HOUSE OF COMMONS
CANADA

THE SAFE THIRD COUNTRY REGULATIONS

REPORT OF THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

Joe Fontana, M.P.
Chair

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THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

FIRST REPORT

In accordance with its permanent mandate under Standing Order 108(2), your Committee has conducted a study *The Safe Third Country Regulations* and reports its findings and recommendations.

ACKNOWLEDGEMENTS

The Committee could not have completed its study *The Safe Third Country Regulations* without the cooperation and support of numerous people. The Chairman and members of the Committee extend their thanks to all the witnesses who shared with them their insight and their knowledge on this subject.

Our task could not be completed without the valuable work of the research officers of the Parliamentary Research Branch, Benjamin Dolin and Margaret Young. The Committee also wishes to acknowledge the Clerk, William Farrell, and Lucie Poulin for the administration and support throughout the course of this study.

The members of the Committee also wish to express their appreciation to the staff of the Committees Directorate, the Translation Bureau of Public Works and Government Services Canada, the Department of Citizenship and Immigration staff and the support services of the House of Commons who have provided logistic and administrative support to elaborate this report.

Finally, the Chairman wishes to thank the members of the Committee for the hours they dedicated to study this question and to prepare this report.

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INTRODUCTION

Under the *Immigration and Refugee Protection Act* (IRPA), the Minister may designate a country as a state to which refugee claimants may be returned to make their claim for protection. The provision for naming a so-called “safe third country” has existed in Canadian law since 1989 but has never been used. It is now proposed that the United States be given this designation.

Denying access to our refugee determination system and returning a claimant to another state requires, in practice, the negotiation of a bilateral agreement with the designated country. On 30 August 2002, a draft safe third country agreement (the Agreement) was signed with the United States. Both countries undertook to submit this Agreement to their respective governments, and the Canadian Cabinet granted its approval on 8 October 2002. The U.S. Secretary of State has not yet formally approved the Agreement but is anticipated to do so before Deputy Prime Minister John Manley meets with Governor Ridge on 5 December 2002. The Americans will then publish their implementing regulations.

The Canadian safe third country regulations were pre-published on 26 October 2002, with a public comment period of 30 days. The purpose of pre-publishing the regulations is to allow interested members of the public a period of time to study them and to submit written comments to the department before they are finalized and come into force. The Committee understands that limiting the time for public input is administratively necessary. However, as the Committee with the mandate to oversee Citizenship and Immigration Canada (CIC), it is within our purview to review and comment on all departmental matters, at our discretion. Unfortunately, we were not able to meet the deadline given to the public, but as we were informed that implementation will not occur until next spring, we expect that our comments and recommendations will be taken into account before the Agreement and regulations come into force. The Committee recently studied the *Immigration and Refugee Protection Regulations* and our report of March 2002, *Building a Nation*, resulted in significant improvements to the pre-published regulations. It is hoped that this report will be similarly received.

Despite conducting our study in a very limited time period, the Committee is satisfied that we have addressed the major issues. In addition to an appearance from the Minister and CIC officials, we heard oral presentations from 20 individuals representing nine organizations, and received numerous written briefs. The Committee had an opportunity to identify the common issues of concern and now makes the following comments and recommendations.

A. BACKGROUND

Article 33(1) of the United Nations Convention and Protocol Relating to the Status of Refugees (the Refugee Convention) provides:

> 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.

Similarly, Article 3(1) of the United Nations Convention Against Torture (the CAT), ratified by both Canada and the United States, provides:

> No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

These international commitments form part of the backdrop against which the Agreement must be judged. In returning asylum seekers we must ensure that the Refugee Convention and the CAT are respected. Indeed, this has been specifically delineated in section 102 of the IRPA, which lists the factors to be considered when designating a safe third country. The Committee notes that Article 3 of the Agreement provides that Canada and the U.S. will not return anyone referred back under the Agreement to another country until an adjudication of their refugee claim has been made.

The Committee was informed that the safe third country concept has its origins in Europe where it evolved out of a desire to prevent "asylum shopping." It was alleged that some people were making asylum claims in different European countries, either simultaneously or consecutively, in an effort to find the most personally advantageous situation. It is the government's view that selecting a new home based on personal preferences or for economic reasons falls within the domain of immigration and does not properly belong in the asylum context. In essence, refugees should be required to seek asylum in the first safe country they enter. Many of our witnesses, on the other hand, argued that claimants should be permitted to choose where they are most likely to find a safe haven that allows them to become economically and socially re-established.

The United Nations High Commissioner for Refugees (UNHCR) has established guidelines for implementing the safe third country concept and does not, in principle, oppose such accords. The UNHCR recognizes that states are entitled to enter into agreements to share responsibility for determining asylum requests, provided it is explicit that return can be effected only when the claimant will be able to access fair asylum procedures in the receiving country. The Regulatory Impact Analysis Statement (RIAS) accompanying the proposed regulations indicates that the UNHCR supports the objectives of the Agreement and considers that both Canada and the U.S. meet their international obligations. However, when the UNHCR representatives appeared before the Committee, they felt it necessary to qualify this statement by indicating that there are

portions of the Agreement that could jeopardize access to refugee protection, contrary to international norms. As discussed below, this was a cause of concern for the Committee.

B. STATISTICS

The Committee was presented with various statistics regarding the number of claims the Agreement is expected to address. Figures provided by CIC indicate that from 1995 to 2001, approximately one-third of all refugee claims in Canada (31% to 37% annually) were made by claimants known to have arrived from or through the United States. Additional people making inland claims may have come via the U.S. but are not captured in this data, as their route of entry could not be confirmed. Of those claiming at a port of entry, where verification of transit countries may be more easily undertaken, 60% to 70% come from or through the United States on their way to Canada. In 2001, 13,497 people known to have come from or through the U.S. made refugee claims, and 95% of these applications were initiated at land border ports of entry. While no one could provide data regarding the flow of refugee claimants from Canada to the United States, it appears likely that they would number no more than a few hundred per year.

C. PAST STUDIES

An attempt at an agreement between Canada and the U.S. was made in the mid-1990s. A preliminary draft agreement was concluded in November 1995 and released to the public. The Immigration Committee held hearings in March 1996 and tabled a report in May of that year.[1] While the Committee felt that a safe third country agreement was not wrong in principle and that the underlying premises of the draft were sound, it made the following recommendations:

- An ongoing monitoring committee, composed of representatives of both governments and the UNHCR, should be established.

- The mandate of the monitoring committee should include the question of significant differential treatment by the two countries of categories of people who, in the opinion of the UNHCR, have meritorious claims.

- In cases where French-speaking claimants wish to make a claim in Canada for reasons relating to language, the government should exercise its discretion to allow them to claim in Canada even though the U.S. would normally be responsible for them.

- Any future draft agreement should be brought before this Committee to be re-examined.

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[1] Standing Committee on Citizenship and Immigration, 35th Parliament, 2nd Session, First Report, *The Preliminary Draft Agreement Between Canada and the United States Regarding Refugee Claims*, May 1996.

