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Canada - A Long Way to Go: The Designated Country of Origin Policy and Refugee Protection

Abstract

The Designated Country of Origin (DCO) policy was a political response to unwanted migration in Canada. Adapted from Europe, Harper took a liking to the EU's SCO policy after Canada received a large influx of Middle Eastern and Balkan refugees seeking asylum. He adapted it in Canada, renaming it Designated Country of Origin (DCO). Under the DCO, the government of Canada would decide if a refugee's country of origin was dangerous enough to be considered for asylum. If the asylum seekers country is determined as safe, that person would be disregarded and sent back to their country of origin. Many refugees who had already settled in Canada had their files reopened and were told to return to their country of origin. The DCO policy became an integral part of the refugee status determination process in Canada to which some regarded as faulty, inefficient, and unjust. In 2019, the SCO was deemed unconstitutional and violated The Canadian Charter of Rights and Freedoms. Ahmed Hussen, Minister of Immigration, wanted to create an asylum system that was considered fair and efficient. While it is important for an asylum seeker to prove they are truthful about the facts of their case, the DCO policy represents a climate of hostility towards migrants in Canada. In this piece, it will be argued that the DCO policy is a discriminatory migration tool used to "weed out" what the government deems as fake migrants. This policy could deny international protection to those who are genuinely in need. The DCO proves that the nation has a misleading reputation of being welcoming to all who come. The DCO threatened the human rights of asylum seekers who sought refuge in Canada.

Keywords: Designated Country of Origin, Immigration Studies, Refugees

Résumé

La politique de pays d'origine désigné (POD) était une réponse politique à la crainte de migration au Canada. Adapté de l'Europe, Harper s'est pris d'affection pour la politique de l'OCS de l'Union européenne après que le Canada a reçu un afflux important de réfugiés en provenance du Moyen-Orient et des Balkans demandant l'asile. L'ancien premier ministre l'a adaptée au Canada, en la rebaptisant pays d'origine désigné (POD). Dans le cadre de cette politique, le gouvernement du Canada décide si le pays d'origine d'un réfugié est suffisamment dangereux pour être considéré comme un pays d'asile. Si le pays du demandeur d'asile est considéré comme sûr, le demandeur par conséquent n'est pas pris en compte et on leur renvoie au pays d'origine. De nombreux réfugiés qui s'étaient déjà installés au Canada ont été témoins de la réouverture de leurs dossiers et par la suite ont été déportés dans leur pays d'origine. La politique de l'OCS est devenue une grande partie du processus de détermination du statut de réfugié au Canada, que certains considéraient comme défectueux, inefficace et injuste. En 2019, l'OCS a été jugée inconstitutionnelle et violait la Charte canadienne des droits et libertés. Ahmed Hussen, ministre de l'Immigration, souhaitait créer un système d'asile considéré équitable et efficace. Bien qu'il soit important pour un demandeur d'asile de prouver qu'il est sincère, la politique de l'OCS représente la crainte des migrants au Canada. Cet article soutient que la politique de POD est un outil d'immigration discriminatoire utilisé pour "éliminer" ce que le gouvernement considère des faux migrants. Cette politique pourrait priver de protection internationale ceux qui sont réellement dans le besoin. La politique POD prouve que la nation a la réputation trompeuse d'être accueillante pour tous ceux qui viennent. La politique de POD menace les droits de la personne des demandeurs d'asile qui cherchent à se réfugier au Canada.

