ensure human rights are protected (IRCC A201521196, 8). Since 2013, the programme returned over 600 Sri Lankan asylum-seekers destined for Canada stranded in Togo, Benin, Cameroon, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal and Sierra Leone (IRCC A201532096, 20). However, the return of Tamils to Sri Lanka may result in refoulement (Robinson 2022). Indeed, passengers from the *Sun Sea* expressed fear of return and at least one person was tortured and killed after being deported to Sri Lanka (Bell 2011).

According to UNHCR (2021, 2), cooperative measures to interdict or deport arrivals without adequate safeguards shift responsibility for refugees to other states and leave protection needs unmet. Despite their rhetoric of law and order, these practices limit access to international protection, increase the risk of indirect refoulement and thus constitute externalisation. International cooperation, as UNHCR explains, ‘must ensure access to international protection is a primary consideration as affirmed in the Global Compact on Refugees’ (ibid). Interdiction practices that ‘shift burdens, avoid responsibility, or frustrate access to international protection’ undermine the principles of global solidarity and responsibility sharing outlined in the GCR (ibid).

## Concluding Discussion

Programmes developed under the Human Smuggling Envelope illustrate the role of capacity building in the problematisation of migrant smuggling and practices of interdiction and externalisation. As part of the attempt by Western states to contain the effects of forced displacement to regions of origin, these

programmes enhance the capacity of the Canadian government to remote control migration by enrolling intermediaries into the task of interdiction. The Canadian government contends that the Human Smuggling Envelope reflects ‘priorities that Canada will continue to advance as a champion country of the GCM’ (UN Migration Network 2020, 11). However, as this article has suggested, in blocking asylum-seekers from reaching Canada, these extraterritorial actions jeopardise the ability of people to access protection. In this sense, building the capacity of affected governments to prevent migrant smuggling contributes to forced displacement by enhancing the capacity of destination states to interdict refugees and export the violence of border controls to the interdicting state.

In the problematisation of migrant smuggling, anti-smuggling policy is framed as a self-evident reaction to external forces and problems that exist *independent of and prior to* state interventions. This framing of anti-smuggling policy as a necessary response to objective realities masks its role in constituting migrant smuggling and causing forced displacement. I argue that anti-smuggling policy exercises what Walters (2008, 280–281) calls an ‘externalisation effect’, a discursive move that frames a political phenomenon as an exogenous force that emanates from beyond state borders and outside the state’s ‘history of global entanglement’. Reconceptualised in this way, externalisation is not just the creation of physical and legal distance. Rather, it is a discursive move that mobilises the state as the provider of protection, hides the contradictions of anti-smuggling policy and disavows the role of the Global North in the production of the conditions under which refugees are forced to flee through irregular channels. From a critical perspective, then, the offshoring and outsourcing of anti-smuggling policy is not simply a response to the pre-existing ‘problem’ of migrant smuggling. Rather, as Lemberg-Pederson argues (2017, 54), interdiction, deportation and other extraterritorial migration controls cause, rather than merely react, to forced migration. This ‘second-order’ form of displacement, what he calls ‘border-induced displacement’, exacerbates the vulnerability of already-displaced persons and reinforces patterns of forced migration by containing refugees to regions of origin (*ibid*).

Through the designation of migrant smuggling as a technical problem amenable to risk management techniques, this article has demonstrated that capacity building programmes enable Canada to externalise protection and augment its capacity for control by enhancing the ability of governments in Southeast Asia and West Africa to interdict and deport refugees. I have argued that by framing migrant smuggling as a technical problem of migration management, anti-smuggling policy rationalises interdiction and obscures the role of externalisation in reproducing forced displacement, in a discursive effort to absolve states of their role in making asylum-seeking more difficult and deadly. While the Government of Canada claims to evaluate

its extraterritorial actions in the light of the GCM principles of human rights, solidarity and responsibility sharing, the Human Smuggling Envelope does little to address the conditions under which people are forced to enlist smugglers to facilitate their escape from persecution. Instead, by interdicting refugees and increasing their vulnerability, paradoxically, the offshoring and outsourcing of anti-smuggling policy may contribute to the proliferation and profitability of smuggling networks. This will in turn endanger refugees, thereby perpetuating a vicious cycle of border violence and forced displacement.

## Notes

1. The United Nations (UN) Protocol against the Smuggling of Migrants by Land, Sea and Air (UN General Assembly 2000), defines migrant smuggling as ‘the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident’ (Article 3(a)).
2. The UN Refugee Agency (UNHCR) (UNHCR 2021, para. 5) defines externalisation as unilateral or cooperative state actions ‘which are implemented or have effects outside their own territories, and which directly or indirectly prevent asylum-seekers and refugees from reaching a particular “destination” country or region, and/or from being able to claim or enjoy protection there’.
3. This article does not conduct a doctrinal legal analysis. However, these extraterritorial measures are arguably in contravention not only to principles of human rights, solidarity and responsibility sharing in the Global Compacts, but also legally binding international human rights and international refugee law on which the Global Compacts rest. Canada’s international legal obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air, Article 19 (1) prohibit signatory states from engaging in actions that contravene the 1951 Refugee Convention and the 1967 Protocol, such as refoulement. Regardless of their extraterritorial scope, in conducting externalisation measures to regulate irregular migration, signatory states remain bound by the 1951 Refugee Convention (Cantor et al. 2022).

## Acknowledgments

The author would like to thank the anonymous reviewers for their helpful comments and suggestions. Previous drafts of the article also benefitted from helpful feedback from Juliette Tolay, Nick Micinski, Camille Lefebvre and the Group for Research on International Politics at Durham University.

## Disclosure Statement

No potential conflict of interest was reported by the author(s).



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## **Appendix - Access to information requests**

CBSA A201102325  
CBSA A201313161  
GAC A201101931  
GAC A201302551  
GAC A201302709  
IRCC A201521196  
IRCC A201532096  
RCMP A201501244

## **Interviews**

Interview #6 - Canadian government official, February 5, 2016.  
Interview #12 - Former Canadian government official, March 30, 2016.  
Interview #21 - Canadian government official, July 4, 2016.