In 2001, the Committee again visited the issue in the course of its study on border security.[2] In recommending that the government pursue a safe third country agreement with key countries, and especially the United States, the Committee stated the following:

> The Committee believes there is merit in again attempting to negotiate such an arrangement with the U.S., but cautions that it is not a "magic bullet" that will solve the increasing demands placed on our refugee determination system. It would be one tool among many. It is apparent that front-line border workers overwhelmingly favour the pursuit of a safe third country agreement with the United States and believe that overall efficiencies may be achieved. As well, the United Nations High Commissioner for Refugees (UNHCR) has guidelines regarding the application of the safe third country concept. Following these guidelines, Canada could pursue an arrangement with the U.S. that would ensure compliance with our humanitarian obligations.

We also note the Senate's comments on this issue in the course of the Social Affairs, Science and Technology Committee's study of Bill C-11, the *Immigration and Refugee Protection Act* (IRPA).[3] That Committee reached the similar conclusion that the government should work toward implementing the safe third country provisions of the IRPA and, in particular, an agreement relating to shared asylum processing with the United States.

THE PROPOSED REGULATIONS

The regulations begin by stating that the United States is a designated country for the purposes of section 101(1)(*e*) of the IRPA, which provides that a claim is ineligible to be referred to the Immigration and Refugee Board (IRB) if "the claimant came directly or indirectly to Canada from a country designated by the regulations …." The remaining regulations are devoted to setting out exceptions to the safe third country rule and outlining procedures for suspending or terminating the Agreement.

To begin with, the provisions will only apply at land ports of entry. The regulations specify that the Agreement will not apply at:

- a location that is not a port of entry (for example, an inland CIC office);
- a harbour port; or
- an airport.

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2 Standing Committee on Citizenship and Immigration, 37th Parliament, 1st Session, Second Report, *Hands Across the Border: Working Together at our Shared Border and Abroad to Ensure Safety, Security and Efficiency*, December 2001.

3 Senate Standing Committee on Social Affairs, Science and Technology, Ninth Report, 23 October 2001, 37th Parliament, 1st Session.

As well, claimants will not be returned to the U.S. if they establish that they have a family member in Canada who is:

- a Canadian citizen;
- a permanent resident;
- a person whose refugee claim has been accepted; or
- a person who is at least 18 and has had a refugee claim referred to the IRB for determination.

Clause 2 of the proposed regulations defines "family member" in respect of a claimant as their spouse or common-law partner, their legal guardian, and any of the following: their child, father, mother, brother, sister, grandfather, grandmother, uncle, aunt, nephew or niece.

Unaccompanied minors are also exempted and the regulations provide details in this respect. If the minor is under 18 years of age, is not accompanied by an adult, has no spouse or common-law partner, and has no parent or legal guardian in Canada or the United States, access to Canada's refugee protection system will be permitted.

The Agreement will also not apply to people with a valid Canadian visa or those who do not require a visa to enter Canada but who would need a visa to enter the U.S.

Article 6 of the Agreement provides that either country may, at its own discretion, examine *any* refugee claim where it determines it is in the public interest to do so. Under this Article, proposed section 159.6 indicates return to the U.S. will not occur if the claimant:

(a) is charged or has been convicted of an offence in the U.S. that is punishable by the death penalty;

(b) is charged or has been convicted of an offence in any other country that is punishable by the death penalty in that country; or

(c) is a national of a country for which the Minister has imposed a stay on removal orders.

Article 10 of the Agreement provides for the suspension or termination of the Agreement, and the proposed regulations set out the notification process that would be required. The Agreement can be terminated on 6 months notice, or suspended for up to 3 months upon written notice to the other party.

GENERAL OBSERVATIONS

Officials from Citizenship and Immigration Canada informed the Committee that the purpose of the Agreement is to reduce the number of refugee claims being referred to the IRB, in particular the large number of claims from people who are granted visitor visas to enter the United States and who then proceed to the Canadian border to initiate a refugee claim. The Committee hopes that any financial savings realized from the Agreement's impact on inland claims will be used to enhance our overseas humanitarian resettlement program.

The Minister and departmental officials stated that the implementation of the Agreement is projected to reduce the pressures being faced by the IRB, but that it will not adversely affect the situation of asylum seekers, who will be guaranteed access to either the Canadian or the American refugee adjudication system. Representatives of the non-governmental organizations (NGOs) who appeared as witnesses (who oppose the safe third country concept in principle) and the UNHCR (which does not oppose such agreements) did not accept the department's assurances. The question the Committee had to grapple with was whether the concerns expressed by these witnesses were significant and, if so, whether they could be addressed by changes to the regulations or whether the Agreement itself was defective.

To some extent, the Committee does not have the full picture. In Canada, procedural details are still to be finalized. In the United States, because the Secretary of State has not yet signed the Agreement, the American regulations have not been published. Publication of the U.S. regulations may help to clarify some issues addressed by this report.

On balance, the Committee supports the Agreement. However, we do have concerns about some aspects of the proposed regulations. Before implementation, the Committee trusts that the department will address the various matters outlined below.

THE ISSUES

A. The American Asylum System

Many of the witnesses questioned the basic premise that the United States is a "safe" country for all asylum seekers. Witnesses from various NGOs and the UNHCR expressed concerns about certain U.S. practices. Specifically brought to the fore were detention procedures, the expedited removal process, the one-year time limit to file a claim in the U.S., and differences in the interpretation of the refugee definition in American jurisprudence. A memorandum by Professor David A. Martin of the University of Virginia, commissioned by CIC, was also provided for our review. In his paper, Professor Martin reached the conclusion that the United States does adhere to the

principles of the Refugee Convention and that its asylum processes are consistent with international law.

(i) Expedited Removals

The United States introduced the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) in 1996 and substantially altered their asylum process. Upon a foreign national's arrival at a port of entry, the IIRIRA authorizes an immigration officer to order the person removed from the United States without further hearing or review if the officer believes that the person arrived without proper documents and is illegally in the country. If the foreign national without proper travel documents makes a claim to asylum at a port of entry or if a claim to asylum is made when the foreign national has previously entered the country without being inspected at an official port of entry, the claimant can still be removed from the U.S. if an asylum officer determines that he or she does not have a "credible fear" of persecution. The person claiming asylum must be detained until this decision is made. The IIRIRA permits an immigration judge to review a negative decision of an asylum officer, if requested by the claimant. The judge's review must be completed within seven days. Detention is discretionary pending a decision by the immigration judge.

Witnesses expressed concern about this process. They fear that claimants returned from Canada pursuant to the Agreement will not necessarily be granted a full hearing of their claim in the United States if they are undocumented. Rather, they could find themselves in the expedited removal process, which many witnesses, including the UNHCR, suggested does not provide adequate procedural guarantees against *refoulement*, or return to the country where they claim to fear persecution.

Department officials countered that claimants who are returned by Canada to the United States would not fall into the expedited removal process as it only applies at American ports of entry and the claimants who are turned away at the Canadian border are already in the United States. This was not the understanding of the UNHCR, which indicated in its brief that although "U.S. government officials have stated they expect that most persons returned from Canada would not be subject to expedited removal, this has not yet been confirmed." As well, Professor Martin's memorandum is ambiguous, stating that it is not clear whether expedited removal could be applied to claimants returned to the U.S. from Canada. However, he does state that such a return would be considered as creating a "new arrival" in the context of the American one-year deadline to apply for asylum; arguably, then, it could also be considered an "arrival" that would trigger the expedited removal process.

