

# Migrant Smuggling in Canadian Waters

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According to the United Nations (UN), migrant smuggling is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national.”<sup>1</sup> While it is possible to provide a definition, the full extent of the problem is much harder to determine. Nevertheless, we can say with some certainty that international smuggling organizations move hundreds of thousands of people from less-developed countries to industrialized countries every year.

Migration by sea is often the only option for economically disadvantaged migrants. Research suggests that although smuggling by sea represents only a small proportion of the migrant smuggling problem,<sup>2</sup> the inherent dangers to the migrants by using this form of travel make it important to address. While the total number of deaths of smuggled migrants at sea is not known, it is likely to be increasing because as immigration channels become more limited, more people turn to smugglers for assistance.

In 2011, the UN Office on Drugs and Crime (UNODC) released an issue paper entitled *Smuggling of Migrants by Sea*. This paper acknowledges the complexities and challenges associated with addressing the crime of migrant smuggling by ship. Some of its key points are:

- it is a competitive criminal business with high profits for smugglers and all the risks borne by migrants;
- it cannot be separated from smuggling by land or air because of complex interconnections. There is mounting evidence that an effective response to smuggling by sea requires that the issues be addressed where land and air movements occur in countries of origin and transit, and where smugglers organize sea smuggling. Such locations are a considerable distance from the high-tide mark;
- detecting smuggling vessels at sea is a key challenge for coastal states;
- coastal states face significant challenges balancing border protection and respecting the legal rights of migrants; and
- international cooperation is essential to tackling the problem of smuggling migrants by sea. Efforts need to focus on the criminalization (and prosecution) of smugglers and the protection of migrant rights.<sup>3</sup>

## *Incidents of Migrant Smuggling on Canada’s Coasts*

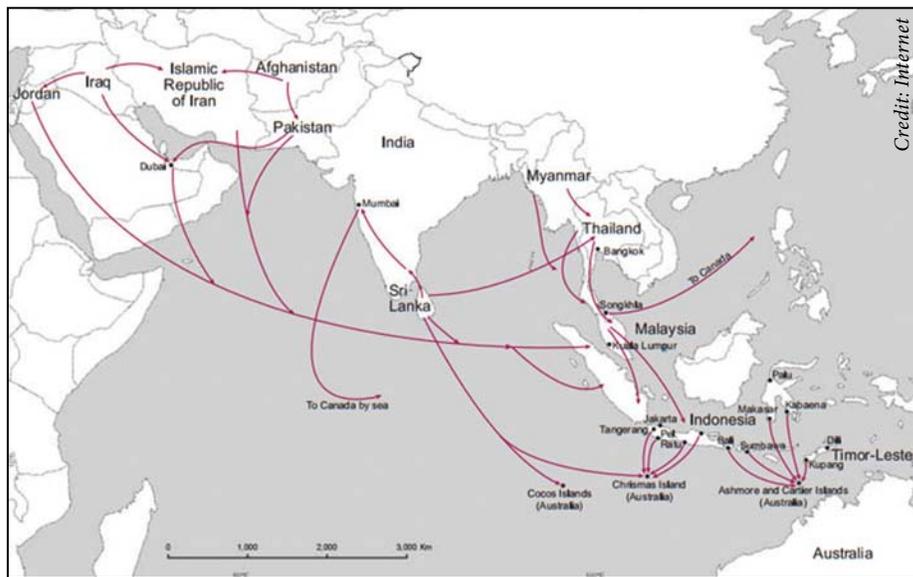
Canada is geographically isolated from most of the world but that does not make it immune from migrant smuggling. Thus, for example, in July 1987, 173 migrants, who were mainly Sikhs from India, were detained on the freighter *Amelia* and taken to Halifax after attempting to enter Canada illegally. And in 2005, 47 Chinese nationals were smuggled via four cruise ships on the East Coast, which was the first identified use of this mode of transport to Canada. However, it is the West Coast of Canada that has received the most attention in recent years, and it is on the West Coast that this article will focus.

