



CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

Unwanted Immigration: Has the Concept of State Sovereignty Become Obsolete?

by Vanja Petricevic
October 2018

POLICY PERSPECTIVE

UNWANTED IMMIGRATION: HAS THE CONCEPT OF STATE SOVEREIGNTY BECOME OBSOLETE?

by Vanja Petricevic

CGAI Fellow
October 2018



CANADIAN GLOBAL AFFAIRS INSTITUTE
INSTITUT CANADIEN DES AFFAIRES MONDIALES

Prepared for the Canadian Global Affairs Institute
1800, 421 – 7th Avenue S.W., Calgary, AB T2P 4K9
www.cgai.ca

©2018 Canadian Global Affairs Institute
ISBN: 978-1-77397-041-7



The number of migrants worldwide reached 258 million in 2017, which is an increase over the past 17 years, up from 173 million in 2000. International migrants' preferred destination countries have mostly been the Western powers, with 58 million new arrivals in 2017 making North America the third largest destination.¹ In the midst of the recent changes in trends of migration patterns as well as immigrants' characteristics, there is an overall contentious environment in which public debates over immigration are being held. The arena is split between advocates of open borders and those who pursue restrictive immigration policies. The middle ground is filled with those who like to cherry-pick policy proposals of both. However, these debates are timely and need to be held in light of the increasing number of migratory movements and decision-makers' zeal to place the topic of state sovereignty at the forefront of the immigration discourse. The question then becomes: have recent waves of unwanted immigration made states' sovereignty obsolete?

The conceptual starting point lies with the very definition of state sovereignty. Reaching as far back as the Treaty of Westphalia (1648), the underlying principles that characterize the concept of state sovereignty include being an internationally recognized entity, not being under submission to external actors and their authority structures, and possessing relative control over the territorial domains of one's own state.² There is an argument to be made that state sovereignty in the 21st century has been stretched or even modified to adjust to 21st century challenges. Yet, these challenges have not tamed the critics of global governance. Instead, statist claims have increasingly resurfaced and are further bolstered by recent waves of unwanted immigrants.

In the case of unwanted immigration – specifically refugees – the state is not becoming irrelevant. Quite the opposite could be argued as evidenced by a growing number of countries providing physical barriers for migrant entry. The generation that once loathed the Berlin Wall and took a painstaking journey toward its demise finds itself, once again, in an environment surrounded by border fences. There are four times as many fences being erected on countries' borders than when the Berlin Wall fell.³ Some may see these fences as theatrical acts, but they are certainly a sign of sovereign assertiveness for the purpose of serving as a psychological, if not physical, deterrent.

In a world of “complex interdependence”,⁴ neoliberal institutionalists in particular place an emphasis on international institutions as the beacon of facilitating states' collaboration. Within that realm, states' sovereignty becomes subsumed to supranational forces for the purpose of collective resolutions anchored in the projected effects of such institutional frameworks. It is assumed that institutions “constrain and shape [state] behavior”.⁵ Yet, while these platforms may exert some influence on states, “they do not necessarily affect states' underlying motivations”.⁶ Instead, decision-makers tend to use the underlying principles of sovereignty to their own political advantage as they act, more often than not, according to the “logic of expected consequences” than the “logic of appropriateness”.⁷

International refugee protection instruments present moral principles that, unfortunately, carry little legal weight and impose only limited, if any, constraints on states. The 1951 Refugee



Convention and its 1967 Protocol⁸, among other instruments, constitute the cornerstone of refugee protection in the international system and impose a humanitarian obligation upon states. While they have been established with the aim of proper and effective refugee protection as well as resettlement, the states ultimately hold the upper hand in that regard. For example, Canada signed the convention 18 years after its adoption and implemented its obligations in 1976 (through the *Immigration Act* of 1976).⁹ States may take their time to utilize and reform refugee determination procedures and states' compliance with these international frameworks is rather on a voluntary basis. In the majority of cases, it is the states rather than the UNHCR that implement procedures for vetting, admitting and resettling refugees onto their territories.¹⁰ During these procedures, states and their respective agencies may “dispute the identity of those claiming international protection, doubt the validity of their claims and fear that they are security risks.”¹¹ It is the state that decides whom to admit and whom to deny entry and thus holds power over the determination procedure and the faith of those seeking asylum. It is unsurprising that host states vastly differ in their refugee recognition rates even with individuals of the same nationality who are seeking refuge under the same conditions.¹²

Immigration to Canada, 1860–2015

(number of immigrant arrivals; per cent of population)