The Committee notes that Article 3 of the Agreement requires adjudication of a person's refugee claim in one of the two countries. The Committee has sufficient concerns about the expedited removal process that we feel it must be addressed for Article 3 to be meaningful.

RECOMMENDATION 1

The Committee recommends that the government seek assurances that people returned to the United States under the Agreement will not face expedited removal proceedings.

(ii) Detention

Most of the NGOs also discussed what they view as an excessive use of detention by the American authorities. The conditions of detention were also questioned, and it was indicated that many refugee claimants in the United States, including minors, are held in facilities with criminals.

The department indicated to the Committee that while the U.S. may in practice detain more asylum seekers, in law their grounds for detention are the same as in Canada: that the person is a security risk, is unlikely to appear for hearings or removal, or their identity is not established. Professor Martin dismissed the concerns of groups such as Amnesty International regarding detention as being based on cases that violated American law and were subsequently corrected.

The Committee accepts that American detention policies differ from those in Canada to some degree, but believes that the U.S. does comply with international law in this regard. With respect to the detention of minors, the Committee notes that the Agreement and regulations do provide that unaccompanied minors will be permitted to enter Canada from the U.S., and we have made recommendations for improving the treatment of unaccompanied minors below. The Committee is concerned that some people may be detained in the U.S. who would likely not be detained in Canada. As will be recommended below, this issue should be part of the ongoing monitoring of the Agreement.

(iii) Gender-based Asylum Claims

Witnesses questioning the American application of the refugee definition made specific reference to the fact that gender-based claims are treated differently in Canada, particularly those based on domestic violence. In fact, in the Regulatory Impact Analysis Statement, the department concedes that Canada and the U.S. “have different approaches” in this regard. Professor Martin addressed this topic by stating that the U.S. has actually been hailed as a leader in the recognition of gender-based claims and that it is only the “difficult and controversial” area involving claims based on domestic violence that is problematic. This, he suggested, is due to the Board of Immigration Appeals decision in *Matter of R.A.* in 1999, where a restrictive view of the Refugee Convention ground of “particular social group” led to the rejection of a claim based on domestic abuse. This decision, he noted, was subsequently vacated on the order of Attorney General Janet Reno, and new regulations to guide decision-makers in such matters are

currently being created. Professor Martin does concede that until these regulations are published, real uncertainty about current American standards exists.

RECOMMENDATION 2

The Committee recommends that until such time as the American regulations regarding gender-based persecution are consistent with Canadian practice, women claiming refugee status on the basis that they are victims of domestic violence be listed as an exempt category under section 159.6 of the proposed regulations.

RECOMMENDATION 3

The Committee further recommends that gender-based analysis be part of the ongoing monitoring of the Agreement to ensure that victims of domestic violence are not adversely impacted.

(iv) One-year Time Requirement for Filing an American Asylum Claim

Under the IIRIRA, a person is barred from accessing the American asylum system if they fail to apply within one year of arrival in the United States. Many of the witnesses appearing before the Committee argued that this bar could result in claimants who are returned from Canada under the Agreement not having access to either asylum system; for example, if they came to Canada after having been in the U.S. for over a year as students or visitors. The UNHCR, in particular, argued for an exemption for such cases.

Professor Martin's memorandum, in contrast, notes that the one-year bar is not absolute. It is subject to override if claimants can show either changed circumstances that affect their eligibility for asylum (e.g. a student who has been in the U.S. for a year now fears returning to his home after a military coup) or extraordinary circumstances relating to the delay in filing (which includes serious illness, disability, or ineffective assistance of counsel). As well, the one-year deadline is calculated from the time of the person's *last* arrival. Professor Martin suggests that being returned under the Agreement from Canada to the U.S. would be considered a "new arrival" and would have the effect of starting the one-year clock anew.

RECOMMENDATION 4

The Committee recommends that the government seek assurances from the United States that claimants returned under the Agreement will not be precluded from accessing the American asylum system on the basis that they have been in the United States for one year or more.

B. The Agreement Only Applies to Land Ports of Entry

The fact that the Agreement and proposed regulations apply only to land ports of entry was discussed at some length in the Committee's proceedings. The fact that inland claims are not covered is due, in part, to lessons that have been learned from the European experience. In implementing safe third country regimes, some countries had to establish time-consuming and costly processes for inland claims. It is understandable that the government would like to avoid diverting resources to a procedure intended to establish the inland claimants' route to Canada, rather than using that time and money to actually decide their refugee claims.

We also heard evidence relating specifically to the German experience. In 1993, Germany enacted a safe third country rule that related to all nine countries with which Germany has land borders. No one who sought entry from one of those countries overland was allowed to enter and make a claim, without exception. The main purpose of the agreement was to reduce the number of people applying for asylum in Germany. Overnight, no one applied for asylum any more at the land borders. Yet every year since then, approximately 100,000 people have applied for asylum in Germany. They all cross the borders illegally and apply inland.

Many witnesses indicated that the fact that the Agreement does not apply to inland claims would, as occurred in Germany, lead people to enter the country surreptitiously. One witness even indicated that church groups would assist in this endeavour, setting up what was referred to as a modern "underground railroad." Others pointed to human smugglers as likely beneficiaries of the Agreement. The NGOs pointed to the inherent dangers involved in entering Canada illegally and the potential for injury and loss of life.

The Committee was also told of the fairly orderly system that now exists at Canada's ports of entry, including the land border. All claimants are fingerprinted, photographed and issued instructions for medical examinations. This will, of course, not occur if people avoid reporting to border posts. It was suggested that the Agreement could therefore have an adverse effect on security and public health in Canada, given that more people would enter the country illegally. It was also suggested that this could result in a public backlash against refugees, as illegal entries tend to create intolerance.

RECOMMENDATION 5

The Committee recommends that, as part of the monitoring of the implementation of the Agreement, the issues of "irregular migration" and people-smuggling be closely watched. Should the Agreement fail to decrease the number of claims being referred to the Immigration and Refugee Board, and should an increase in the number of illegal entries to Canada be apparent, the government must be prepared to exercise its authority to suspend or terminate the Agreement.

C. Definition of Family

The Committee heard concerns expressed with respect to the definition of "family member" in the regulations. This definition is particularly important because claimants with a listed family member in Canada will not be returned to the United States.

To begin with, some of the witnesses suggested that *de facto* family members should be included in the definition. Many refugees lose their biological family members and become dependent on others, both financially and emotionally.

RECOMMENDATION 6

The Committee recommends that the regulations include an exception for claimants with *de facto* family members in Canada who serve or have served as their primary support mechanism.

Another concern was the wording of section 159.5(*b*) of the proposed regulations. It is necessary that the family member in Canada have "lawful status" for the exception to apply and this section would include a family member whose claim for refugee protection has been accepted under the Act. Some of the witnesses felt that this wording might improperly exclude those who had been granted protected status through the Pre-Removal Risk Assessment process of the Act.

RECOMMENDATION 7

The Committee recommends that section 159.5(*b*) of the regulations be changed to clearly include all protected persons under the Act.

A final issue relating to the family exception arose in the course of the Committee's discussion of refugee claims based upon domestic violence. We have recommended that, until the American regulations regarding gender-based persecution are consistent with Canadian practice, women claiming refugee status on the basis that they are victims of domestic violence be permitted to have their claims heard in Canada. To ensure that victims of domestic violence are not pursued by their abusive spouses, the Committee feels that the regulations should clearly indicate that the family exception should not apply to men whose wives or common-law partners have been permitted entry to Canada on this basis.