On 29 June 2012 Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism announced new legislation entitled *Protecting Canada’s Immigration System Act*. His announcement specifically cited the large-scale arrival of illegal migrants smuggled by ship as undermining Canada’s security. The two most recent incidents on Canada’s Pacific Coast were mentioned as proof that human smuggling networks were a large and growing concern for Canada.<sup>4</sup>



Credit: MCpl Angela Abbey, Canadian Forces Combat Camera

HMCS *Whitehorse* assists in the escort of MV *Sun Sea* to port on Vancouver Island in August 2010.



This map shows some of the maritime migrant smuggling routes in the Indian Ocean.

Migrant smuggling by ship does not occur frequently on Canada’s West Coast. Rather, as far as we know, there are only occasional incidents within Canadian territorial seas. Table 1, compiled from media, UBC Library, information from the RCMP website and data provided by the Canadian Border Service Agency (CBSA), indicates that only the MV *Sun Sea* incident of 2010 could be described as a mass irregular migration incident.<sup>5</sup> Nonetheless, the issue is of concern to many people.

Canada is a signatory to the UN Protocol against the Smuggling of Migrants by Land, Sea and Air. As a signatory Canada has an obligation to rescue and afford

protection to irregular migrants even though this obligation often conflicts with border protection and immigration policy concerns. The duty to rescue migrants at sea is paramount, taking priority over other concerns including law enforcement objectives. Protection of migrants must be undertaken even if this means that the objectives of smugglers are met when rescuing authorities assume responsibility for migrants.

Ship masters also have an obligation to rescue migrants in distress. Yet one of the issues faced by the shipping community is the reluctance of ship masters to fulfill obligations to assist migrants in distress at sea. This is partly because some countries, including Australia, deny entry to a ship that has rescued migrants on board. Thus, a key challenge for the international community is how to support ship masters to fulfill their obligations while at the same time combating the smuggling that leads to the need for rescue in the first place. The UN acknowledges that while the obligation to protect and assist persons rescued at sea is clear, how to uphold this in practice while also addressing migrant smuggling at sea is not. To date, Canadian decision-makers have made few, if any, suggestions on how to meet these obligations.

**Table 1. West Coast Migrant Smuggling by Ship Incident 1999-2010**

Vessel Name	Date	Location	Est. Length of Journey	Total Migrants	Minors	Adult Males	Adult Females	Refugee Claimants	Exclusion Orders
Not reported	July 20, 1999	North Vancouver Island	39 days	123	9	96	18	123	None
Not reported	Aug. 9, 1999	Queen Charlotte Islands	58-60 days	140	38	54 (not including 9 crew)	39	130	1
Not reported	Aug. 30, 1999	North Vancouver Island	30-35 days	190	16	145	29	157	33
Not reported	Sept. 9, 1999	Nootka Sound	35 days	146	11	123	12	139	7
Ocean Lady	Oct. 17, 2009	Intercepted off Vancouver Island	45 days	76	None	76	None	76	15 refugee applications rejected and 4 accepted
MV Sun Sea	Aug. 12, 2010	Intercepted 12 nautical miles off Vancouver Island	90 days	492	54	413	25	492	19 deportation orders; 6 claims accepted; 6 rejected

Credit: author



A boat from HMCS **Regina** helps escort the 350-foot commercial vessel **Ocean Lady** to Ogden Point, British Columbia, on 17 October 2009 in response to a request for assistance from the RCMP.

The main features of the new Canadian legislation, *Protecting Canada's Immigration System Act*, appear to be directed towards border protection and deterrence. For example, the Minister of Public Safety will now be able to designate the arrival of a group of persons into Canada as an "irregular arrival," and make those involved over the age of 16 subject to the new legislation. The government claims that the new legislation will make it easier to prosecute human smugglers. The law was amended to include new mandatory minimum prison sentences for convicted smugglers.<sup>6</sup>

The government has also amended the *Marine Transportation Security Act* (MTSA). Under the pre-existing MTSA, certain types and size of vessels bound for Canada had to file pre-arrival information at a specific time before entering Canadian waters. The amended MTSA has increased penalties for failing to provide this pre-arrival information, failing to comply with ministerial direction, and/or providing false or misleading information. It also provides increased penalties for repeat offences of this nature by individuals and corporations.<sup>7</sup> These kinds of policy measures seem to be influenced by the type of migrant smuggling incidents that have happened on Canada's West Coast.

