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Immigration and Anti-Terrorist Policies: An Analysis of Canada and the United Kingdom

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IMMIGRATION AND ANTI-TERRORIST POLICIES: AN ANALYSIS OF CANADA AND
THE UNITED KINGDOM

by

Monica Carreon-Diez, BA, ITAM, 2005

A Major Research Paper
Presented to Ryerson University

in partial fulfillment of the requirements for the degree of

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in the Program of
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Master of Arts
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ABSTRACT

This paper examines whether the evolution of immigration policies and anti-terrorism laws in Canada and the United Kingdom reflect a process of securitization of migration. The theory developed by the Copenhagen School is employed to explain the security-migration nexus and the concept of *selective securitization* is introduced to explicate how certain immigration categories, such as irregular migrants, asylum seekers and refugees become the preferred target of stringent immigration and anti-terrorist laws. The paper has two inter-related central arguments: that securitization of migration began to occur prior the September 11, 2001 terrorist attacks which was expanded and fast-tracked thereafter; and that the negative consequences of securitization are more evident when one takes into account the violations of immigrants' rights.

Key words: securitization, immigration policy, anti-terrorism law, Canada, the United Kingdom.

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Introduction

The twentieth century was characterized by a number of factors including the materialization of immigration laws,¹ the ideological division between capitalism and communism, the growth of migration flows worldwide, and the embracing of globalization, which is said to have reduced physical barriers to the free flow of capital, services and goods (Castles, 2006; Castles and Miller, 2003; Dauvergne 2003; Dauvergne, 2004; Hayter, 2003; Hollifield, 2006; Sassen, 1996; Straubhaar, 2006). Comparably, at the beginning of the twenty first century, most Western countries have continued to establish increasingly restrictive immigration laws; the “war on terror” has separated those who are either with the United States or against them;² globalization has not succeeded in narrowing the gap between poor and rich countries, as well as in abolishing territorial borders for the free movement of people and workers in contrast to the free movement of capital; and migration flows — especially of irregular migrants,³ refugees and asylum seekers — have been the subject of greater security concerns.

The goal of this paper is to determine whether the evolution of migration policies and anti-terrorism laws in Canada and the United Kingdom reflect a process of securitization of migration. The approaches to security studies and the theory developed

¹ Catherine Dauvergne (2003, p. 2; 2004, p. 589) points out that passports and border controls emerged even earlier but it was not until the world was definitely divided by borders at the beginning of the twentieth century that nation-states resolutely required passports and visas to people to enter into their territories.

² This phrase makes reference to a statement of George W. Bush. On November 6, 2001 he declared: “all nations, if they want to fight terror, must do something. It is time for action... [O]ver time, it's going to be important for nations to know they will be held accountable for inactivity. You are either with us or you are against us in the fight against terror” (White House, 2001).

³ Various terms are employed to make reference to “irregular” migrants. For instance, the term most commonly used by states has been “illegal” migrant, which because of its connotation with criminality has allowed to link “irregular” migrants with criminals, to omit their claims which are deemed to lack of validity, and to justify the violation of their human rights. Other terms are “unauthorized” and “undocumented”; however, both are inaccurate since not all irregular migrants are people without documents or who enter to the state without its authorization. Even though the term “irregular” is not exempt from criticism, this paper employs it to make reference to people who entered or remained in a country without the proper authority of the state, including people who have been smuggled or trafficked (GCIM, 2005, p. 32; Koser, 2005, pp. 4-6; Koser, 2006, pp. 44-45).

by the Copenhagen School are explored in the next section to explain how immigrants are perceived as security concerns. The concept of *selective securitization* is introduced to illustrate that certain immigration categories, such as irregular migrants, asylum seekers and refugees, are the preferred target of stringent immigration and anti-terrorist laws. Instead of looking at the speech-acts of politicians, the paper mainly analyzes government documents — immigration and anti-terrorist laws — to determine if they reveal the rise of securitization to deal with migration. The paper also discusses some of the measures derived from the immigration and anti-terrorism laws that are part of this process. Two overarching arguments guiding this paper are that securitization of migration occurred prior the September 11, 2001 terrorist attacks and that the negative consequences of securitization are more evident when violations of immigrants' rights are taken into account.

According to Castles and Miller (2003, pp. 68-100), international migration developed throughout in two phases.⁴ The first one occurred from 1945 until the oil crisis of 1973, and includes three main migration flows: people from Eastern Europe who migrated to Western Europe as temporary workers; people from the former colonies who migrated to Europe; and permanent migration to North America and Australia from Europe, Asia and Latin America. The second phase started in the mid-1970s and reached two peak periods in the 1980s and the 1990s.⁵ As migration flows grew, the

⁴ The authors recognize that movements of people across borders have been part of human history; however, the twentieth and twenty first centuries have witnessed “their global scope, their centrality to domestic and international politics and their enormous economic and social consequences” (Castles and Miller, 2003, p. 2). Hollifield (2006) names this era as the “migration state.” Please refer to chapter three of Castles and Miller (2003) for an overview of migration flows before 1945.

⁵ In the period of 1975-1980, international migration grew 14.4 percent while refugees 114.9 percent. In the following five year period, the figures were 11.8 percent and 45.6 percent respectively. Lastly, between 1985 and 1990 the growth rate for international migration was of 39.6 percent and for refugees of 40.2 percent. However, throughout the period of 1960-2005 international migration and refugees as percentage of the world population only represented on the average 2.54 and 0.2 percent respectively (Table 1). Detailed information can be obtained from United Nations (2006).

attention that scholars, politicians, the media, and states placed on this issue increased and became more systematic. Furthermore, the proliferation of migrants with irregular status since 1970 and the dramatic increase in refugees and asylum seekers from the 1980s until the early 1990s — referred to as the “refugee crisis” — led to a ferocious interest from states to regulate them (Castles and Miller, 2003; Castles 2006).