RECOMMENDATION 8

The Committee recommends that the definition of family in the regulations be changed to provide that a person not be granted entry to Canada to pursue a refugee claim on the basis that his spouse or

common-law partner is in Canada, if the spouse or common-law partner in Canada was permitted entry on the basis that her refugee claim concerns domestic violence.

D. Unaccompanied Minors

The Agreement provides an exception for unaccompanied minors, who would be permitted to enter Canada to pursue a claim for protection. The regulations define such a claimant as a person who:

- has not reached the age of 18 years and is not accompanied by a person who has reached the age of 18 years;
- has neither a spouse nor common-law partner; and
- has neither a mother nor father nor a legal guardian in Canada or the United States.

As some witnesses pointed out, this appears to be more restrictive than the text of the Agreement itself, which defines an unaccompanied minor as an unmarried person under 18 without a parent or legal guardian in one of the two countries. The additional requirement that the child not be accompanied to the border by any adult was criticized as problematic. What if an adult sibling accompanied an orphaned child? The Agreement would appear to allow the child to enter Canada while the regulations would not. What about a kindly stranger seeking to help the youngster, or another adult who has no legal duties with respect to the minor?

Witnesses also referred to the fact that Americans often detain children, sometimes with criminals, and also expressed concern that the United States has not ratified the *Convention on the Rights of the Child*.

RECOMMENDATION 9

The Committee recommends that an unaccompanied child be defined as a minor separated from both parents and not accompanied by a person over 18 who by law or custom has the responsibility for looking after the child.

E. Public Interest Exceptions

Article 6 of the Agreement provides that either country may, at its own discretion, examine any refugee claim where it determines it is in its public interest to do so. The proposed regulations specify the following public interest exceptions:

- Claimants charged or convicted of a death penalty offence in any country; and

- Claimants who are nationals of countries in respect of which the Minister has imposed a moratorium on removals.

Some members of the Committee expressed concern that the exception for claimants charged or convicted of a death penalty offence in any country would encourage murderers or other serious offenders to seek refuge in Canada. Although CIC officials argued that the Supreme Court of Canada decision in *U.S.* v. *Burns and Rafay*[4] demonstrated that this provision is consistent with Canadian values, it is nevertheless the case that some Canadians continue to have concerns that Canada may be perceived as a "safe haven" for criminals. Indeed, if the exception in the regulations is examined in isolation that might seem to be the case.

The exception, however, should be seen as part of an ongoing process, not as an end point. A person admitted to Canada who has been convicted of a death penalty offence would likely *not* be eligible to make a refugee claim by reason of section 101(2)(*b*) of the *Immigration and Refugee Protection Act*.[5] Moreover, it is most likely that the jurisdiction where the offence occurred would request the individual's return under an extradition agreement. At that point, extradition procedures would begin. If the person is found to be extraditable, the Minister of Justice has a discretion to return the person, with assurances that the death penalty would not be applied, or in egregious cases, even without such assurances.

Thus, the Committee has concluded that it cannot be said that the exception in the regulations for those facing a death penalty creates a safe haven. Rather, it is consistent with other aspects of our law, and most members of the Committee support it. We note as well that none of our witnesses disagreed with that exception.

Our witnesses did, however, argue for additional public interest exceptions. To begin with, some suggested that the broad discretion of the Minister under the Agreement is taken away by the regulations. Witnesses felt that the regulations should specifically indicate that the Minister may exempt any claimant from the safe third country provisions in the public interest. The Committee believes that specifying that this discretion exists is merited.

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4 [2001] S.C.C. 7.

5 That provision states that a person is ineligible to make a refugee claim by reason of a conviction outside of Canada if the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would be punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years.

RECOMMENDATION 10

The Committee recommends that section 159.6 of the regulations include a provision allowing for the non-application of the Agreement in any additional situations the Minister determines to be in the public interest.

Witnesses also provided other suggestions for public interest exceptions. Some concerns that could be addressed through this provision have been referred to already in this report. The Committee has considered all of the proposals and makes the following recommendations:

RECOMMENDATION 11

The Committee recommends that Francophone claimants should, in the public interest, be permitted to have their claims heard in Canada.

RECOMMENDATION 12

The Committee recommends that claimants who may succeed in a claim for refugee protection under the Immigration and *Refugee Protection Act* but, because of the nature of their claim, would not be protected in the United States, should, in the public interest, be permitted to have their claims heard in Canada.

F. Procedural and Administrative Issues

(i) Resource Requirements

Many witnesses questioned what sort of process would be established at our land ports of entry to administer the regulations. CIC officials informed the Committee that two officers, one of them a Senior Immigration Officer, would review any claims by people who indicate that they meet one of the exceptions under the regulations. Only then could a person be returned to the United States. Witnesses from the Canada Employment and Immigration Union, however, pointed out that some border posts are staffed only by one person.

The Union representatives also referred to other resources that will be required to implement the Agreement. Officers at the border will need to do more in-depth interviews with claimants to determine if they meet one of the exceptions in the regulations. As an increase in claims at inland offices and airports can be expected, more resources will be required there as well. The expected increase in “irregular migration” will also place more demands on border enforcement personnel. All this will compound existing strains on

resources. In fact, the Union representatives indicated that CIC term staff are currently being let go for financial reasons.

Adequate resources must be provided to the department to implement the Agreement. It is clear that if the resources are not there, the Agreement will not have its desired effect. We hope that the department will meet its commitment to have at least two officers available at all border posts in order to fairly and quickly assess whether claimants meet one of the exceptions in the regulations.

RECOMMENDATION 13

The Committee recommends that additional resources be provided to the department to meet the demands that will result from implementation of the Agreement. The government must closely monitor the effects of the Agreement and assemble "SWAT teams" that can be deployed quickly should bottlenecks appear.

(ii) Burden of Proof

The Committee heard concerns about whether the proposed procedures will be fundamentally fair. Many witnesses referred to the burden of proof that asylum seekers would be required to meet at the border, as section 159.5 of the proposed regulations indicates that claimants must establish that they are eligible to make their claim in Canada. This may be difficult for claimants who do not have legal counsel or who do not speak one of Canada's official languages, and who may require some time to establish that they are exempt under the Agreement. As well, the Committee is aware that many may have been forced to flee their homelands without documentation or may come from countries where no central government exists to issue documentation that could assist the person.

RECOMMENDATION 14

The Committee recommends that the regulations specifically state that they are to be interpreted in a manner sensitive to the difficulties that may be faced by claimants in providing proof that they are eligible to have their claims heard in Canada, and that claimants should be given the benefit of the doubt.

We note that in cases where there are delays in this process, a deemed referral of the claim to the Immigration and Refugee Board will occur after three days, in most cases, pursuant to section 100(3) of the Act.

(iii) Appeal Mechanism

A lack of effective appeal mechanism was also cited as a concern by many of the witnesses. Departmental officials indicated that any decision by an immigration officer is subject to judicial review by the Federal Court. However, the NGO witnesses argued that such an appeal would not be accessible to most refugee claimants who would be required within 15 days to obtain counsel to file an application for leave to be heard by the Court. Leave can be difficult to obtain and, even then, the Federal Court will not review the immigration officer's decision on a standard of correctness. Thus, although judicial review is available, it may not provide a practical remedy. Because the IRPA now provides that a finding of ineligibility forever precludes another claim, the repercussions of the immigration officer's decision are significant.

