

# Controlling the Borders: C-31 and Interdiction

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## **Abstract**

*This paper examines elements in the Bill C-31 package that relate to interdiction, setting them in the context of the failure of the international human rights to effectively protect the right to seek asylum. The Bill C-31 proposals are shown to be a continuation of longstanding Canadian policies and practices, as well as a reflection of international (particularly Western) preoccupations with migrant smuggling and trafficking in persons, especially as evidenced in the recently negotiated protocols to the UN Convention against Transnational Organized Crime.*

## **Résumé**

*Cet article examine les éléments dans le paquet de législations du projet de loi C-31 reliés à l'interception, les plaçant dans le contexte du manque de protection efficace du droit de chercher asile dans le cadre du système international des droits humains. Il est démontré que le projet de loi C-31 est en fait une continuation de politiques et de pratiques canadiennes bien-établies, qui reflètent en même temps des préoccupations internationales (particulièrement celles des pays Occidentaux) avec le trafic illicite de migrants et la traite de personnes, spécialement comme cela s'est vu dans les Protocoles additionnels récemment négociés à la Convention des Nations Unies contre la Criminalité Transnationale Organisée.*

In 1948, the United Nations General Assembly proclaimed, in the Universal Declaration of Human Rights, that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>1</sup> The subsequent half-century has made this right to seek asylum an orphan right, since, despite its appearance in the foundational human rights document, it was never adopted by any human rights conventions and covenants that followed. The millions who face persecution have discovered that their right to seek asylum is one that states are not necessarily prepared to protect.

Instead of addressing how people fleeing persecution might seek asylum in other countries, the 1951 Convention relating to the Status of Refugees focused on the obligation of states not to *refouler* a refugee to persecution.<sup>2</sup> The challenge of getting out of the country in which one fears persecution and into (or to the door of) a country of potential asylum is left up to the refugee. States, meanwhile, have emphasized their right to protect their borders and decide who enters their territory.

For many years, Canada, like other states, has been increasing the obstacles facing persecuted people who try to seek asylum in other countries.<sup>3</sup> These endeavours are known as “interdiction,” described by Citizenship and Immigration Canada as “activities to prevent the illegal movement of people to Canada, including application of visa requirements, airline training and liaison, systems development, intelligence-sharing with other agencies, and specific interdiction operations.”<sup>4</sup> Other measures that can be included under the rubric of interdiction are

- blocking of “suspicious” foreigners in airports or points of departure for the country, by the police of the country of departure, by immigration officials of the interdicting country, or by the staff of the transportation company
- training by the interdicting country for police officers or immigration officials in the countries of de-

parture on how to detect false documents and how to identify “suspicious” foreigners

- applying sanctions against transportation companies for allowing foreigners to arrive in the country without adequate documentation for entry
- blocking and sending back “suspicious” foreigners from the airports of the interdicting country
- “detering” foreigners on their arrival, no matter what their status (harassment, detention, etc.)
- returning refugee claimants to countries of transit through use of the concepts of “safe third country” or “country of first asylum”
- negotiating with countries of transit so that they take every possible measure to prevent foreigners from passing through their territory en route to the interdicting country
- supporting measures to block flows of refugees in “international security zones” created in the territory of the country they are fleeing from.<sup>5</sup>

In a paper prepared in 2000, the UNHCR has used the term *interception* and defined it more narrowly as “encompassing all measures applied by a State, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination.”<sup>6</sup>

These measures are aimed against people who may be trying to enter Canada for a range of reasons, but inevitably among those affected are refugees, who very often have no choice but to use illegal means of flight.<sup>7</sup> The higher the fences created by interdiction, the more refugees are forced to turn to smugglers to help them overcome the barriers (and the more the smugglers charge them for their services).

The Bill c-31 package announced by the Minister of Citizenship and Immigration on 6 April 2000 clearly shows a continuing commitment by the Canadian government to reinforcing interdiction. Even if there is a modest attempt to reduce the impact of the measures on refugees, the overwhelming force of the proposed changes runs counter to the basic human right to seek asylum from persecution.

The following are the main elements relevant to interdiction in Bill c-31, in the proposed regulations and in the accompanying announcement.