Ever since, countries such as France, Germany and the United States have embarked on a “quest for control” which has involved relentless attempts to prevent irregular migration, and in so doing, to suppress abuses and infringements of their immigration rules (Castles and Miller, 2003, p. 94). This behaviour has been justified on the basis that irregular migration poses a threat to the sovereignty of states because it transgresses their right to control who crosses their borders.⁶ However, in various cases, states have taken this discourse to the next level by arguing that irregular migration constitutes a threat to their security (Koser, 2005, p. 10). Even though “the terrorist problem does not lie with migration” (Schoenholtz, 2003, p. 174), the two are conflated in the age of the “war on terror,” and discussions on international migration have centered on the security of the state to support the links between terrorism and “illegal” migration (Grant, 2005, p. 8; Koser, 2006, p. 50). All of the aforementioned viewpoints have prompted states not only to implement more restrictive immigration laws, but also to apply a *selective securitization*⁷ of migration.

Regarding refugees and asylum seekers, the scenario has not been more promising. The sharp increase in the number of refugees and asylum seekers during the 1980s, and the collapse of the Soviet Bloc at the beginning of the 1990s generated panic around these two migration flows (Castles and Miller, 2003, p. 102-106). Asylum seekers

⁶ Several scholars concede that a defining feature of the nation-state is precisely its sovereign capacity to control who may or may not enter and remain in its territory (Brouwer and Kumain, 2003, p. 4; Buzan, Wæver and de Wilde, 1998, p. 150; Dauvergne, 2003, p. 3, 8; Huysmans, 2006, pp. 30-21; Koser, 2005, p. 10; Koser, 2006, p. 50; Sassen, 1996, pp. 65-66).

⁷ This concept will be explained in the second section of this paper.

and refugees lacking proper documentation — visas, passports or any other proof of identity — came to be seen as “illegal migrants” and a “criminality” was assigned to them (Tazreiter, 2004). Moreover, the term “bogus refugee” was adopted to suggest that asylum seekers were nothing more than economic migrants (Richmond, 2002, p. 718). As a result, “the line between irregular migrants[,]... asylum seekers and refugees has become increasingly blurred in the media and in the public mind” (Koser, 2005, p. 6). Nevertheless, scholars argue that being part of a mixed migration flow must not exclude asylum seeker and refugees of their right to be protected (Dauvergne, 2003, p. 7; Feller, 2005, pp. 27-28; Grant 2005, p. 16; Koser, 2005, p. 6). Also as irregular migrants’ experience, a fear “that terrorists can abuse asylum systems” (Schoenholtz, 2003, p. 186) has placed asylum seekers and refugees under further scrutiny.

Tougher immigration laws are a response to a perceived need of states to control certain migration flows. In this sense, it has been observed that globalization has denationalized economies by reaching a consensus to lift border controls for the flow of capital, information and services (Sassen, 1996, p. 57, 86). Yet this change has intensified border controls to keep out irregular immigrants. This contradictory trend has also been called as the process of de-bordering and re-bordering.⁸ As globalization exacerbates disparities between rich and poor countries, economic incentives to migrate are still in place. Therefore, states have become more eager to control and to impose barriers to the movement of people (Castles, 2006; p 4, Richmond, 2002, p. 715) who are deemed to be “undesirable” or “unfit” for the prosperity of the state.

⁸ The process of de-bordering is related to the “borderless world” thesis which suggests that borders are being eroded and are becoming more open to facilitate the greater economic mobility required for the liberalization of markets and its global growth. In contrast, the re-bordering thesis explains the process by which states selectively police their borders to better control certain migration flows — irregular migrants, refugees and asylum seekers —, and to prevent a variety of illicit activities — terrorism, human trafficking and smuggling, and drugs trafficking (Andreas, 2003, pp. 78-79, 82; Newman, 2006, p. 182; Rumford, 2006, p. 157).

To summarize, the increase of international migration of mainly irregular migrants, asylum seekers and refugees, has encouraged states to implement more immigration controls at borders and to implement tougher migration policies (Feller, 2005; Hayter, 2003; Hollifield, 2006; Koser, 2005; Richmond, 2002). Additionally, these three migration flows have increasingly been the subject of negative stereotypes, perceived as a security threat to the state, and assumed to be channels for criminal activities, including terrorism (Feller, 2005; Grant, 2005; Koser, 2005; Richmond, 2002; Schoenholtz, 2003, p. 174). However, the most important point to highlight is that in their “quest for control”, states have failed to obtain the “desired” outcomes⁹ and endangered the human rights of migrants (Brower and Kumin, 2003; Cornelius and Tsuda, 2004; Dauvergne, 2003; Feller, 2005; Grant, 2005; Hayter, 2003; Hollifield, 2006; Koser, 2005; Koser, 2006; Martin, 2003; Richmond, 2002; Sassen, 1996; Tazreiter, 2004).

As many other Western countries, Canada's immigration policy — usually perceived as a lenient one — started a process of transformation during the 1980s and the 1990s with the purpose of hindering irregular migrants, refugees and asylum seekers from reaching the country (Pratt, 2005, pp. 97-108). The implemented changes revealed that the Immigration Act of 1976 was no longer functional and the *Immigration and Refugee Protection Act* (IRPA) replaced it in 2002. The current immigration program has been criticized because while it introduced a more relaxed selection criteria for the permanent resident class, it also incorporated detention, inadmissibility provisions, security certificates and border controls as measures to restrict “undesirable” migrants from reaching and staying in Canada (Crocker, Dobrowolsky, Keeble, Moncayo, and Tastsoglou, 2007, p. 11; Macklin, 2001, pp. 389-340; Pratt, 2005, p. 3-5). Along with

⁹ Cornelius and Tsuda (2004) have called the existing gaps between official immigration policies and actual policy outcomes as the “gap hypothesis”. They distinguish two kinds of gaps: those caused by the unintended consequences of a policy, and those caused by inadequate implementation or enforcement of policies. Other authors who talk about the “gap hypothesis” are Sassen (1996) and Martin (2003).