RECOMMENDATION 15

The Committee recommends that the regulations provide for an effective and transparent internal review mechanism before returning someone to the United States to make a claim.

G. The Supplementary Draft Agreement

A diplomatic note accompanying the Safe Third Country Agreement, based upon Article 9, has been made public. It would permit the U.S. to refer up to 200 people per year to Canada for resettlement provided they are "outside the United States and Canada, as defined in respective national immigration laws, and have been determined by the Government of the United States of America and the Government of Canada to be in need of international protection." While the Agreement clearly contemplates Canada being able to refer refugees to the U.S. for resettlement, the supplementary draft agreement only refers to Canada's willingness to resettle American referrals. When discussing this matter, the Minister indicated that the U.S. had originally suggested that Canada accept 2,400 referrals per year.

The Committee notes that Article 9 of the Agreement is reciprocal and that Canada is permitted to call on the U.S. to resettle refugees as well. We are hopeful that the United States will be as cooperative in accepting referrals from Canada, should the need arise. We also note the department's assurances that any refugees referred by the United States would be subject to Canadian law and would be screened by our officials prior to entry. However, in the interests of openness, the Committee believes that if the number of referrals is to be specified, it should be specified for both parties and should form part of the main Agreement. It is inappropriate to have such a significant issue addressed by a diplomatic note in this manner.

RECOMMENDATION 16

The Committee recommends that the provisions of the supplementary draft agreement be incorporated into the main Agreement.

H. Review of the Agreement

The Committee was moved by the conviction and heartfelt concern of the witnesses who appeared before us to express their reservations about the Agreement and the regulations. It is quite clear, however, that the Agreement will be implemented, and soon. We would like to encourage all those who work on the front lines — in the department and for the NGOs — to make public any problems that come to light. Moreover, this is clearly a matter that requires continued oversight by the Committee.

Ongoing monitoring will ensure that the various issues that were raised in our hearings continue to remain alive. For example, the Committee heard evidence that the American asylum system may be improperly influenced by that country's foreign policy goals. In the event that such an improper influence were to become apparent in the course of monitoring the Agreement, remedial action could be taken by the Government of Canada at that time, including suspending or even cancelling the Agreement.

RECOMMENDATION 17

The Committee recommends that when the department performs a full review of the Agreement one year after its implementation, it should report its findings to this Committee. The department's report to the Committee should include the following information:

- **The number of claimants returned to the United States under the Agreement, including their countries of origin;**
- **The number of claimants returned to Canada under the Agreement, including their countries of origin;**
- **The number of claimants granted exemptions by each country, specifying the category;**
- **The number of claims made at inland offices during the period, as well as the number of claims made at inland offices in the same time period in the year preceding the Agreement;**

- **The number of claims made at airports during the period, as well as the number of claims made at airports in the same time period in the year preceding the Agreement;**

- **A report on human smuggling and human trafficking activity into Canada during the period;**

- **Detention statistics for land ports of entry during the period, as well as detention statistics for the same time period in the year preceding the Agreement;**

- **Reports on any migrants killed or injured in the course of attempting illegal entry into Canada;**

- **A summary of the concerns of non-governmental organizations brought to the attention of the department; and**

- **Any other significant concerns that come to the attention of the department, including any unintended or unanticipated effects of the Agreement.**

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

The Committee recommends that the government seek assurances that people returned to the United States under the Agreement will not face expedited removal proceedings.

RECOMMENDATION 2

The Committee recommends that until such time as the American regulations regarding gender-based persecution are consistent with Canadian practice, women claiming refugee status on the basis that they are victims of domestic violence be listed as an exempt category under section 159.6 of the proposed regulations.

RECOMMENDATION 3

The Committee further recommends that gender-based analysis be part of the ongoing monitoring of the Agreement to ensure that victims of domestic violence are not adversely impacted.

RECOMMENDATION 4

The Committee recommends that the government seek assurances from the United States that claimants returned under the Agreement will not be precluded from accessing the American asylum system on the basis that they have been in the United States for one year or more.

RECOMMENDATION 5

The Committee recommends that, as part of the monitoring of the implementation of the Agreement, the issues of "irregular migration" and people-smuggling be closely watched. Should the Agreement fail to decrease the number of claims being referred to the Immigration and Refugee Board, and should an increase in the number of illegal entries to Canada be apparent, the government must be prepared to exercise its authority to suspend or terminate the Agreement.

RECOMMENDATION 6

The Committee recommends that the regulations include an exception for claimants with *de facto* family members in Canada who serve or have served as their primary support mechanism.

RECOMMENDATION 7

The Committee recommends that section 159.5(*b*) of the regulations be changed to clearly include all protected persons under the Act.

RECOMMENDATION 8

The Committee recommends that the definition of family in the regulations be changed to provide that a person not be granted entry to Canada to pursue a refugee claim on the basis that his spouse or common-law partner is in Canada, if the spouse or common-law partner in Canada was permitted entry on the basis that her refugee claim concerns domestic violence.

RECOMMENDATION 9

The Committee recommends that an unaccompanied child be defined as a minor separated from both parents and not accompanied by a person over 18 who by law or custom has the responsibility for looking after the child.

RECOMMENDATION 10

The Committee recommends that section 159.6 of the regulations include a provision allowing for the non-application of the Agreement in any additional situations the Minister determines to be in the public interest.

RECOMMENDATION 11

The Committee recommends that Francophone claimants should, in the public interest, be permitted to have their claims heard in Canada.

RECOMMENDATION 12

The Committee recommends that claimants who may succeed in a claim for refugee protection under the *Immigration and Refugee Protection Act* but, because of the nature of their claim, would not be protected in the United States, should, in the public interest, be permitted to have their claims heard in Canada.

RECOMMENDATION 13

The Committee recommends that additional resources be provided to the department to meet the demands that will result from implementation of the Agreement. The government must closely monitor the effects of the Agreement and assemble "SWAT teams" that can be deployed quickly should bottlenecks appear.

RECOMMENDATION 14

The Committee recommends that the regulations specifically state that they are to be interpreted in a manner sensitive to the difficulties that may be faced by claimants in providing proof that they are eligible to have their claims heard in Canada, and that claimants should be given the benefit of the doubt.

RECOMMENDATION 15

The Committee recommends that the regulations provide for an effective and transparent internal review mechanism before returning someone to the United States to make a claim.

RECOMMENDATION 16

The Committee recommends that the provisions of the supplementary draft agreement be incorporated into the main Agreement.