### **1. Increases in Penalties for Offences Related to Illegal Entry**

Bill c-31 dramatically increases the penalties associated with most offences against the Act. For example, using a false document to enter Canada is currently punishable by a

maximum fine of \$5,000 or a maximum prison sentence of two years (for a conviction on indictment), or by a \$1,000 fine or a six-month sentence (for a summary conviction).<sup>8</sup> Under Bill c-31, simply possessing “a passport, visa or other document, of Canadian or foreign origin, that purports to establish or that could be used to establish a person’s identity” in order to contravene the Act brings a term of imprisonment of up to five years (for a conviction on indictment).<sup>9</sup> If the person actually uses the document, the person becomes liable to imprisonment of up to fourteen years.<sup>10</sup>

There are also increased penalties for anyone who organizes a person’s illegal entry into Canada. Under the current Act the penalties are fines of up to \$100,000 or imprisonment of up to five years (on indictment).<sup>11</sup> For smuggling a group of ten or more persons, the penalties rise to up to \$500,000 or imprisonment of up to ten years.<sup>12</sup> Under Bill c-31, the penalties for a first smuggling offence are up to \$500,000 in fines and up to ten years in prison (for smuggling fewer than ten people) and up to \$1,000,000 in fines and up to life imprisonment (for smuggling a group of ten or more persons).<sup>13</sup>

### **2. New Offences for Trafficking**

Bill c-31 also contains new offences for trafficking in persons, reflecting an increased international preoccupation with this serious human rights problem. Statute 111(1) states, “No person shall knowingly organize the coming into Canada of one or more persons by means of threat, force, abduction, fraud, deception or coercion.” The penalty for this offence is up to \$1 million in fines and up to life imprisonment.<sup>14</sup>

### **3. Impact of Lack of Identity Documents in the Refugee Determination System**

Under Bill c-31, when Immigration and Refugee Board (IRB) members are determining refugee status and considering a claimant’s credibility, they would be required to take into account “the fact that the claimant does not possess documentation establishing identity, has not provided a reasonable explanation for the lack of documentation and has not taken reasonable steps to obtain the documentation.”<sup>15</sup> Since the IRB already follows this practice, there is no reason to include this particular point, except as a way of sending a message about the unwelcomeness of refugee claimants who arrive without identity documents (and about Citizenship and Immigration Canada’s determination to confuse lack of documentation with lack of credibility). The government’s clause-by-clause analysis makes

plain the connection with interdiction: "This provision is one element of the general policy in relation to undocumented and uncooperative arrivals. It broadens the current approach to undocumented claimants which focuses on the destruction or disposal of identity documents without valid reason."<sup>16</sup>

#### **4. Safe Third Country Provisions**

A measure of interdiction that has been particularly popular in Europe is the concept of "safe third country," by which refugee claimants can be interdicted at a country's border if they have come from a country deemed "safe" for refugees. The current Canadian Immigration Act already provides for denial of access to the refugee determination system for persons who have come from a country other than the country of origin deemed to be "safe," although the provision has never been put into effect.<sup>17</sup> S. 53(2) specifies that such persons can be removed only to a prescribed safe third country, unless the person has been refused refugee status by the Immigration and Refugee Board. Under Bill C-31, however, it would be possible for a person who had been refused refugee status by a "safe third country" to be sent to any country, including the country of origin, without having access to any assessment by Canadian authorities of the risks to the person.<sup>18</sup> Canada would thus be substituting a determination by another country for a Canadian determination, despite the differences between Canada and other countries' laws, processes, and jurisprudence (and without regard to the length of time that might have passed since the other country determined that the person was not a refugee).

#### **5. Detention**

Bill C-31 increases the government's powers of detention, enabling detention for administrative convenience (s. 50) and expanding provisions for detention without warrant (s. 51(2)) and for detention on grounds of identity (s. 51(2)(b)). Detention can be characterized as an interdiction measure, because it acts as a deterrent, and facilitates the eventual removal of those detained. Furthermore, proposals for regulations listing factors for decision makers to consider in relation to grounds for detention specifically refer to mode of arrival: "[t]he definition of warranted fear of flight will include explicit reference to claimants arriving as part of a criminally organized smuggling or trafficking operation."<sup>19</sup>

There is in fact no obvious relationship between arrival with smugglers' help and risk of flight. Experience shows

that some people, including refugee claimants, who arrive without recourse to criminal smugglers, never appear, whereas others, including many refugees who have no choice but to use smugglers, can be relied upon to show up for all their immigration proceedings. Mode of arrival is not a relevant factor in determining flight risk. The assumption of such a relationship does, on the other hand, speak to the government's preoccupation with interdicting the "improperly documented."