IRPA, Canada's approval of the Anti-terrorism Act (Bill C-36) has intensified the concerns about immigrants being observed through the security lens.

Contrastingly, since the Immigration Act of 1971, the core of Britain's immigration policy has consisted on strong control procedures, as well as sanctions to a number of selected classes of migrants (Somerville, 2007, p. 16). Until recent years, the United Kingdom was proclaimed to be a "deviant case" given that it was the only state within Western countries in which relentless and aggressive immigration policies were able to bring down immigration to a minimum, keeping the net migration balance close to zero. As a result of this, the UK earned the name of the "zero-immigration" country (Joppke, 1999; pp. 100-105; Hansen, 2000, p. 22). In recent years, the entry of Britain to the global competition for the "best and the brightest" has questioned its "zero-immigration" position; nonetheless, British immigration policy is far from having moved away from its aggressive nature (Layton-Henry, 2004, pp. 330-331; Somerville, 2007, pp. 4-5). Furthermore, in addition to the UK's longstanding body of legislation to tackle terrorism, laws introduced after the terrorist attacks of 11 September, and the 7 July 2005 London bombing attacks seem to have drawn a manifest link between migration and security.

Approaches to Security Studies and the Security-Migration Nexus

Developed during the start of the Cold War in 1947, the notion of the *security state* positioned states as the key players in the provision of security and as the guarantor of citizens' well-being (Krause and Williams, 1997, p. 21; Mabee, 2003, p. 135; Paul, 2004, p. 356). The security state can be identified as having four characteristics: a dramatic rise in the infrastructural power of the state; a separation of internal and external security; an unyielding pursuit of internal security as a precondition for the internationalization of the state; and an increasing power of the state over society in exchange of social goods,¹⁰ public safety and protection from external threats (Mabee, 2003 p. 136-137, 143). The case that best illustrates these elements and provides more insights on the workings of the security state is the United States.

In 1947 most of the institutions on which American security currently rely were created — such as the Secretary of Defense, the National Security Council and the Central Intelligence Agency — in order to address the communist and nuclear threats. A consequence of this institutional expansion of security agencies, national security affairs dominated the government's budget and agenda. Since internal security was turned into something essential, critics of prevailing policies were judged as dissidents linked to communism. In 1948, the Truman administration established a federal employee loyalty program that included a mechanism to deny employment to, or to dismiss from federal services individuals whose loyalty to the government was questionable. The McCarran Act included measures that required communists to register with the attorney general and allowed the detention of suspected spies and saboteurs. Even some congressmen

¹⁰ In Mabee's perspective (2003) the security state is based on a state-society relation that involves an increasing penetration of the state into society, and a gradual capacity of citizens to affect the state and to claim their rights. She highlights the expansion of citizenship rights and the creation of the welfare state as trade-offs of the state power over society. However, while states have continued to penetrate into society, neo-liberalism and the "war on terror" have decreased the provision of social goods to citizens, and individuals have experienced an erosion of their rights in the name of security.

proposed the deportation of members of the communist party and to deprive American-born communists of their citizenship. The final and most important attribute of the American security state was its ideological component. The Truman Doctrine clearly recognized the Soviet regime, its influence and ideology as threats; it assumed that the protection of the American security and its liberty depended on defending peace and freedom everywhere; and emphasized the role of the United States as the global protector of democracy (Hogan, 1998, pp. 1-22, 44-45, 65, 254-261, 315; Krause and Williams, 1997, p. 21).

As a replica of the security state of the Cold War, after the September 11, 2001 terrorist attacks the United States, as many other states, underwent a major reconfiguration of its security agencies in order to face terrorism. The Department of Homeland Security was created; the Bush Doctrine confirmed terrorism as the major threat to security and reassured American's role in preserving freedom,¹¹ democracy and peace; "terrorists" and "extremists" were transformed into the new communists; and measures that trade privacy and human rights for security were authorized. It has been argued that

at the end of the Cold War, ... [the] role of the state as security provider ...[was on]... decline. Furthermore, after the September 11, 2001 terrorist attacks, arguments have emerged that the territorially-organized state with traditional military instruments has proved to be incapable of facing the threats posed by transnational terrorism" (Paul and Ripsman, 2004, p. 356).

Given this argument that the state is seen as "incapable of facing the threat posed by transnational terrorism," the issue of security at the end of the Cold War and the September 11 attacks has meant a radical shift towards a state-centric perspective

¹¹ For further analysis of the Bush Doctrine consult the *National Security Strategy of the United States of America* at <http://www.whitehouse.gov/nsc/nss.pdf>

on security. This change has been introduced in almost all western and some key Third World States.

Challenging Approaches to Security Studies

Security studies have been dominated by the neorealist perspective. The primary referent of this approach is the state which is regarded as a unitary, rational actor trying to maximize its security in an anarchic system (Bueno de Mesquita, 2003, pp. 121, 123, 130-131). The neorealist theory defines security in terms of state survival and assumes that threats are external and of military nature. Once the survival of the state is assured, states can work towards other goals (Waltz, 1979, p. 126). The neorealist perspective identifies the phenomenon of war as the main focus of security studies by defining the field “as the study of threat, use and control of military force” (Walt, 1991, p. 212, author’s emphasis). Neorealist theorists recognize that “military threats are not the only dangers that states face... [Yet] [t]he fact that other hazards exist does not mean that the danger of war has been eliminated” (Walt, 1991, p. 212). As Philippe Bourbeau (2006, p. 6-7) observes the neorealist perspective cannot accept the migration-security nexus because migration is not defined either as a “high-politics” issue or as a concern of international security.