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The Committee recommends that when the department performs a full review of the Agreement one year after its implementation, it should report its findings to this Committee. The department's report to the Committee should include the following information:

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- **The number of claimants returned to Canada under the Agreement, including their countries of origin;**

- **The number of claimants granted exemptions by each country, specifying the category;**

- **The number of claims made at inland offices during the period, as well as the number of claims made at inland offices in the same time period in the year preceding the Agreement;**

- **The number of claims made at airports during the period, as well as the number of claims made at airports in the same time period in the year preceding the Agreement;**

- **A report on human smuggling and human trafficking activity into Canada during the period;**

- **Detention statistics for land ports of entry during the period, as well as detention statistics for the same time period in the year preceding the Agreement;**

- **Reports on any migrants killed or injured in the course of attempting illegal entry into Canada;**

- **A summary of the concerns of non-governmental organizations brought to the attention of the department; and**

- **Any other significant concerns that come to the attention of the department, including any unintended or unanticipated effects of the Agreement.**

APPENDIX A
LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Department of Citizenship and Immigration	19/11/2002	3
Joan Atkinson, Assistant Deputy Minister, Policy and Program Development		
Luke Morton, Senior Counsel		
Bruce Scoffield, Director, Policy Development and International Coordination		
Amnesty International (Canada)		4
Michael Bossin, Past President		
Alex Neve, Secretary General		
Canada Employment and Immigration Union		
Janina Lebon, National Vice-President		
Alan Lennon, Senior Union Representative		
Jeannette Meunier-McKay, National President		
Canadian Council for Refugees		
Janet Dench, Executive Director		
Nick Summers, Vice-President		
“Table de concertation des organismes au service des personnes réfugiées et immigrantes”		
Richard Goldman		
Michèle Jenness		
United Nations High Commissioner for Refugees		
Judith Kumin, Representative in Canada		
Buti Kale, Senior Protection Officer		
American Immigration Lawyers Association	20/11/2002	5
Nan Berezowski, Barrister and Solicitor		
David H. Davis		
Canadian Auto Workers Union		
Raj Dhaliwal, Director		
Lisa Kelly, Counsel		
Peggy Nash, Assistant to the President		
Canadian Bar Association		
Renée Miller, Executive Member		
Tamra Thomson, Director		

Associations and Individuals	Date	Meeting
Southern Ontario Sanctuary Coalition	20/11/2002	5
Mary Jo Leddy		
As an Individual		
Max Berger, Barrister & Sollicitor		
Department of Citizenship and Immigration	21/11/2002	6
Hon. Denis Coderre, Minister		
Michel Dorais, Deputy Minister		
Alfred MacLeod, Assistant Deputy Minister, Strategic Directions and Communications		
Luke Morton, Senior Counsel		
Bruce Scoffield, Director, Policy Development and International Coordination		

APPENDIX B
LIST OF BRIEFS

American Immigration Lawyers Association

Amnesty International (Canada)

Berger, Max

Canada Employment and Immigration Union

Canadian Auto Workers Union

Canadian Bar Association

Canadian Council for Refugees

Southern Ontario Sanctuary Coalition

United Nations High Commissioner for Refugees

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, your Committee requests the government to table a comprehensive response to this report.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Citizenship and Immigration (*Issues Nos. 3 to 9 which includes this report*) is tabled.

Respectfully submitted,

Joe Fontana, M.P.
Chair

CANADIAN ALLIANCE SUPPLEMENTARY OPINION: SAFE THIRD REGULATIONS

Diane Ablonczy, M.P., Grant McNally, M.P., Lynne Yelich, M.P.
Official Opposition Critics for Citizenship & Immigration

The Canadian Alliance affirms Canada's international humanitarian obligation to receive our share of United Nations Convention refugees and our responsibility to ensure that we fulfill our commitment. The Canadian Alliance supports the Safe Third Agreement between Canada and the United States, as initialled on August 20, 2002. We support designating in Canadian law the United States as a safe third country. We agree that refugees should seek a safe haven in the first safe country they enter.

However, the Canadian Alliance disputes the central claim of the committee report that all major issues have been addressed.

Protecting victims of domestic violence

The Canadian Alliance believes there must be a commitment to deal with the safety of women refugees. The recommendations call for an exception to the provisions of the Agreement in the case of women making a claim on the basis of domestic violence. However the regulations do not clearly prohibit the abusing partner from making a refugee claim on the basis of family connection. If a woman has fled an abusive domestic arrangement, Canadian law should not be exploited to recreate that same dangerous environment in Canada.

Ill-defined exceptions undermine the purpose of the agreement

We disagree with the inconsistent, overly broad set of exceptions contained in the regulations. The exceptions contained in the regulations may lead to a situation where a fundamental breach of international law could occur. International law clearly states that no country will pass domestic measures that violate the intent of an international agreement. The exceptions outlined and the arbitrary determination process for future exceptions undermine the purpose of the Safe Third Country Agreement.

The regulations in undermining the agreed text also run contrary to the standards of the United Nations High Commission on Refugees. The UNHCR has made the Safe Third Country principle a critical part of the international refugee determination process.

Also, too many additional exceptions are recommended whose scope is excessively broad. For instance, by extending an exception to "de facto" family, the scenario exists, particularly with individuals who lack proper identity documents, that any acquaintance resident in Canada can be called upon to serve as "de facto" family. In a similar

recommendation, the granting of the "benefit of doubt" to the claimant is too vague. Doubt may often be present in refugee claims. Doubt ought to be reasonably satisfied and not ignored unless to serve Canada's interests. Overly broad and ill-defined exceptions could lead to irregular refugee flows that could undermine the resources available to genuine refugees.

There is also fundamental incoherency in section 159.6. (The objections to that section will be dealt with separately.) The recommendation gives the Minister arbitrary latitude to make exceptions in the "public interest." However, in committee testimony, the Minister implied that the specific exceptions in section 159.6 were based in Supreme Court jurisprudence. Recommendation 9 would potentially give the minister the right to override through some "public interest" claim the "rule of law" in Canada. Either the Minister by right of "public interest" has the final say in determining an exception or the relevant jurisprudence of the Supreme Court has the final say.

Sovereignty and security compromised by exception for capital crime felons

The Canadian Alliance disagrees with the three exceptions added to the regulations that were **not in the Agreement's final text.** They are all contained in paragraph 159.6. The exceptions are for claimants either charged with or convicted of an offence punishable by the death penalty in another country or claimants who are either a national or a stateless former resident of a country to which the Minister has imposed a stay on removal orders.

The minister in committee stated that recent Supreme Court decisions mandated the exceptions in question. His argument fundamentally misrepresents the most recent Supreme Court decision on the related issue of extradition is the 2001 case, *United States vs. Burns*, or more commonly known as *Burns-Rafay*. In that case, the court stated that Section 7 of the Charter requires the Attorney General to secure assurances that the death penalty would not be applied before extraditing **Canadian residents** to another jurisdiction. The Court also stated "Nevertheless, we do not foreclose the possibility that there may be situations where the Minister's objectives are so pressing, and where there is no other way to achieve those objectives other than through extradition without assurances, that a violation might be justified."

What is important to realize is that the court intended their decision only to apply to Canadian residents for whom Charter protection exists. Furthermore entry into Canada differs significantly from extradition out of Canada. They are not equivalent. The law on extradition does not compel the law on entry into Canada.

The justices discussed at length the possibility of Canada's becoming a "safe haven." They concluded that, "Elimination of a 'safe haven' depends on vigorous law enforcement rather than on the infliction of the death penalty once the fugitive has been removed from the country." *"Vigorous law enforcement" should involve by any measure of common sense not allowing fugitives from justice into the country in the first place.*

A more fundamental legal argument against the proposed exceptions lies in the extraterritorial application of *Charter* guarantees. In earlier cases *Kindler* (1991) and the *Ng reference case* (1991), the now Chief Justice Beverly McLachlin warned against casting "the net of the Charter broadly in extraterritorial waters."