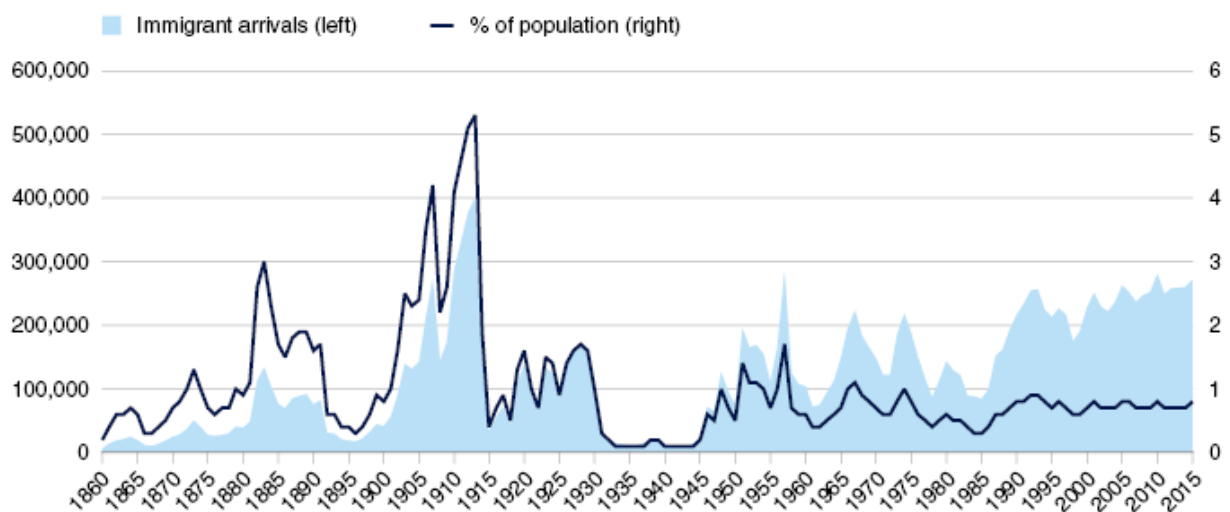


Figure 1: Historic Canadian immigration levels from 1860-2015. (Source: Conference Board of Canada)

States also have the power to impose numerical caps on refugee admissions. As the international system continues to face the “highest levels of displacement on record”,¹³ the U.S. State Department decided to cut refugee admission to 45,000 in FY 2018, which has been considered a historic low and an abandonment of its leadership on refugee resettlements (in addition to the rampant anti-immigration rhetoric the current U.S. administration employs).¹⁴ Canada, on the other hand, may be an example to follow. The Trudeau government is expected to increase not only the government-assisted refugee admission caps by 2020 but there is also an expectation that the private sponsorships of refugees in Canada are as likely to rise by then.¹⁵ While these countries have taken drastically different positions on refugee resettlement and border control, even the Canadian government’s arguably altruistic nature has shown its limits. Despite the spike



in refugee claims, Canada has not opened up its borders entirely and has deviated from its projected course in refugee management to mitigate the impact of the refugee crisis. In fact, it has been argued that “Canada is harsher and more effective at preventing asylum seekers from arriving”¹⁶ and has come under pressure from human rights activists for detaining asylum seekers in detention centres that bear a resemblance to medium-security prisons.¹⁷ In addition, Canadian officials are further trying to discourage individuals from seeking refuge in Canada with a warning that they might be deported.¹⁸

Countries may also bypass international instruments of refugee protection by creating bilateral agreements to reinforce border controls. The Safe Third Country Agreement between the United States and Canada does not allow individuals to apply for asylum in both countries but instead forces them to apply for asylum in the first country of entry.¹⁹ Therefore, the agreement allows Canada to single-handedly return asylum seekers to the United States who attempt to cross the land border. Designating the United States as a safe third country, Canadian officials are relying on the assumption that the refugee recognition rates and determination procedures will be similar to those in Canada and that the United States will not return potential asylum seekers to their country of origin. However, concerns have been raised about making these assumptions as some argue that the United States has failed to meet the standards of a safe third country.²⁰ In the wake of the current crisis over immigration in the United States and tightening restrictions on asylum claims, these concerns are more pronounced, potentially leading to the key principle of the 1951 Refugee Convention – non-refoulement – to be easily and uncaringly violated. The agreement has come under heavy criticism in Canada as an instrument that is “discriminatory and [one that] violates Canada’s Charter of Rights and Freedoms.”²¹ However, the Trudeau government has not shown signs of succumbing to the political pressures and calls for its removal, while the current U.S. administration has only displayed fervent devotion to keeping any physical barriers to refugee entry and ideas of such alive.

While one can observe a surge in states’ tenacious actions to protect their borders, states’ commitment to collective responsibility in refugee protection should not be neglected. A time of unprecedented forced displacement worldwide demands states’ active engagement and their commitment to those fleeing political violence and persecution.²² Their call to action should be vigorously reinforced at the international level. The power vacuum created by the U.S. withdrawal from the international refugee domain should continue to be filled with those willing to take their humanitarian obligations more seriously. At the same time, states need to be willing and capable to address their own institutional weaknesses that paralyze timely refugee admissions and resettlement.