Challenges to the neorealist perspective on security can be traced back prior to end of the Cold War.¹² Nevertheless, during the post-Cold War period, the *status quo* of security studies was under further pressure since the primacy of the state and military threats in the field were questioned by several perspectives (Buzan, 1997; Bilgin, 2003; Williams, 2003). The post-Cold War security approaches have focused on threats faced by both state and non-state actors such as individuals and social groups. For example,

¹² Pinar Bilgin (2003) identifies three concepts created during the Cold War that reflect an interest in individual and societal dimensions of security: common security, stable peace and Third World notions of security.

states were no longer perceived as a guarantor of security, but even as potential threats to their own citizens (Bilgin, 2003, p. 208; Krause and Williams, 1997, p. 44). In that sense, “the concept of ‘human security’ emerged out of the recognition that individuals and communities’ security does not necessarily follow from the security of the state in which they are citizens” (Bilgin, 2003, p. 213). Therefore, the concept of human security draws attention to a number of factors affecting the safety and well-being of individuals. Human security also advocates a shift from territorial security to people's security and signals sustainable human development as the means to achieve it.¹³ Approaches based on the human security concept emphasize the protection of human rights of individuals and the degree of democracy that prevails in their countries (Kay, 2006, pp. 258-261).

Another approach that also assigns a prominent role to the society and to the possibility of diverse threats has been the thesis of *Risk Society*. For Ulrich Beck, a proponent of this notion, risks are the product of modernization, and can arise from sources which are out of human control — natural disasters, climate change or ozone depletion — or that can be manufactured by human beings (Aradau, 2007, p. 92; Bilgin, 2003, p. 217-218). Within the manufactured risks some are perceived as controllable and others as out of control (Bilgin, 2003, p. 217). However, a sense of extreme uncertainty through which the state is no longer capable to assure security is only generated when people become aware of the possible catastrophic impacts of uncontrollable risks (Aradau, 2007, p. 93).

Another perspective aimed to address the limitations of the neorealism and the narrow agenda of security studies is the theory of securitization developed by the Copenhagen School (CS). This theory, according to Williams (2003) and Stritzel (2007)

¹³ For a comprehensive analysis of what the human security concept entails consult the *Human Development Report 1994. New Dimensions of Human Security* of the United Nations Development Program.

is among the most influential and prominent approaches that challenge the neorealist theory. In broad terms, the CS emphasizes the role of collectivities; attempts to unravel thresholds that trigger the formulation of a subject as part of the security realm; and proclaims that security is a political construction (Buzan, 1997, p. 19-20). The CS identifies factors in five sectors that affect the security of human collectivities: military, political, economic, environmental and societal. Consequently, the concept of security is broadened to these sectors (Buzan, 1991, p. 19). The societal and, to a lesser degree, the political sector are of special relevance since they give room to understand the way in which migration can be articulated in security terms.

The Copenhagen School and the Security-Migration Nexus

Before talking about the security-migration nexus, it is important to explain some of the central concepts and assumptions of the Copenhagen School (CS).¹⁴ First the term “security” needs to be understood from the CS perspective. The CS defines this concept in terms of survival or as the pursuit of freedom from threat (Buzan, 1997, p. 13; Wæver, 1993, p. 23; Wæver, 1995, pp.52-53). They work within a notion of security that entails a duality because survival is influenced not only by the survival of the state — in which sovereignty is its ultimate criterion — but also by the survival of society — in which concerns about identity are crucial. Security results from the “interplay between the vulnerabilities of the unit and the threats that it faces” (Wæver, 1993, p. 24; Wæver, 1995, p. 67). This leads to two other relevant concepts of the securitization theory: threat and securitization.

¹⁴ The Copenhagen School is a body of scholarly work produced by Barry Buzan and Ole Wæver along with a number of other collaborators. It is acknowledged that even though the collective designation of “Copenhagen School” suggests certain unity of approach, there are differences among its members (Sheehan, p. 2005, p. 51). However, for the purposes of this paper these discrepancies will not be discussed and the perspective will be treated as a unity.

Threats arise from both military and non-military areas, but “in order to count as security issues...[t]hey have to be staged as existential threats to a referent object [— the state, society, or both —] by a securitizing actor” (Buzan, 1997, p. 13; Buzan, Wæver and de Wilde, 1998, p. 5). As Barry Buzan (1997) explains, the process of securitization¹⁵ demands from leaders (political, societal or intellectual) to formulate an issue as an existential threat to some valued asset like sovereignty, identity, economic stability, and ecological sustainability. In turn, this “existential threat” designation implicitly justifies exceptional and/or emergency measures — such as the use of force, limited rights or their infringement, secrecy and additional executive powers — that in ordinary times would be illegal. The key feature of securitization is a specific rhetorical structure or a speech-act by which an affair “is dramatized and presented as an issue of supreme priority, and thus by labeling it ‘security’ an agent claims a need for and a right to treat it by extraordinary means” (Buzan, *ibid.* p. 14; Buzan et al., 1998, p. 26). When a threat is persistent or recurrent then the responses to it may become institutionalized (Buzan, 1997, p. 15; Buzan et al., 1998, p. 26).

The CS broadened the security studies’ agenda to five sectors: the military, the economic, the political, the environmental and the societal. In the first four the state is the referent object of security,¹⁶ while in the last one the society is. Each sector has differences on what could constitute an existential threat, but according to the CS theory, only the political and the societal sectors are important to understand the reasons behind framing migration as a security issue. In the political sector, threats are aimed to

¹⁵ The CS regards securitization as an extreme version of politicization. The difference between the two is that politicized issues are dealt with regular political procedures, while issues that have been securitized involve emergency measures and policies out of the norm (Buzan, 1997, p. 14; Buzan et al., 1998, p. 27).

¹⁶ Buzan (1997, p. 11) argues that “the state still remains central, but no longer dominates either as the exclusive referent object of security or as the principle embodiment of threat in the way it did previously.” Even though the CS brings the society as referent in security and contemplates it as a key player in defining what constitutes a threat; the security agenda is ultimately and predominantly defined by the state and the government decision makers.

destabilize the organization of the state, and are either directed to the state's ideology or to its sovereignty. In the case of the latter, anything challenging the legitimacy or authority of the state can be perceived as an existential threat (Buzan, 1997, p. 16; Buzan et al., 1998, p. 22, 142, 150). For instance, when migrants contravene immigration rules of a state or infringe its territorial boundaries, the state will perceive that as a threat against its sovereignty. However, the securitization of migration will depend on whether or not the state makes the political choice of framing migration as an existential threat.