The critical point is that the new *Immigration and Refugee Protection Act,* which came into effect on June 28, 2002*,* does not consider a potential refugee claimant at the border to possess *Charter* rights. The new exceptions in Safe Third Country Agreement regulations essentially propose to give *Charter* protections to non-residents and thus represent the extraterritorial application of the *Charter*.

The *Immigration and Refugee Protection Act* states that a refugee claim can be denied to an individual convicted of an offence punishable by a maximum term of imprisonment of at least 10 years. The proposed death penalty exception would allow individuals, charged or convicted of a crime serious enough to warrant the death penalty, to make a refugee claim. Under the existing law, the refugee claimant would almost certainly be deemed as ineligible. Why burden the system with litigation doomed to fail?

The concept of sovereignty includes the ability to control who enters or does not enter the country. The 159.6 regulations remove the right of the minister to not allow entry into the country of individuals potentially harmful to the public. The application of the exceptions would in essence allow individuals entry into Canada who would not have any legal status either as residents or refugee claimants. As convicted felons they could not apply for refugee status but would still be allowed to remain in Canada. **It is remarkable that these regulations would create a new status of residency in Canada based solely on the conviction for a capital offence.**

Treaty Partner not Consulted?

The exceptions laid out in the section 159.6 will have a strong impact on law enforcement in the United States. The U.S. agreed to the Safe Third Agreement in order to advance its security. The exceptions created weaken the security envisioned in the agreement. Canada's no denial of entry policy will attract individual in flight from charges or convictions carrying the death penalty. U.S. criminal justice and security bodies should be notified and consulted. If consultations with U.S. officials have taken place on section 159.6, the details of those conversations should be released.

Recommendation: Ensure protection of victims of domestic violence from abusive partners and remove Section 159.6.

BLOC QUÉBÉCOIS DISSENTING OPINION

In the wake of the events of September 11, 2001, Canada and the United States agreed that it was in their mutual interest to implement a joint “smart border” blueprint. One of the steps in this action plan is the signing of a Canadian-American safe third country agreement for purposes of processing refugee claims. This issue is not new, however, since the Canadian government has been trying for several years now to convince the United States of the value of such an agreement. In this regard, it is instructive to look at the May 1996 report by the Standing Committee on Citizenship and Immigration, where the Bloc Québécois expressed a dissenting opinion as to the timeliness of concluding a safe third country agreement with the United States.

First of all, the Bloc Québécois wants to note the excellent work done by the Standing Committee on Citizenship and Immigration. Although it had only a very short deadline within which to study the proposed regulations (which we consider deplorable given the importance of the issues linked to this agreement, and its far-reaching consequences), the Committee succeeded in hearing from expert witnesses who voiced their concern about the agreement. It should be noted that most of their recommendations were accepted by the Committee and can be found in this report. Unfortunately, the government has remained unreceptive to their primary recommendation, that the safe third country agreement not be adopted. When we asked the various witnesses to name just one positive thing about the agreement, their silence spoke volumes. That is why we cannot endorse this report.

Given the many reservations expressed by agencies that work with refugees, the Bloc Québécois firmly believes that the agreement is not in the best interests of asylum seekers. We are concerned about the stated objective of reducing the number of refugee claimants in Canada. As a signatory to the Convention on Refugees, Canada has a moral responsibility to make sure that all asylum seekers have access to a fair and equitable system. There is however nothing to indicate that the standards in the United States are equivalent to those in Canada. On the contrary: the representatives of the Office of the United Nations High Commissioner for Refugees declared when they appeared before the Committee that the United States does not always meet international standards for refugee protection. For example, the detention of asylum seekers is common in the United States, even though article 31 of the Convention specifies that no refugee should be subject to detention simply because he or she is present in a country without authorization.

Since the agreement will apply only at land ports of entry, and not to people requesting asylum once they are inside Canada’s borders, everyone who appeared before the Committee saw it as very likely giving rise to a significant increase in clandestine immigration. People-smuggling networks could be organized to take advantage of the agreement’s shortcomings. Such networks represent a real threat to the safety and even the lives of refugees. If in whatever way we place the lives of asylum seekers in danger, it

is obvious that we are contravening the principles and values of the Convention on Refugees.

Out of concern for equity and justice, the Bloc Québécois refuses to endorse the trivialization of the federal government's international responsibilities for refugee protection. If the government will not deign to reconsider the merits of such an agreement, we urge it at least to adopt all the recommendations included in this report.

Madeleine Dalphond-Guiral
MP for Laval Centre and
Bloc Québécois Critic on
Citizenship and Immigration and
the Status of Persons with Disabilities

NEW DEMOCRATIC PARTY DISSENTING OPINION TO THE SAFE THIRD COUNTRY REGULATIONS REPORT OF THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

DECEMBER 2002

The New Democratic Party stands in firm opposition to the 'Safe Third Country Agreement' between Canada and the United States and the regulations that have been proposed to implement that agreement.

Legitimate changes to our refugee policy should have as their primary objective the improvement of the lot of refugees. We do not feel that this Agreement fulfills that requirement.

In fact, quite the opposite. Its origins, in its current manifestation, are not in Canada's humanitarian traditions, but flow from the horrors of September 11th. It was also born in the midst of the reckless scapegoating of refugees, often the victims of terror, as likely perpetrators of terror. It is no coincidence that this Agreement is one element of the 'Smart Border' security package between the two countries.

The Agreement is predicated on comparable treatment of refugee claimants on both sides of the border. This is clearly not the case.

Several US practices have been criticized as falling below international standards. American laws dictating the wide use of incarceration, its non-transparent expedited removal process and its failure to recognize gender-based refugee claims are among the serious concerns that have been raised. The United States also has a history of inappropriately linking its refugee assessment to its foreign policy objectives.

Recent reports of racial profiling and the inappropriate treatment of Canadian citizens and selected permanent residents have offered only a glimpse into actual American practices when dealing with non-American citizens. The fact that refugees will be dealt with through the new Department of Inland Security has heightened our concern. So too has the expansion of the list of countries whose citizens qualify for 'special treatment' by American government officials. As several witnesses have testified, the United States is not a safe haven for some refugees and that alone should prevent Canada's entry into this Agreement.

We have had concerns since the Minister first began musing about reviving a 'safe third' initiative — musing outside of Parliament and only shortly after the debate on the new Immigration and Refugee Act had been completed. Our worst fears have been confirmed by the witnesses appearing before the Committee — witnesses who were unanimous in their opposition to the agreement and cited many flaws in the regulations.

A number of administrative problems have been raised. To qualify for an exception, the burden of proof falls unfairly on the person in flight. One witness suggested the Agreement would result in 'chaos and corruption'. Officials will be asked to make complex assessments and decisions beyond their customary parameters and with no safeguard of a review process to correct errors or consider new evidence. Officials' discretionary powers under the Agreement are even further restricted by the regulations.

The workload of officials is expected to increase with only vague assurances of increased resourcing — assurances from a Minister who has already acknowledged that a lack of resources is responsible for the unconscionable delay in implementing the Immigration and Refugee Act's Refugee Appeal Division.