#### **6. Increasing Resources for Interdiction**

The Minister of Citizenship and Immigration's April 6, 2000, announcement of Bill C-31 contained a number of undertakings that did not require legislative change. Among them was a promise to provide "increased overseas interdiction," glossed as "more immigration control officers stationed at our offices abroad," motivated by the desire "to discourage those not in need of protection from coming to Canada through irregular means."<sup>20</sup>

#### **7. Discourse of Abuse**

The government's presentation of the proposed new legislation put the accent on tightening enforcement measures in order to combat abuse. The first sentence of the press release set the tone: "Elinor Caplan, Minister of Citizenship and Immigration, today introduced a new Immigration and Refugee Protection Act designed to curb criminal abuse of the immigration and refugee systems while expanding policies to attract the world's best and brightest to Canada."<sup>21</sup> The goal of cracking down on abuse came first and captured most of the reader's attention. Government priorities were confirmed in the arrangement and scope of the backgrounders "Closing the Back Door . . ." (which came first, comprising four pages) and "Opening the Front Door Wider" (which came second, and took up two pages). The Minister's main message was also made clear by her opening remarks in the press conference: "I will not mince words: this is a tough bill."<sup>22</sup>

The emphasis upon enforcement in the bill's packaging set the stage for increased interdiction measures. As François Crépeau has argued, winning over the public is a prerequisite for a successful interdiction program. Reviewing the history of the "illegitimacy transfer" by which refugees became linked with international criminality, he has argued that "[a]ltering public opinion was probably the major challenge facing immigration control administrations during the '80s and, coupled with an economic situation which weakened social consensus and polarized the

fears of many, these administrations succeeded in denigrating the image of the asylum-seeker, associating it to that of the defrauder.”<sup>23</sup>

### **8. Alternatives for Refugees**

The Bill C-31 package does contain one small but significant new element: an acknowledgement that refugees are among those interdicted and are in need of protection. The government promises us that duties of the more numerous immigration control officers abroad will include directing “genuine refugees to appropriate missions or international organizations.”<sup>24</sup> Anyone at all familiar with the challenges of refugee protection must at least raise an eyebrow at this proposed response to interdicted refugees, since neither Canadian missions, nor international organizations (read UNHCR) are realistically in a position to protect refugees at risk of *refoulement* following interdiction. Still, the door has been opened to a discussion of the impact of interdiction on refugees.

#### ***Interdiction in Canada***

The interdiction measures proposed in the Bill C-31 package do not come as any surprise: on the contrary, they continue a solid tradition within Canadian immigration policy and practice. Citizenship and Immigration boasts of being “a world leader in developing interdiction strategies against illegal migration.”<sup>25</sup> The illegitimacy associated with “illegal migration” has long been transferred by Canadian officials to the refugee claims of those who arrive “illegally.” For example, an immigration official wrote in 1992 to the Canadian Council for Refugees explaining that “[o]ur view on transportation company liability, a view which is shared by many countries in the international community, is that sanctions are needed to control illegal migration and to protect the integrity of the visa control system. The uncontrolled movement of migrants has serious implications not only for Canadian taxpayers, but also for legitimate refugee claimants who must join those migrating for strictly economic reasons in the already crowded refugee status determination system.”<sup>26</sup> Legitimate refugee claimants, we are to understand, do not come through “illegal migration” and therefore are not affected by interdiction measures. How the “legitimate refugee claimants” get to Canada to make their claim is a question that goes unanswered.

Recent years have seen an increasing focus on criminal aspects of smuggling, representing a raising of the ante. Now refugee claimants who use smugglers to get to Canada are not only associated with “illegality” but also with “criminality.”

For example, in August 1998, Solicitor General Andy Scott released highlights of a major study on organized crime. It looked at illicit drugs, environmental crime, contraband, economic crime, migrant trafficking, counterfeit products, motor vehicle theft, and money laundering. Among the key findings of the study was that the costs associated with migrant trafficking to Canada were estimated at between \$120 million and \$400 million per year (involving approximately 8,000 to 16,000 people arriving each year.)<sup>27</sup> From a review of the study’s highlights (the full study was not made public), it is apparent that the figures were based on errors of fact supplied by “experts,” and on questionable assumptions.<sup>28</sup> Nevertheless, although the estimated costs were large, they were minuscule compared to the estimated costs of other organized crime covered in the study (for example, estimates of the costs of illicit drugs to Canadians ranged from \$1.4 billion per year to \$4 billion, just for Canada’s three most populous provinces, and it was estimated that \$5 billion to \$17 billion was laundered in Canada each year). Yet media coverage of the announcement focused not on the most costly forms of organized criminal activity, but on people smuggling. The Canadian Council for Refugees wrote to the Solicitor General about the report, declaring itself “extremely disturbed by the parts relating to refugees, which are very weak in terms of fact and analysis, fail to take account of Canada’s international human rights obligations and tend to promote xenophobia against refugees.”<sup>29</sup>