The societal sector, which is the basis of societal security,¹⁷ has the identity of collectivities as its organizing concept. Threats to identity are mostly framed under the binary of "us vs. them," and some of the most common issues that have been viewed as threats to societal security are migration, the influence from neighboring cultures, and integrationist or regionalist projects (Buzan et al., 1998, p. 119-121). In relation to migration, immigrants are supposed to carry a competing identity to the host society, but this is only turned into a source of threat when this identity and the identity of the host country are regarded as mutually exclusive. Another way in which migration is acknowledged as a threat derives from society's perceptions about the capability of immigrants to adapt to the host society and the number of immigrants that such society can absorb (Buzan, 1993, p. 44-45, Huysmans, 1995, pp. 54). A society might react to immigration by trying to place the issue on the state policy agenda, and as a consequence, the most probable response of the state will likely be to implement a more stringent legislation and tougher border controls (Buzan et al. 1998, p. 122). As Buzan (1993, p. 46) rightly projected, "the pressures of migration... [have made] this issue an

¹⁷ Buzan et al. (1998, pp. 119-120) clarify that societal security should not be confused with social security that is mainly related to individuals and is largely economic. They also explain that the term societal is related to society and does not make reference to state population, but to communities defined as self-sustaining identity groups.

increasing part of the [security] agenda, especially in the wealthier states and their societies.”

Despite the relevance of the theory of securitization, it suffers from several pitfalls. The CS recognizes that societal identities are dynamic (Buzan, 1993, p. 42); however, societal security encompasses the risk of essentializing the concept of society by relating it to a “single, fully unproblematic entity” (Sheehan, p. 86) when in reality societies and identities are dynamic (Bilgin, 2003, p. 213; Huysmans, 1995, pp. 56-57). With respect to society, a concern that remains unresolved has to do with who represents it or has the right to speak on its behalf (Huysmans, 2002, p. 55, Sheehan p. 87). In the words of Ole Wæver “society never speaks, it is only there to be spoken for” (1995, p. 70). Therefore, the securitization theory only offers the possibility to determine *via* observation which actors have enough legitimacy when speaking in the name of society (Wæver, 1995, p. 70).

The CS definition of security includes both the state and the society, and spans five different sectors — the military, the political, the economic, the environmental and the societal. However, for Walt “broadening the concept of ‘security’... runs the risk of expanding ‘security studies’ excessively” (1991, p. 13). In this sense, security studies could include anything in the political agenda. This fact would not only jeopardize the intellectual coherence of the field, but also would make more difficult to formulate solutions to security problems (Walt, 1991, p. 13). This concern has been reiterated by other scholars (Shaw, Booth and Deudney as cited in Sheehan, 2005, p. 60; Williams, 2003, p. 512-513) who consider that a too broad concept of security might lose its meaning and would not contribute to understanding security practices in depth.

The CS implicitly assumes that power is an important factor in the process of securitization; a fact that is evident when they affirm that a successful speech-act depends on the authority of the speaker. For the CS the power of the securitizing actors

is understood as something given by an audience (e.g. the power of national extreme parties derives from the electorate supporting them), and not as something generated by the hierarchy of bureaucracy and the political structure itself (Bigo, 2002, p. 73).¹⁸ For instance, in the United States the Secretary of the Department of Homeland Security is perceived as with more authority to frame an issue as a security concern than the Commissioner of the Customs and Border Patrol. This example shows that both audience and political structure are relevant to determine the power of securitizing actors. Additionally, both audience and political structure could explain how and why certain political actors and government agencies have an advantageous position to expose security matters that, in turn, reiterate their power position within the state structure (Bigo, 2002, p. 73; Huysmans, 2002, p. 57). Stritzel (2007) and Balzacq (2005) also criticize the securitization theory as it lacks comprehensive awareness of the social sphere, the social relations, and the power structure within both spheres. Stritzel and Balzacq highlight that the contextual factors that surround a speech act are relevant because securitization is context-dependent. This context may include events occurring inside and outside the community and stereotypes which might lead the audience towards the acceptance or rejection of a specific point of view.

The CS created a dual concept of security constituted by the state and the societal security, but they did not envisage the risks that securitization could bring to societal issues. Jef Huysmans argues that when the possibility is open to include migration within the security agenda, immigrants are in latent danger of being subjected to control and exclusion (1995, pp. 59-62). Moreover, the CS treats migrants as a whole,

¹⁸ Compared to the CS, Bigo (2002) and Huysmans (2006) visualize securitization as a practice taking place in a continuum, rather than in the exceptional.

but as Huysmans notes, only certain groups of foreigners fall within the category of “the migrant” (1995, p. 61).¹⁹ This *selective securitization* is more evident if we consider that

one of the striking characteristics of the contemporary discourse on migration in the European Union [and in North America] is the contrast between a negative portrayal of asylum seekers and illegal immigrants and talk about the necessity of increased economic migration to support growth and welfare provisions (Huysmans, 2006, p. 48).

Coinciding with Huysmans, both “repressive and permissive migration policies... share the *desire to control* population dynamics for the purpose of optimizing a society’s ‘well-being’ by keeping the unwanted out and integrate the needed into the labour market” (2006, p. 47). However, this paper argues that securitization is more likely to occur in those immigration categories — named irregular migrants, asylum seekers and refugees — targeted by repressive policies, rather than in other immigration categories related to permissive policies like economic and skilled immigrants, and temporary workers. Therefore, securitization is selective. The selective securitization thesis will be tested against the immigration and anti-terrorism laws which will make clear if there are exceptions to it, mainly in the context of policies approved after the September 11 attacks that now include “regular” immigrants as targets of security concerns.