The 2018 review of the Canadian Immigration and Refugee Board provides a glimpse into the institutional shortcomings that deserve further attention. Some of the institutional flaws identified include a backlog in cases being processed, complexity of the refugee management system, ineffective removals of asylum claimants who have been found ineligible for protection and insufficient operational funding. To remedy the shortcomings the report has included several recommendations, some of which speak to creating clear performance expectations and productivity mechanisms, developing annual asylum budgets, formalizing the monitoring



processes of actors involved, possibly centralizing the refugee management by creating an integrated refugee system and simplifying the information acquisition process.²³ These, of course, are only a snippet of reforms proposed specifically for Canada although one cannot deny the fact that other states are facing similar, if not greater, challenges with the recent refugee crisis.

State sovereignty in the 21st century has been altered to adjust to new challenges, yet it has not lost its appeal or its underlying elements. States continue to be viewed as key players in the international political system – a view which they vehemently protect. While states have chosen to place their focus on border controls, their focus should also be within their territories. They should place equal attention on those individuals who have been granted refugee status and are potentially on their way toward making significant contributions to the building blocks of the very sovereign state which has tried to impose limitations on their entry.



- ¹ “International Migration Report 2017,” United Nations, http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf
- ² Stephen Krasner, “The Durability of Organized Hypocrisy,” in *Sovereignty in Fragments – The Past, Present and Future of a Contested Concept*, eds. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2011), 96.
- ³ Simon Tomlinson, “World of Walls: How 65 Countries Have Erected Fences on Their Borders – Four Times as Many as When the Berlin Wall was Toppled – as Governments Try to Hold Back the Tide of Migrants,” *Daily Mail*, Aug. 21, 2015, <http://www.dailymail.co.uk/news/article-3205724/How-65-countries-erected-security-walls-borders.html>
- ⁴ Robert Keohane and Joseph S. Nye. *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown & Co., 1977).
- ⁵ Lisa Martin and Beth Simmons, “Theories and Empirical Studies of International Institutions,” *International Organization* 52, no. 4 (1998): 743.
- ⁶ Margaret Karns and Karen Mingst, “The Theoretical Foundations of Global Governance,” in *International Organizations – Politics and Processes of Global Governance*, 2nd edition (Boulder: Lynne Rienner, 2010), 39.
- ⁷ For further information about the logic of expected consequences and the logic of appropriateness, see James March and Johan Olsen, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 4 (1998): 943-969.
- ⁸ “1951 Refugee Convention Relating to the Status of Refugees and its 1967 Protocol,” United Nations High Commissioner for Refugees, <http://www.unhcr.org/en-us/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>
- ⁹ “Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum,” Government of Canada, April 10, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/report-independent-review-immigration-and-refugee-board.html>
- ¹⁰ “Asylum and Refugee Status Determination,” UNHCR Statistical Yearbook 2014, <http://www.unhcr.org/56655f4cb.html>
- ¹¹ Elspeth Guild, “Asymmetrical Sovereignty and the Refugee: Diplomatic Assurances and the Failure of Due Process, *Agiza v. Sweden* and *Alzery v. Sweden*,” in *Critical Issues in International Refugee Law*, ed. James Simeon (Cambridge: Cambridge University Press, 2011), 124.
- ¹² Martina Burmann and Madhinee Valeyathepillay, “Asylum Recognition Rates in the Top 5 EU Countries,” ifo DICE Report 2/17, Volume 15, <https://www.cesifo-group.de/DocDL/dice-report-2017-2-burmann-valeyathepillay-june.pdf>
- ¹³ “Refugees,” United Nations, <http://www.un.org/en/sections/issues-depth/refugees/>
- ¹⁴ Phillip Connor and Jens Manuel Krogstad, “For the First Time, U.S. Resettles Fewer Refugees than the Rest of the World,” Pew Research Center, July 5, 2018, <http://www.pewresearch.org/fact-tank/2018/07/05/for-the-first-time-u-s-resettles-fewer-refugees-than-the-rest-of-the-world/>
- ¹⁵ Aaron Hutchins, “Canada Could Lead World in Resettling Refugees by 2020, Passing U.S.,” *Maclean’s*, July 12, 2018, <https://www.macleans.ca/news/canada/canada-could-lead-world-in-resettling-refugees-by-2020-passing-u-s/>
- ¹⁶ Sigal Samuel, “There’s a Perception that Canada is Being Invaded,” *The Atlantic*, May 26, 2018, <https://www.theatlantic.com/international/archive/2018/05/theres-a-perception-that-canada-is-being-invaded/561032/>
- ¹⁷ Benjamin Shingler, “Canada ‘Working Very Hard’ to Curb Number of Migrant Children Held in Detention,” CBC News, June 21, 2018, <http://www.cbc.ca/news/canada/montreal/canada-detention-children-united-states-goodale-1.4715588>
- ¹⁸ Sara Schaefer Muñoz and Alicia A. Caldwell, “Canada Says It’s No Safe Haven for Immigrants Losing U.S. Protection,” *The Wall Street Journal*, Sept. 27, 2017, <https://www.wsj.com/articles/canada-says-its-no-safe-haven-for-immigrants-losing-u-s-protection-1506504600>
- ¹⁹ “Exceptions to the Safe Third Country Agreement with Canada,” UNHCR, <http://www.unhcr.org/en-us/5952a3c54.pdf>
- ²⁰ Teresa Wright, “Canada Faces Mounting Pressure to End Safe Third Country Agreement with U.S.,” *The Canadian Press*, June 21, 2018, <https://www.ctvnews.ca/politics/canada-faces-mounting-pressure-to-end-safe-third-country-agreement-with-u-s-1.3984274>
- ²¹ David Ljunggren and Anna Mehler Paperny, “Canada PM Pressured to Suspend U.S. Refugee Agreement in Face of ‘Unacceptable’ Policy,” *Reuters*, June 20, 2018, <https://www.reuters.com/article/us-usa-immigration-canada/canada-pm-pressured-to-suspend-u-s-refugee-agreement-in-face-of-unacceptable-policy-idUSKBN1JG24B>
- ²² “What is a Refugee,” UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>
- ²³ “Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum,” Government of Canada, April 10, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/report-independent-review-immigration-and-refugee-board.html>