#### ***Convention against Transnational Organized Crime and Protocols***

The increasing focus on the criminal aspects of smuggling is by no means purely a Canadian phenomenon. In 1998 the United Nations General Assembly voted to begin developing a convention against transnational organized crime. The three first protocols to the Convention, drafted simultaneously with the Convention, were on firearms, trafficking in persons, and migrant smuggling.<sup>30</sup> In December 2000, the Convention and the two last protocols were signed in Palermo, Italy.

One may ask why, out of all the kinds of transnational organized crime, the international community decided to put among its first priorities the issues of trafficking in persons and migrant smuggling, investing significant amounts of money to ensure an early completion of negotiations. One reason is undoubtedly a growing international concern about trafficking in women and children.

The rise in trafficking (or in attention paid to it) has led in recent years to the drawing of a distinction between

smuggling and trafficking. The Minister of Citizenship and Immigration of Canada has described the distinction in the following way: “Human smuggling has been around for a while. It is a fee-for-service operation, involving simple payment for passage, and we all know that it is sometimes used by genuine refugees. Human trafficking, however, is more akin to human slavery. Its goal is profit from indentured human servitude.”<sup>31</sup>

Trafficking is clearly a very serious human rights problem, involving gross exploitation (often sexual) of its victims. Yet, as mentioned in the preamble to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, “despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons.”<sup>32</sup>

But is a protocol to the Convention against Transnational Organized Crime the right context for developing such an instrument? The focus of the protocol is necessarily on combating criminal actions rather than on protecting the human rights of the victims. Despite the inclusion within the Protocol of a purpose “to protect and assist the victims of such trafficking, with full respect for their human rights,”<sup>33</sup> the Protocol is framed in such a way that trafficked persons discovered by the authorities may continue to be arrested, detained, and deported back to their home country. References to particular assistance to victims of trafficking are leavened with such weak phrases as “in appropriate cases and to the extent possible,” with the result that states signing the protocol commit themselves to no concrete assistance to trafficked persons.

The Bill C-31 package shows us what the Protocol will likely lead to: the criminalization of trafficking, with no measure to give special protection or assistance to the victims of trafficking (or even identify who the victims of trafficking are).

In fact, a person’s status as a victim of trafficking can lead to particularly harsh treatment. The notion that trafficked persons should be detained *for their own protection* has been borrowed by Canada from the U.S. It was used against the Chinese refugee claimants who arrived by boat on the Canadian West Coast in the summer of 1999. The Minister of Citizenship and Immigration explained the government’s position as follows: “As many of you know, the *Immigration Act* currently permits three grounds for detention: failure to establish identity; reasonable concern for public safety; and warranted fear of flight. This section of the Act has allowed us to detain most of last summer’s boat

arrivals, and thereby achieve two goals. We have cut the traffickers off from the source of their profits, and offered a measure of protection to their victims, as they receive a fair hearing on their refugee claims.”<sup>34</sup>

The latter argument has also been made about minors suspected of being vulnerable to traffickers: in this case it is contended that the state’s responsibility for protecting the best interests of the minors necessitates detention. This line of reasoning is incorporated into the Bill C-31 package. Among special factors to be considered in the detention of minors, the proposals for regulations list the “possibility of continuing control of the minors by criminally organized smugglers or traffickers who brought them to Canada.” The government explains that this is being done in order to “treat minors in a manner consistent with their best interests, including protection from exploitation, whether by smugglers or other unscrupulous individuals.”<sup>35</sup>

The fact that governments of the West could argue that victims of trafficking should be “protected” by being deprived of their fundamental right to liberty is no doubt linked to the fact that the victims are foreign and racialized.