The analysis of immigration and anti-terrorism laws in Canada and the United Kingdom of the following sections will be mainly conducted through the lens of the securitization theory. However, some of the elements mentioned as drawbacks will be taken into account to prevent the theoretical vagueness that this theory involves.²⁰ It is common practice within empirical studies on securitization of migration give great

¹⁹ For Huysmans (1995, p. 61) “the migrant” means the cultural other to be distrusted.

²⁰ Stritzel (2007, p. 368) mentions that the “securitization theory is theoretically vague and it does not provide clear guidance for empirical studies;” fact that is admitted by Ole Wæver (Stritzel, 2007, p. 359). Rudolph (2006, p. 27) not only coincide with Stritzel, but also proposes to deconstruct the policies themselves as a solution.

emphasis to rhetoric. However, laws and policies are the result of such rhetoric and therefore, become part of the securitization process (Huysmans, 2006, p. 24; Ibrahim, 2005, p. 164). The evidence provided in this paper to establish whether or not the securitization of migration has occurred will be analyzed at the level of policy and not at the level of rhetoric.

Immigration Policy in Canada and the United Kingdom: the Lenient vs. the Zero-Immigration Case

Canada and the United Kingdom have been very responsive to changes in immigration flows and both have had an interest on hindering irregular migrants, refugees and asylum seekers from reaching their respective destinations. The main difference between both cases has been that while Canada, since the *Immigration Act* of 1976, has made clear its welcoming position to economic migrants, Britain's immigration laws until recently have not been oriented towards economic considerations. Furthermore, the Canadian immigration policy has been considered as a lenient one, mainly because of the point system scheme and its "non-aggressive" nature. Contrastingly, the United Kingdom has been qualified as a "zero-immigration" country because of the effectiveness of its historic, tough immigration policy. In spite of the differences, the following section reveals that both countries share an increasing pattern that links immigrants to security. It is important to acknowledge that the evolution of both immigration programs have been shaped by factors occurred throughout centuries; however, this section is mainly focused in the period from 1970s until now in which a dramatic shift in immigration policy was registered.

Canadian Immigration Policy: an Exceptionally, Lenient Case?

Canadian immigration law started a profound process of transformation during the second half of the twentieth century. In 1967, Canada implemented the Norms of Assessment point scheme which established new standards for selecting immigrants; however, the publication of the White (1966) and the Green (1974) Papers, beside a broad process of public consultation set the conditions for a new immigration program (DeVoretz and Laryea, 2005, pp. 576-577; Kelley and Trebilcock, 2000, pp. 358-359, 380; Kubat, 1993, pp. 28-30). The introduction of the *Immigration Act, 1976* has been

considered as a turning point in the history of Canadian immigration law because it eliminated race and country of origin as criteria for admission, and for the first time, the objectives of the immigration program were explicitly spelled out (Kelley and Trebilcock, 2000, pp. 380-381, 390).²¹ However, amendments made to the *Immigration Act, 1976* reflect a willingness to increasingly frame immigrants as a security concern.

After the *Immigration Act, 1976* was approved, the number of immigrants entering Canada remained steady; however, the period of 1975-1990 witnessed a tremendous increase in the number of refugees (United Nations, 2006; Table 2). In addition, concerns over “the growing backlog of onshore refugee claims...[,] primarily attributed to fraudulent refugee claims made by ‘bogus’ refugees[,]” (Pratt, 2005, p. 96) exposed that the immigration program was not able to handle this situation (Kelley and Trebilcock, 2000, p. 414). Two further events triggered the panic around irregular immigrants and refugees: the arrival of 155 Tamils from Sri Lanka to the coast of Newfoundland in 1986, and the landing of a vessel carrying 173 Sikhs and one Turkish woman in the East coast of Canada in 1987 (Kelley and Trebilcock, 2000, p. 417; Pratt, 2005, pp. 97-98). In 1998, the refugee determination system practically collapsed and two new Bills were passed to address the “refugee crisis.”

On the one hand, the *Refugee Reform Bill* (Bill C-55) introduced in 1987, amended the immigration program to achieve the three-folded purpose of simplifying the refugee-determination system, ensuring protection to legitimate refugees and deterring system abusers (Etherington, 1994, p. 73; Kelley and Trebilcock, 2000, p. 416; Kubat, 1993, p. 38). In spite of that, Bill C-55 provided a two-stage refugee-determination system by creating the Immigration and Refugee Board (IRB); it established a “safe third

²¹ The objectives included: immigration should meet Canada's demographic goals and labour market needs; foster family reunion, maintain Canada's humanitarian tradition, and encourage a strong economy (DeVoretz and Laryea, 2005, pp. 577-578; Kelley and Trebilcock, 2000, p. 390).

country”²² clause to limit the eligibility of refugees and curtail “asylum shopping,” as well as limited the right to review and appeal negative decisions in the Federal Court (Etherington, 1994, p. 73; Kelley and Trebilcock, 2000, p. 418; Pratt, 2005, p. 100; Ziudema, 1997, pp. 24-30).

On the other hand, the *Deterrents and Detention Bill* (Bill C-84) was passed in the same year to improve the control of Canadian borders. Bill C-84 allowed detention of people arriving in Canada without proper documentation; immediate deportation of those deemed to pose a criminal or security threat; and to turn back ships suspected of carrying refugees before they landed (Kelley and Trebilcock, 2000, p. 417; Pratt, 2005, p. 100). Both bills produced great opposition since they were perceived as draconian emergency measures marked by an alarmist tone and harsh provisions (Kelley and Trebilcock, 2000, p. 419; Ziudema, 1997, pp. 31-35). Taking these claims into account, it seems that the *selective securitization* of migration in Canada started in the late 1980s.