Mots clés: pays d'origine désigné, les études sur l'immigration, les réfugiés

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Immigration is an important aspect of Canadian politics and history. After all, our country prides itself on its diversity. Canada welcomes thousands of immigrants and refugees each year. In Canada, asylum seekers are able to make this country their new home. But what is the process Canada uses for refugees seeking asylum? Since 1976, Canada has used the Immigration Act. In 2012, Canada introduced the Designated Country of Origin (DCO) policy. This policy was an attempt to catch potential “fake” asylum seekers seeking refuge in Canada. However, what the policy resulted in was asylum seekers being denied international protection due to their countries being prematurely designated as “safe”. Under the DCO, refugees from countries designated as “safe” could not seek asylum in Canada, they would instead be labeled as ‘bogus’ asylum seekers and sent back to their country of origin. The DCO was modeled after Europe’s Safe Country of Origin policy (SCO), which is quite similar in motivation. The DCO then branched into another immigration policy: The Safe Third Country Agreement (STCA) with the United States, subjecting refugees to detainment, which is now in the process of abolishment. This paper will analyze how Canada used the DCO and STCA to inefficiently catch “fake” refugees and argue that these policies denied refugees their right to international protection.

To clarify, international protection is a means to protect a person who is outside their country of origin and unable to return due to dangers present in their home country. Dangers could be considered persecution, threats to life, armed conflict, or any type of national violence. Since 1921, the need for international protection and action has been recognized and is considered a part of human rights (Weiss, 1954, p. 194).

In order to discuss the impact of the DCO, it is important to dive into the history of the EU’s SCO. Delving into the SCO’s origin will help provide context and understanding since it is the groundwork that shaped Canada’s DCO. In 2005, the EU created the Safe Country of Origin Policy (SCO) as a response to unwanted migration. Europe made a list of countries that were deemed as “safe” prohibiting any migrant native to those countries from seeking asylum (Euromed, 2016, 2). The EU feared fake refugees who would cheat the system and wanted to filter out any individuals who could potentially be suspects. Seven countries in Europe were deemed as safe in the draft regulation: Bosnia, Albania, Herzegovina, Macedonia, Kosovo, Montenegro, Serbia, and Turkey. Now, of course, countries can be added to the list as this is only

a draft (Euromed, 2016, 2). This does raise the question; how does the EU determine what country is safe?

The question of what makes a country safe in Europe dates back to the early 1990s after there was an increase in the number of refugee applications. Many were skeptical that these asylum seekers were faking their crisis so that they could easily move into Europe. This eventually led Europe to create the SCO. To determine if a country was safe, the country in question must not persecute its people and must provide basic human rights to its citizens (Euromed, 2016, 2). If the EU determines the state to fit this criterion, it is deemed safe. Therefore, migrants from the country in question cannot seek asylum despite their individual cases (Goodwin-Gill, 1992, 248).

It should be noted that a country can fall into two categories: A safe country of origin or a safe third country. A safe third country is a non-EU country that the migrant is currently inhabiting. The asylum application will not consider the migrants’ country of origin, but the safe third country they are residing in (Euromed, 2016, 5). For example, if a Syrian refugee flees to Armenia but desires to seek asylum in the EU, the EU does not regard Armenia as a safe third country, which could allow the Syrian migrant to seek asylum in Europe. However, if a Syrian migrant flees to Turkey, which is more likely considering that Turkey has 3.6 million Syrian refugees living in camps, the migrant will be denied because Turkey is designated as “safe” under the SCO.

Now that the framework of the SCO has been stated, it is easier to explain how Canada adapted this policy and implemented it into the Designated Country of Origin (DCO) policy. After seeing the effect, the SCO had on European immigration, Prime Minister Stephen Harper deemed it to be an effective method at curbing ‘illegal’ immigration, and so the DCO was implemented. Before the DCO, Canada’s immigration policy followed Pierre Trudeau’s Immigration Act of 1976, which had been revised throughout the years to include same-sex relationships. The Immigration Act of 1976 was a major change in Canada’s immigration policy. It opened Canada’s doors to migrants from across the world. The Immigration Act also required the government to protect refugees and meet international requirements pertaining to asylum seekers. The DCO would completely change how we processed and accepted immigrants into Canada after the idea was introduced as part of legislation that revised the Immigration and Refugee Protection Act and passed into law on June 28, 2012. Refugees who arrive through

DCO countries would be rushed through important procedures and were unable to seek reparations for any procedural injustices. When a person attempts to seek asylum in Canada, the basis of their pleas is assessed by the Refugee Protection Division of the Immigration and Refugee Board (IRB). The IRB decides whether the asylum seeker meets the definition of a refugee set out in the UN Convention Relating to the Status of Refugees. However, if the asylum seeker arrives from a DCO, they must adhere to a fast-tracked process which cuts the time they have to prepare in half prior to their hearing before the IRB. A claimant from the DCO is also denied eligibility for certain procedural protections, such as an appeals process, which would allow them a chance to defend themselves (Belluz, 2012, 8).