The rhetorical advantage of dealing with trafficking is that governments can take the moral high ground while increasing measures to combat illegal immigration. In the matter of smuggling more generally, the role of victim is assigned to the Western countries that people attempt to enter. The Australians, for example, appear to have persuaded themselves that they are particularly vulnerable to the dangers of invading hordes of foreigners (although as an island in the middle of an ocean, one might have thought Australia one of the least “vulnerable” countries). In June 1999 the *Report of the Prime Minister’s Coastal Surveillance Task Force* was finalized: it called for the Australian Defence Force to be involved in the defence of Australia’s borders against illegal immigrants. The report uses the language of military threat in discussing possible arrivals of smuggled persons. For example, paragraph 8 states that “[t]he level and geographic location of our representation overseas should be reviewed at regular intervals to meet the ever changing threat.”<sup>36</sup> A similar sense of vulnerability is conveyed by a judge of the Federal Court of Australia, speaking at a conference of refugee law judges: “Our geographic position, a large land mass surrounded by water, difficulties of coast line patrol and a high standard of living in a democratic society, make us a prime target for less fortunate people who leave the shores of their native lands, come to Australia and claim refugee status.”<sup>37</sup>

Protecting the borders from those people who would try to enter without permission is a priority for many gov-

ernments in addition to the Australian. This is presumably one reason that smuggling and trafficking protocols were so high on the governments' agenda (or at least the governments of the West). It can also explain why the trafficking protocol gives disproportionate attention to the crossing of the border. Trafficking does not necessarily involve illegal border crossing: trafficked persons may enter a country with a valid visitor visa, employment authorization, or even potentially permanent residence (if, for example, a mail-order bride program were used for trafficking purposes). Trafficking need not always even involve crossing a border at all. Victims of trafficking who do cross a border, whether legally or illegally, need to be detected and rescued from inside the country (where they may be kept in illegal detention by their traffickers). Yet the Protocol's enforcement measures are aimed almost exclusively at the border, with articles called "Border Measures," "Security and Control of Documents," and "Legitimacy and Validity of Documents."<sup>38</sup> Even the article dealing with issues of training and exchange of information is largely devoted to border-related issues.

Bill C-31 reflects the same obsession with protecting the border. The increase in penalties for border-related offences makes an assault on the border equivalent to an assault on a person: organizing the entry of ten or more people (punishable by up to life imprisonment) is put on a par with taking a person's life or aggravated sexual assault; using a false passport to enter Canada (punishable by up to fourteen years' imprisonment) is made equivalent to wounding with intent.

Meanwhile, the rights of people trying to get to the border in order to save their lives count for little in the twilight zone between borders.

### Notes

1. *Universal Declaration of Human Rights*, UNGA Res. 217 A (III), December 10, 1948, Art. 14 (1).
2. 1951 *Convention Relating to the Status of Refugees*, 189 UNTS 150, entry into force: 22 April 1954 [hereinafter *Refugee Convention*]. Article 33 (1) states, "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
3. Such efforts have a long history. Consider, for example, the comments of a Canadian immigration official in 1921: "About a year ago we began work at Antwerp with a view to, figuratively speaking, erecting a fence on the other side rather than building a hospital on this side." The fence was needed in part because of "the pressure of conditions in some of the devastated areas of Europe." National Archives of Canada, Immigration Records, RG 76, vol. 611, file 902168, part 3, reel C-10432, F.C. Blair to Sir Edmund Kemp, 13 October 1921.
4. Citizenship and Immigration Canada, *1997-1998 Estimates, Part III* (Ottawa: Minister of Supply and Services Canada, 1997) 23 [hereinafter *1997-1998 Estimates*].
5. Canadian Council for Refugees, *Interdicting Refugees* (May 1998) online: <<http://www.web.net/~ccr/Interd.pdf>> 4-5.
6. UNHCR, *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach* (9 June 2000) EC/50/SC/CRP.17.
7. The *Refugee Convention* recognizes that refugees may need to enter countries illegally and prohibits the imposition by states of "penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." Art. 31(1).
8. *Immigration Act*, R.S.C., 1985, c. I-2, s. 94 (2) listing punishments for offences under subsection (1), which includes at para. 94(1)(b) the offence of coming into Canada or remaining in Canada "by use of a false or improperly obtained passport, visa or other document pertaining to the admission of that person . . ."
9. Bill C-31, s. 116(1)(a), prescribing the penalty for the offence in paragraph 115(1)(a).
10. Bill C-31, s. 116(1)(b), prescribing the penalty for the offence in paragraph 115(1)(b).
11. *Immigration Act*, s. 94.1.
12. *Immigration Act*, s. 94.2.
13. Bill C-31, s. 110(2) and (3).
14. Bill C-31, s. 113.
15. Bill C-31, s. 101.
16. Citizenship and Immigration Canada, *Clause by Clause Analysis of Bill C-31* (15 June 2000) online: <<http://www.cic.gc.ca/english/pdf/FILES/pub/c31cls-e.pdf>>: 77.
17. *Immigration Act*, s. 46.01 (1)(b). No countries have ever been prescribed as "safe third countries."
18. Bill C-31, s. 108(3).
19. Citizenship and Immigration Canada, *Caplan Tables New Immigration and Refugee Protection Act*, News Release 00-09, Ottawa, April 6, 2000, with attached backgrounders, online: <<http://www.cic.gc.ca/english/press/00/0009-pre.html>> [hereinafter *News Release*]. The quotation comes from backgrounder "Detention Provisions Clarified." The same point is also made in the summary backgrounder "Closing the Back Door . . .," which explains that "the legislation clarifies the grounds for detaining those arriving as part of criminally organized smuggling operations in addition to those who are suspected of being security risks, war criminals and violators of human rights." In answer to the question "Why we are doing it," the backgrounder explains that it is "to maintain the integrity of the refugee determination system for security cases" and "to keep those who pose a security risk off the streets." People who use criminally organized smugglers to get to Canada are thus assimilated to security risks.
20. *Ibid.*, "Closing the Back Door . . ."
21. *Ibid.*