When announcing the changes outlined above, the federal government reminded those in the shipping community

that the MTSA currently provides the Minister of Transport with the authority to direct any vessel to remain outside Canadian waters, to proceed out of Canada or to proceed to any place as specified by the Minister when there are reasonable grounds to believe the vessel may pose a security threat. Such powers would seem to imply that the irregular movement of migrants by ship is a security threat.

The CBSA plays a key role in preventing and detecting irregular migration and human smuggling ventures. Its primary focus is on pushing the border out by identifying and dealing with threats as early as possible. This means a greater focus on preventing the ships from leaving ports of origin in the first place. Jennifer Bourque, CBSA spokesperson, indicated in an email exchange with this author that "the government of Canada is taking a multi-faceted approach to detect and prevent human smugglers from departing for Canada through international cooperation and capacity building, investigating human smugglers and deterring human smuggling ventures."

Canada has also increased its international engagement with partners and allies overseas and has raised human smuggling in bilateral and multilateral discussions with governments throughout the Asia-Pacific region. As well, Canada has strengthened cooperation with transit countries. This has involved capacity building, information

exchange and identifying practices that will deter future human smuggling operations. Since late 2010, for example, Thailand has cooperated closely with Canadian enforcement officials in disrupting several potential human smuggling ventures. Thailand is not considered a source country for illegal migrants but has been used as a transit country by criminal syndicates.

The CBSA also participates in international forums on human smuggling – most recently, the working group that was established in Vienna at the end of May 2012. The CBSA has also provided input into government submissions for international conferences, including a meeting of the Bali Process workshop on irregular migration hosted in Kuala Lumpur in June 2012. Migrant vessels were part of the discussion at this meeting and Canada’s approach to dealing with the problem was considered. CBSA officials in personal communication with this author indicated that they met with a Chinese delegation from the Guangdong Provincial Anti-Smuggling Office in September 2012. Yet, none of the CBSA’s international meetings to date have been dedicated to the maritime transport mode.

Canadian government departments recognize their international obligations to deal with illegal migrant smuggling by ship. A number of federal departments are involved – CBSA, RCMP, Transport Canada/Canadian Coast Guard and the Royal Canadian Navy. What exactly is the role of the navy in illegal migrant smuggling by sea? In Atlantic Canada, RCN Captain Steve Wilson was the lead exercise planner for Exercise Frontier Sentinel 12. Captain Wilson stated in a personal interview with this author that “[t]he main objective of one training scenario was to practise the activation of the regional migrant vessel plan and the different government departments’ roles and responsibilities, including the boarding of a vessel and the processing of 70 migrants.”<sup>8</sup> The scenario was part of the annual Joint Task Force Atlantic, US Fleet Forces, US Coast Guard exercise that also involved federal and provincial government departments, hospital officials and non-governmental agencies such as the Red Cross. During our discussion, Captain Wilson stressed the importance of such collaborative exercises in helping the RCN and other departments and agencies to develop a better understanding of their interoperability capabilities and



Credit: Corporal Martin Roy, Formation Imaging Services, Halifax, Nova Scotia

*HMCS Summerside (left) and HMCS Moncton (right) at Sydney Marine Terminal jetty during Exercise Frontier Sentinel 12.*



Credit: Mass Communication Specialist 3rd Class Christopher Farrington, USN

*Armidale-class patrol boat HMAS Albany in the Timor Sea in April 2012. These ships patrol the waters around Australia, and are designed for standard patrols of 21 days, with a maximum endurance of 42 days.*

resource requirements. The situation in Atlantic Canada is somewhat different than the Pacific Coast but the insights gained from the training exercise will be available for all naval planners.