There is also a realistic expectation that this Agreement will inevitably lead to an increase in cross-border human smuggling. Just imposing a new rule is not going to suddenly stop refugees who see their secure future in Canada from wanting to come here. Once here, some refugees may apply for status, others may be forced to remain underground.

As well as an administrative nightmare, this raises security concerns. Clearly, this Agreement is counter-productive to maintaining our security.

The Agreement can also be destructive for families. The Underground Railroad showed that desperate families will do anything to ensure the safety of their children including breaking up the family unit for a better opportunity at asylum. The restrictive exceptions may indirectly contribute to desperate strategies.

This Agreement doesn't make sense from an administrative, security or humanitarian perspective. Why then are we pursuing this?

With an estimated 35 per cent of our annual refugee claimants entering from the US, are we simply trying to cut back on Canada's refugee intake? Canada takes in only half of one percent of the world's refugees. That commitment should be rising, not dropping, to help the nearly 20 million people worldwide in flight or in danger. Instead, this Agreement reflects this government's recent pattern of immigration and refugee initiatives aimed at 'tightening up' a system experiencing problems rooted in its own under-resourcing and poor coordination.

Or is the Agreement aimed at ingratiating ourselves to the broader American post-Sept. 11th agenda of “Fortress North America”?. This Agreement should have been brought before Parliament for debate as it signals a growing accommodation of Canadian immigration and refugee policy toward that of the United States.

So who gains from this new refugee policy?

The federal government undoubtedly cuts its refugee intake, if that’s its goal. It will be able to continue to under-resource Citizenship and Immigration Canada and can constrain its budget instead of meeting its international obligations. The US gets to dump unwanted refugees and, perhaps gain other Canadian concessions — ‘future considerations’. It certainly moves Canada another step closer to integration with the US and a loss of sovereignty. And the criminal world has had a brand new opportunity thrust upon it in added human smuggling.

Everyone benefits but the refugee.

PROGRESSIVE CONSERVATIVE
DISSENTING OPINION
SAFE THIRD COUNTRY AGREEMENT
INKY MARK, M.P.

The Progressive Conservative Party supports a policy of open immigration and refugee protection. Canada leads the world not only in attracting the best and brightest, but is also a model for fairness and human rights. We do not perceive every refugee as a potential terrorist or criminal like the Official Opposition.

This week, in Switzerland, the Swiss voters rejected stringent new asylum laws that would have closed Switzerland's borders to all but a trickle of refugees. We also witnessed the anti-immigration party of Joerg Haider being soundly defeated in the polls in Austria, losing nearly two thirds of his support.

The Safe Third Country Agreement (STCA) is a Liberal initiative. It contains few benefits for the USA. In 1996 the Liberal government floated the same balloon and it went nowhere.

On the surface, the STCA appears to be a good idea. Closer examination shows it is not. The government gave no time for debate to take place in the House of Commons. The agreement was never closely examined and debated by the Standing Committee.

We know that in 1994 Germany put in place a similar idea that failed miserably. Closing all the border entry points around Germany did not prevent an onslaught of refugees from entering the country. If the STCA was such a good idea, why haven't other developed countries implemented it?

Key questions have yet to be answered. What is the reason for putting in place the STCA? What are the problems that currently exist? What will be the effect of this agreement? What are the benefits of this agreement? What are the drawbacks? Who are we trying to stop from coming to Canada? In a post 9-11 environment, will this agreement make us more secure? Will the STCA weed out the terrorists and criminals of the world? Can we resolve the problem without this agreement? Is this agreement for security or is it to deal with the refugee backlog? Without first answering these questions, the STCA will likely repeat the German experience of 1994.

There is no doubt that this agreement will stem the tide of refugees seeking asylum in Canada. The irony is that asylum seekers arriving by air or by other illegal means will not have this policy applied to them. That being the case, why have the agreement at all? There is no doubt this will encourage the illegal entry of asylum seekers coming to our

country by air, land, and sea. This will not prevent asylum shopping. Safe Third Country Agreements have not worked forother developed nations so why are we going down this path?

The United Nations High Commission for Refugees (UNHRC) has a good idea, which is to give all refugees the opportunity to make one claim in a country of their choice. This was rejected by Citizenship and Immigration Canada.

Do we have a huge problem with people making refugee claims from the USA? We need to look at the numbers. Last year we took in a total of 26, 530 refugees. This accounts for 11% of the total immigrants accepted and landed. Total immigrant and refugee arrivals for 2001 in Canada was 250, 346.

The 2001 breakdown of refugees is:

7, 324 — government assisted
3, 570 — privately sponsored
11, 896 — refugees determined in Canada
3, 740 — dependants abroad

Approximately 50% of all refugee claims are unsuccessful. Of this number, approximately ⅓ or 13, 000 refugees making claims in Canada came from the United States. Citizenship and Immigration Canada estimates that the STCA will return between five and six thousand claimants to the USA annually.

If we look at our history, Canada has stemmed the flow of immigrants and refugees for the wrong reason. Remember the Jewish people turned away at our shores? Remember the 1923 Chinese Exclusion Act? Establishing quotas is one thing, but turning people away for the sake of an unnecessary and unworkable agreement is something else.

The manner in which this agreement was put together is irresponsible and if enforced will tarnish our reputation in the world community.

The United Nations High Commission for Refugees does not accept Citizenship and Immigration's assurances on this agreement.

Canada is a sovereign state. We do things differently than our friend to the south. The PC Party cannot support a Liberal policy that goes against the humanitarian principles of The United Nations High Commission for Refugees.

MINUTES OF PROCEEDINGS

Wednesday, November 27, 2002
(*Meeting No. 9*)

The Standing Committee on Citizenship and Immigration met *in camera* at 3:38 p.m. this day, in Room 705, La Promenade Building, the Chair, Joe Fontana, presiding.

Members of the Committee present: Diane Ablonczy, Mark Assad, Yvon Charbonneau, Madeleine Dalphond-Guiral, Joe Fontana, Steve Mahoney, Jerry Pickard, Judy Wasylycia-Leis, Lynne Yelich.

Acting Members present: Andrew Telegdi for John Godfrey.

In attendance: F*rom the Library of Parliament*: Benjamin Dolin and Margaret Young; Researchers.

Witnesses: Benjamin Dolin and Margaret Young.

Pursuant to its mandate under Standing Order 108(2), the Committee resumed its study on a Draft Report “The Safe Third Country Regulations”.

The witnesses answered questions.

On motion of Steve Mahoney, it was agreed — That the Draft Report, as amended, be concurred in and that the Chairman be instructed to present it to the House.

On motion of Steve Mahoney, it was agreed — That the Chair, in conjunction with the clerk and researchers, make such editorial changes as may be necessary without changing the substance of the report.

On motion of Steve Mahoney, it was agreed — That pursuant to Standing Order 109, the Committee request the government to table a comprehensive response to the report.

On motion of Steve Mahoney, it was agreed — That, pursuant to Standing Order 108(1)(*a*), the Committee authorize the printing of brief dissenting and/or supplementary opinions as appendices to this report immediately following the signature of the Chair, that the opinions not exceed three single-spaced pages and that they be sent to the Clerk of the Committee by electronic mail in both official languages no later than forty-eights hours after the Committee adopts the report.

At 5:10 p.m., the Committee adjourned to the call of the Chair.

William Farrell
Clerk of the Committee