The issues with the DCO lay in its potential to deny an asylum seeker international protection. While the intent is to remove any “fake” refugees, the result is to deny refugees international protection, whether intentional or not. The DCO was criticized for being unable to detect “fake” refugees which brought on significant backlash (Belluz, 2012, 8). For example, let’s take the case of a migrant from Turkey then attempting to seek refuge in Canada. Turkey was a designated “safe” country, so the migrant would not be allowed to seek asylum. But paradoxically would Turkey be considered safe for, a Kurdish person (Costello, 2005, 35)? The Kurdish people in Turkey have a history of persecution under the Turkish government, deeming the country unsafe for this group of people (Bruneissen, 1991, 1. Another example would be considering Israel a safe place to live according to the DCO, which could be the case for some Israeli residents but not for Palestinians. While most Palestinians are living in Gaza and the West Bank, there are 250,000 displaced Palestinians living on Israeli land. The Palestinians are subject to violence, discrimination, and having their land taken away by the Israeli government. The Palestinians are considered “aliens” to the Israeli government (Pappe, 2013, 2). Yet, a Palestinian cannot seek asylum in Canada due to the DCO. Clearly, the DCO was put together with a black and white framework, not acknowledging the many grey areas that shape the international realm. It was because of cases like these that the DCO failed to detect ‘bogus’ refugees, but also denied people international protection.

The result of the DCO is that there was a high risk of asylum seekers being sent back to their countries. Since the DCO severely limits refugee status, claimants would be sent back to persecution and

violence. There is also a relation between refugees and legal aid. The DCO affects the asylum seeker’s ability to receive legal aid and counsel. Without this representation, the likelihood of refugees successfully seeking asylum is lowered. Besides the DCO, Canada created a treaty with the United States of America (US) to control the number of refugees seeking asylum. If a non-US-born asylum seeker living in the US desires to come to Canada, only very few will be able to seek refuge. For example, a Syrian refugee living in America cannot seek asylum in Canada despite hostility towards Muslims and Arabs in the United States. In a letter signed by over 200 law professors across Canada, to The Minister of Immigration, an end to The Safe Third Country Agreement between Canada and the US was demanded (Osgoode Hall Law School, 2017).

After a negative reaction to the DCO and The Safe Third Country Agreement, the Canadian government put a halt to both policies deeming them as inefficient. On July 22nd, 2020, the Canadian federal government recognized the Safe Third Country Agreement as a violation of the Canadian Charter of Rights and Freedoms. Specifically, the Agreement was a violation of section 7, the right to “life, liberty, and security.”

The DCO was deemed ineffective as of May 17th, 2019 under Prime Minister Justin Trudeau’s Liberal government. Besides the DCO being considered inefficient, the Canadian federal government also recognized it as a violation of the Canadian Charter of Rights and Freedoms, similar to The Safe Third Country Agreement. The Immigration and Refugee Board of Canada declares that “the DCO policy did not fulfill its objective of discouraging misuse of the asylum system and of processing refugee claims from these countries faster. Additionally, several Federal Court decisions struck down certain provisions of the DCO policy, ruling that they did not comply with the Canadian Charter of Rights and Freedoms” (Immigration and Refugee Board of Canada, 2019). Although the policies have been removed from practice, it is still relevant and vital to Canada’s immigration history.

While Canada’s Immigration Act of 1976 shows its care towards refugees, the DCO and STCA policies still denied international protection to asylum seekers and was an inefficient means to eliminate “fake” refugees. It is vital to acknowledge Canada’s past immigration policies in order to hope for a better future and to continue making efforts to improve our immigration system.

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