The backlog continued despite the introduction of Bills C-55 and C-84, and during the early 1990s, it forced the government to an extensively amendment of the *Immigration Act, 1976* (Dolin and Young, 2004, p. 1; Etherington, 1994, p. 75). At the same time, increasing allegations linking irregular immigrants and refugee claimants to criminal activities and welfare frauds, were reported in the media which fueled the public perception that Canada had lost control of its borders (Pratt, 2007, pp. 118-119; Ziudema, 1997, p. 77).²³ In the face of both challenges, in 1992 the Bill C-86 was introduced to address the “growing, unpredictable, and large scale movements of people from one country to another” (Pratt, 2007, p. 103). Bill C-86 provided senior immigration officers with expanded powers to decide on when an applicant would be eligible to a

²² The “safe country origin” provision was not implemented because Canada did not establish the list of safe third countries (Kelley and Trebilcock, 2000, p. 418; Ziudema, 1997, p. 27).

²³ Pratt (2007, pp. 109-138) uses the example of Somali refugees to show how this trend worked and the negative consequences that it brought.

hearing, which meant that the access to a hearing and right to counsel was curtailed to and depended on the officer's discretion. Work permits to refugee claimants were issued only if their final claim was positive. This measure, intended to deter "bogus refugees" from making a claim, forced refugee claimants to welfare and underground work, endangering their precarious status even more. Additionally, immigration officers were authorized to bar entry or deport individuals identified to be engaged in espionage, subversion, terrorism or other acts of violence. However, exclusion based on security grounds was greatly contingent on the officers' perceptions (Etherington, 1994, p. 75; Kelley and Trebilcock, 2000, pp. 424-425; Pratt, 2007, p. 105; Ziudema, 1997, pp. 67-83)

The last amendment to the *Immigration Act, 1976* was a response to concerns around race, crime and immigration generated by the "Just Desserts" shooting²⁴ and tensions between the black community and the police (Kelley and Trebilcock, 2000, p. 434; Pratt, 2005, p. 140; Ziudema, 1997, pp. 96-97). The Bill C-44, called by the media the "Just Desserts Bill", facilitated and expedited deportations by introducing

the danger to the public provision (section 70[5]), which sanctioned deportation without appeal of any noncitizen deemed by the minister of citizenship and immigration to represent a danger to the public — even those who are permanent resident or *Convention* refugees and regardless of how long they have resided in Canada (Pratt, 2005, p. 140).

Bill C-44 also amended the *Immigration Act, 1976* to address fraud and multiple refugee claims, and gave the Minister the power to issue danger certificates to individuals judged to be a danger to the public (Chan, 2005, pp. 156-157; Kelley and Trebilcock, 2000, p. 434; Ziudema, 1997, pp. 90-91, 95-96).

²⁴ In 1994 a white woman was shot and killed by four black men in a café called Just Desserts. Ever since, this incident is referred as the "Just Desserts" shooting.

After Bill C-44, the more than thirty amendments made to the immigration program and the increasing concerns of the public and politicians around immigration made clear that the *Immigration Act, 1976* needed to be replaced. During the late 1990s and early 2000s, three official reports²⁵ were released. The motivations behind these publications were to satisfy the need to review immigration and refugee laws; to promote public consultation around this topic; and to increase the pressure on Citizenship and Immigration Canada (CIC) towards the development of a new immigration program (Dolin and Young, 2004, pp. 2-3). The wide media coverage of the arrival to British Columbia of four vessels carrying undocumented Chinese immigrants in 1999, further contributed both to the perception that the immigration program was totally broken and to the idea that irregular migrants and refugee claimants were the main problem to address (Dolin, 2004, p. 2; Ibrahim, 2005, pp. 173-174; Pratt, 2007, p. 14; Stoffman, 2002, p. 8-10). In February 2001, Bill C-11, better known as the *Immigration and Refugee Protection Act (IRPA)* was tabled in the Parliament, and in the midst of the September 11, 2001 attacks, *IRPA* was passed into law in November 1, 2001.

As the *Immigration Act, 1976*, *IRPA*'s underlying principles are non-discriminatory and universal; meaning that the analyzed qualities are not based on national or ethnic origin, race, religion or gender, but rather on the candidate's potential to successfully settle in Canada (Flam, 2004).²⁶ *IRPA* has been praised for making a

²⁵ The three reports were: *Not just Numbers: A Canadian Framework for the Future Immigration; Building a Strong Foundation for the 21st Century* of 1998; *New Directions for Immigration and Refugee Policy and Legislation* of 1998; and the Chapter 3 of the *Report of the Auditor General of Canada* of April, 2000.

²⁶ The *Immigration and Refugee Protection Act (IRPA)* establishes different goals for immigration and for refugees. Regarding immigration goals, these are oriented towards maximizing Canada's economic, social and cultural benefits from immigration, while at the same time respecting existing Canadian cultural and social features. *IRPA* emphasizes the human aspects of migration such as family reunification, human rights protection and immigrants' successful integration into the Canadian society, but also takes care of safety and security issues. The objectives of *IRPA* regarding refugees are, among others, to recognize that the refugee program is about saving lives, offering protection to the displaced and persecuted, and fulfilling Canada's international legal obligations with respect to refugees (S.C. 2001, c.27, s. 3 (1-2)).

clear distinction between immigration issues and refugee protection (Li, 2003, p. 26; Jimenez and Crépeau, 2002, p. 18). However, as Elinor Caplan, former CIC Minister, stated “the... *Immigration and Refugee Protection Act* and its regulations carry a dual mandate: closing the back door to criminals and others who would abuse Canada’s [“]openness and generosity[“] while opening the front door to genuine refugees and to the immigrants the country needs” (Ibrahim, 2005, p. 180, author’s emphasis).²⁷

In relation to the mandate of “closing the back door,” *IRPA* tightens immigration channels with a number of measures (Chan, 2006, p. 157; Crépeau and Nakache, 2006, pp. 15-16, 21-23; Dauvergne, 2003-2004, p. 737; Ibrahim, 2005, p. 181; Gross Stein, 2003, p. 30). Inadmissibility categories are expanded on the basis of security — terrorism included — human rights violations, serious criminality, organized criminality, health grounds, financial reasons, misrepresentation, non-compliance with the act or if a family member is inadmissible (S.C. 2001, c.27, s. 34-42). *IRPA* restricts the right of an immigration appeal to those foreign nationals or permanent residents who have been found inadmissible and establishes that removal orders must be enforced immediately after being issued against any foreign national (S.C. 2001, c.27, s. 48, 64). Moreover, causes for detention are widened in such a way that a foreign national can be arrested and detained, without a warrant, based solely on what an officer may consider “reasonable grounds” to believe that such individual is inadmissible, or if the officer is not satisfied with the identity of such foreign national (S.C. 2001, c.27, s. 55). “These changes mean migrants seeking entry to Canada are first seen through a security lens before a compassionate or humanitarian lens” (Oxman-Martinez, Hanley, Gomez, 2005, p. 13).