22. Citizenship and Immigration Canada, "Notes for an Address by the Honourable Elinor Caplan, Minister of Citizenship and Immigration, to a Press Conference on the Tabling of the Immigration and Refugee Protection Act," Ottawa, April 6, 2000, online: <<http://www.cic.gc.ca/english/press/speech/immact-e.html>>.
23. François Crepeau, "International Cooperation on Interdiction of Asylum-Seekers: A Global Perspective" in *Interdicting Refugees* 8. (May 1998) online: <<http://www.web.net/~ccr/Interd.pdf>>
24. "Closing the Back Door . . ."
25. 1997–1998 *Estimates*, 23.
26. André Juneau, executive director, Immigration Policy, Employment and Immigration Canada, letter to Nancy Worsfold, executive director, Canadian Council for Refugees, 10 November 1992.
27. Samuel D. Porteous, *Organized Crime Impact Study: Highlights* (1998) Public Works and Government Services of Canada, online: <<http://www.sgc.gc.ca/epub/Pol/e1998orgcrim/e1998orgcrim.htm>>
28. For example, the study relied on "experts" who based their comments on an acceptance rate of 70 per cent in the refugee determination system, although anyone could have discovered from official government sources that the acceptance rate was 44 per cent in 1996 and 40 per cent in 1997.
29. Francisco Rico-Martinez, president, Canadian Council for Refugees, letter to Andy Scott, Solicitor General of Canada (10 September 1998), online: <<http://www.web.net/~ccr/scott.htm>>.
30. United Nations General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Work of Its First to Eleventh Sessions, A/55/383*, 2 November 2000 [hereinafter *Report of Ad Hoc Committee*].
31. Elinor Caplan, "Notes for an Address by the Honourable Elinor Caplan, Minister of Citizenship and Immigration, to the Annual Meeting of the Canadian Council for Refugees" (December 3, 1999), online: <<http://www.cic.gc.ca/english/press/speech/ccr-e.html>> [hereinafter "Notes for an Address"]. Various definitions of trafficking and smuggling are presented in Canadian Council for Refugees, "Migrant Smuggling and Trafficking in Persons" (2000) online: <<http://www.web.net/~ccr/traffick.htm>>. See also John Morrison, "The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy?" (July 2000) online: <<http://www.unhcr.ch/evaluate/reports/traffick.pdf>>: 9–13.
32. *Report of the Ad Hoc Committee*, Annex II, 53–54.
33. *Ibid.*, Article 2 (b).
34. *Notes for an Address*.
35. Citizenship and Immigration Canada, *Bill C-31, Immigration and Refugee Protection Act, Explanation of Proposed Regulations*, prepared for members of the House of Commons Standing Committee on Citizenship and Immigration (29 September 2000) online: <<http://www.cic.gc.ca/english/about/policy/c31regs-e.html>>.
36. Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Prime Minister's Coastal Surveillance Task Force Report* (June 1999) online: <<http://www.dPMC.gov.au/Int/index.htm>>. See also references to "the threat from west" (para. 28) and "the threats involved" (para. 29).
37. John S. Lockhard, "Particular Social Group: A Window of Opportunity or a Particularly Slippery Slope?" in Jordan, Nesbitt and Associates Ltd., eds., *The Realities of Refugee Determination on the Eve of a New Millennium: The Role of the Judiciary* (Haarlem: International Association of Refugee Law Judges, 1999) 98.
38. *Report of the Ad Hoc Committee*, Annex II, Articles 10–13.

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