► About the Author

Vanja Petricevic is Assistant Professor of Political Science at Florida Gulf Coast University, U.S. She holds a Ph.D. in Political Science from Georgia State University and her research interests encompass fields of European Politics, International Relations and Comparative Politics. Her primary interests are in political integration and compliance in the European Union, processes of democratization and EU accession, and right-wing extremism and violence in Western and Central/Eastern Europe.

She is the author of the book *Compliance Patterns with EU Anti-Discrimination Legislation* (New York: Palgrave Macmillan, 2015) and has been the recipient of the Fulbright-Schuman Fellowship, the Belgian American Educational Foundation Fellowship, the Government of Belgium (Flemish Community) Fellowship, the National Scholarship of the Slovak Republic, and the Swedish Women's Educational Association Award. She held Visiting Researcher positions at several institutions and think tanks across Europe, including the Center for European Policy Studies in Brussels, the European Parliament (Committee on Civil Liberties, Justice and Home Affairs), and the Slovak Academy of Sciences in Bratislava. Her postdoctoral research was conducted at Linköping University in Sweden.

Prior to joining Florida Gulf Coast University, she taught at Georgia State University and the Sam Nunn School of International Affairs at Georgia Institute of Technology in Atlanta.

► **Canadian Global Affairs Institute**

The Canadian Global Affairs Institute focuses on the entire range of Canada's international relations in all its forms including (in partnership with the University of Calgary's School of Public Policy), trade investment and international capacity building. Successor to the Canadian Defence and Foreign Affairs Institute (CDFAI, which was established in 2001), the Institute works to inform Canadians about the importance of having a respected and influential voice in those parts of the globe where Canada has significant interests due to trade and investment, origins of Canada's population, geographic security (and especially security of North America in conjunction with the United States), social development, or the peace and freedom of allied nations. The Institute aims to demonstrate to Canadians the importance of comprehensive foreign, defence and trade policies which both express our values and represent our interests.

The Institute was created to bridge the gap between what Canadians need to know about Canadian international activities and what they do know. Historically Canadians have tended to look abroad out of a search for markets because Canada depends heavily on foreign trade. In the modern post-Cold War world, however, global security and stability have become the bedrocks of global commerce and the free movement of people, goods and ideas across international boundaries. Canada has striven to open the world since the 1930s and was a driving factor behind the adoption of the main structures which underpin globalization such as the International Monetary Fund, the World Bank, the World Trade Organization and emerging free trade networks connecting dozens of international economies. The Canadian Global Affairs Institute recognizes Canada's contribution to a globalized world and aims to inform Canadians about Canada's role in that process and the connection between globalization and security.

In all its activities the Institute is a charitable, non-partisan, non-advocacy organization that provides a platform for a variety of viewpoints. It is supported financially by the contributions of individuals, foundations, and corporations. Conclusions or opinions expressed in Institute publications and programs are those of the author(s) and do not necessarily reflect the views of Institute staff, fellows, directors, advisors or any individuals or organizations that provide financial support to, or collaborate with, the Institute.