What many Canadians may not realize is that the navy does not play a lead role in stopping human smuggling by sea; it plays a supporting role for other departments. Not only must the navy's involvement be requested by the lead law enforcement agency, the lead agency also retains full responsibility for conducting any operation. Thus, in the instance of migrant smuggling, the use of naval resources for a constabulary function (i.e., policing and managing the tasks that take place in Canada's territorial waters and Exclusive Economic Zone) is in support of other departments' mandates and jurisdiction.

Some observers have suggested that the new Canadian approach is modeled after the policy responses of the Australian government. To reduce the flow of maritime migrants, Australia has explored a range of options, most notably turning back suspected irregular entry vessels from Australian waters and assessing asylum claims outside of the country. For example, from 1999-2011 a number of turn-back operations were led by Australian Defence Forces.<sup>9</sup> One thing that the Australians have learned is that migrant smugglers do not operate in a uniform manner or have a standard business model.

Dr. Andreas Schloenhardt at the University of Queensland has observed that the Australian navy's role in addressing

human smuggling by sea has become politicized. Recently, retired navy officials have criticized the country's approach to the migrant issue. Dr. Schloenhardt has concluded that "after a decade of scare campaigns about 'floods of asylum seekers,' of attacks on so called queue-jumpers, of demonising migrant smugglers, and drastic measures that turned around boats and detained thousands of genuine refugees on remote islands for months and years, Australia is left with a lot of empty rhetoric, criticism by the international community and human rights organizations, and with no clue about how to prevent the smuggling of migrants to its shores."<sup>10</sup>

Dr. Schloenhardt's research reveals that "the nexus, if any, between migrant smuggling and organized crime also remains poorly understood.... If prosecutions are to have any impact on migrant smuggling ventures ... the focus must shift from prosecuting those at the end of the chain to those higher up in the organizations who arrange for, and profit from, these ventures."<sup>11</sup> This can be a problem, however, because the criminal leaders involved in organizing migrant smuggling are often outside of the geographic location of the recipient coastal states. Thus, it is extremely important for countries to cooperate and share criminal intelligence as part of a strategy to deal with migrant smuggling. During an email discussion with the author, Dr. Schloenhardt indicated that he was not aware of how much criminal intelligence is shared in individual cases, but he suspected that there were major reservations about Indonesian and Malaysian cooperation with Australia.

## Conclusions

While Canadian exporters may lament the long distance from international markets, Canada's distance from the world's major population centres has an influence on the scale of illegal migrants arriving by sea.

To the extent that the recent changes to Canadian legislation create a disincentive for those who organize maritime migrant smuggling, there would seem to be some justification for a revised approach. Yet, there is ample reason to question certain aspects of Canada's current policy approach. It remains to be seen if there is validity to the federal government's contention that large-scale arrivals of irregular migrants make it difficult to investigate properly and whether those who arrive on Canada's shores pose a risk to Canada. Based on the available evidence, Canada may indeed experience periodic episodes of large-scale irregular migrants but it does not appear to face a tsunami of illegal migrants arriving by ship – as Table 1 illustrates, from 1999 to 2010 there was a total of only 1,117 refugee claimants smuggled by sea to BC. The scale of the navy's recent training scenario suggests that at least on the Atlantic coast government officials are not planning for a major incident.

to irregular migrants at sea, or to provide practical guidance to support ship masters to fulfill their obligations when faced with such a difficult situation.

In addition to their constabulary role, maritime forces also make an important contribution to Canada's foreign policy objectives. This raises an important question of whether the navy should be used to turn back migrant vessels in Canada's Exclusive Economic Zone, or become involved in surveillance and deterrence efforts in regions of the world far from Canadian waters, and where international cooperation is truly needed to combat the problem effectively. 🍷

## Notes

1. United Nations Office on Drugs and Crime (UNODC), *Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications* (Geneva: UNODC, 2011).
2. International Maritime Organization (IMO), "Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea," MSC.3/Circ.21 (London: International Maritime Organization, 2012).
3. UNODC, *Issue Paper: Smuggling of Migrants by Sea* (Vienna: UNODC, 2011).
4. Government of Canada, Citizenship and Immigration Canada, Press Release, "Legislation to Protect Canada's Immigration System Receives Royal Assent," 29 June 2012, available at <http://www.cic.gc.ca/english/department/media/releases/2012/2012-06-29.asp>.
5. Sources: University of British Columbia Library, "The Faces of Irregular Migrants, Photograph Collection," 2001, [www.library.ubc.ca/asian/FinalAsian/introduction.html](http://www.library.ubc.ca/asian/FinalAsian/introduction.html); "The Deadly Trade of Human Smuggling," BBC World News, 12 August 1999, <http://news.bbc.co.uk/2/hi/americas/418676.stm>; "Illegal Immigrants Head for Esquimalt," CBC News, 12 August 1999, [www.cbc.ca/news/canada/story/1999/08/12/migrants990812.html](http://www.cbc.ca/news/canada/story/1999/08/12/migrants990812.html); "Third Ship of Illegal Migrants Diverted, RCMP Confirm," CBC News, 14 August 1999, [www.cbc.ca/news/canada/story/1999/08/14/thirdship990814.html](http://www.cbc.ca/news/canada/story/1999/08/14/thirdship990814.html); Alex Tizon, "Chinese Boat People make Waves in Canada, Some Former Refugees Want Newcomers Sent Back," *The Seattle Times*, 19 September 1999, <http://community.seattletimes.nwsourc.com/archive/?date=19990919&slug=2984149>; Joel Connelly, "Canada Braces for More Illegal Chinese Immigrants Aboard Ships," *Seattle Post-Intelligencer*, 1999, [http://miksa.ils.unc.edu/sbrowser/btrec/doc\\_show.cgi?id=22761&id2=NYT19990910.0012](http://miksa.ils.unc.edu/sbrowser/btrec/doc_show.cgi?id=22761&id2=NYT19990910.0012); Anthony DePalma, "Canada Seizes Chinese Boat Smuggling in 100 Immigrants," *The New York Times*, 22 July 1999; Stewart Bell, "Sri Lankan Smuggled into Canada on MV Ocean Lady Accepted as Refugee Due to Possible Danger," *National Post*, 13 August 2012.
6. Government of Canada, Citizenship and Immigration Canada, Press Release, "Legislation to Protect Canada's Immigration System Receives Royal Assent," 29 June 2012.
7. Government of Canada, Citizenship and Immigration Canada, "Background: Tougher Penalties for Ship Owners and Operators who Fail to Comply with Canada's Marine Security Legislation," 2012, available at [www.cic.gc.ca/english/department/media/backgrounders/2012/2012-06-29h.asp](http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-06-29h.asp).
8. RCN Captain Steve Wilson, interview with the author. For information on the exercise see, "Migrant Vessel Plan Put to the Test," *The Maple Leaf*, Vol. 15, No. 6 (2012).
9. See Government of Australia, "Report of the Expert Panel on Asylum Seekers," 2012.
10. Andreas Schloenhardt, speech made to Maritime Security Challenges Conference, Victoria, BC, 2012.
11. Andreas Schloenhardt, "Migrant Smuggling and Organised Crime in Australia," Migrant Smuggling Working Group Research Paper, Brisbane: The University of Queensland, 2011.

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Credit: Jonathan Hayward, Canadian Press



Prime Minister Stephen Harper and Citizenship Minister Jason Kenney aboard MV *Ocean Lady* in Delta, BC, February 2011.

Data secrecy makes it hard to determine if any RCMP, CBSA or RCN efforts, such as collaboration or sharing criminal intelligence, have been effective in preventing further maritime incidents from happening at the overseas point of departure. It is difficult, however, to accept at face value the assertion made by the Ministry of Citizenship, Immigration and Multiculturalism that the large-scale arrival of illegal migrants smuggled by maritime transport is undermining Canada's security. In addition, notably absent from the new policy announcements is any discussion of steps that Canada is undertaking to fulfill international obligations to rescue and afford protection