²⁷ Besides this dual mandate, Catherine Dauvergne (2003-2004, p. 734) argues that changes introduced in *IRPA* “move in two directions: in the direction of cracking down in migration violations of various sorts, and in the direction of making immigration for well-qualified economic migrants easier.”

IRPA has also been criticized with reference to the refugee program. For instance, *IRPA* contemplated the creation of the Refugee Appeal Division (RAD); however, the RAD has not been implemented and refugee claimants' right to appeal has been indefinitely delayed (Crépeau and Nakache, 2006, p. 15; Dauvergne, 2003-2004, p. 733; Dauvergne, 2005, p. 96; Gross Stein, 2003, p. 30; Pratt, 2005, p. 4-5, 96). Also, it has never been deemed important in Canadian law and policy to provide sufficient legal aid for migrants to prepare their cases (Crépeau and Nakache, 2006, p. 15; Ibrahim, 2005, p. 183-183); in consequence, refugee claimants usually lack a good legal representation during the determination process. *IRPA* blurs the line between refugee claimants and irregular migrants.²⁸ While it is well known that refugees are sometimes forced to flee without documentation or they hold false documents since it is the only means to escape (CCR, 2007; Gauvreau and Williams, 2002, p. 69), *IRPA* requires a "reasonable explanation" for lacking proper documentation. Canadian authorities make their own interpretation and must be satisfied with the provided explanation or the refugee claimant could end up in detention. A final concern is that refugee claimants might not obtain protection if named in a security certificate (S.C. 2001, c.27, s. 112 (d)). However, a more in depth discussion regarding security certificates is presented in the anti-terrorist legislation section.

The evolution of Canadian immigration law would not be complete if Bill C-50 — assented on June 18, 2008 — is not mentioned. This Bill C-50 was an act to implement certain provisions to the budget, but it also included some amendments to *IRPA*. Diane Finley, Minister of CIC, defended the changes arguing that they were needed to address

²⁸ In relation to refugee claimants without identification, section 106 of *IRPA* clearly states that: the Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation (S.C. 2001, c.27, s. 106).

the immigration backlog and to make the immigration system more flexible and responsive to the labour market needs (CIC, 2008; CIC 2008a.).²⁹ The downside of Bill C-50 is that the backlog is likely to continue since the measures only apply to applications received after February 27, 2008. Furthermore, it enhances the Minister's discretionary power, and it revokes the right of all applicants — who meet all the requirements — to have their permanent residence application reviewed (CCR, 2008). Emergency, as securitization theory suggests, has justified once again more discretionary powers.

Britain's Immigration Policy: Do not Knock the Door because It is Closed

The United Kingdom (UK) has not always been characterized by a closed, restrictive immigration policy. In the early years of the twentieth century and, more clearly, after the end of the Second World War, Britain kept a liberal immigration policy that served to its economic interests (Meyers, 2004, p. 64; Rudolph, 2006, p. 174). As a consequence of the post-war labour shortage, Britain started a work permit regime to recruit temporary workers from other European countries through various schemes.³⁰ In 1948, the *British Nationality Act* allowed all colonial British subjects to enter, work and settle in Britain; to enjoy all social, political and economic rights, and to become citizens of the UK (Hansen, 2003, p. 26; Hansen, 2002, p. 265; Hatton and Wheatley Price, 2005, p. 123; Meyers, 2004, p. 64-68; Rees, 1993, p. 94-95; Rudolph, 2006, p. 175). The *British Nationality Act* not only fulfilled the economic purpose of guarantying a vast

²⁹ The Bill titled *Budget Implementation Act, 2008* clearly states that changes to *IRPA* will “authorize the Minister of Citizenship and Immigration to give instructions with respect to the processing of certain applications and requests in order to support the attainment of the immigration goals established by the Government of Canada” (S.C. 2008, c.28). All the amendments to *IRPA* are in part 6 of the Bill.

³⁰ Lithuanians, Ukrainians, Latvians, and Yugoslavians were the groups with more representation in the work permit scheme. They were not allowed to bring their dependants. Other groups which migrated latter from Germany, Italy, Austria and Spain founded easier conditions to reunite with their families (Rees, 1993, p. 94-95; Meyers, 2004, p. 67).

supply of labour from the colonies, but it also reaffirmed Britain's commitment with the Old Commonwealth countries — Australia, Canada and New Zealand — which remained at the centre of its economic and foreign policy interests (Meyer, 2004, p. 68; Hansen, 2000, p. 17; Rudolph, 2006, p. 173-174).

Throughout the 1950s, the UK saw increasing migration flows of British citizens from the New Commonwealth; the large proportion of whom arrived from the Caribbean territories, Guyana, India and Pakistan and latter, from Africa. As the numbers of permanent immigrants coming from “non-desirable” source countries continued to rise, concerns about the changing racial composition of the UK and about the British national identity arose as well. Using securitization theory ideas, societal security was seen to be in danger. Additionally, the evident precarious financial situation of the UK, the de-colonization process, and the occurrence “race riots”³¹ in several cities were factors that contributed to the pressure to promptly address immigration from the New Commonwealth. In 1958, “race riots” in Nottingham and Notting Hill launched race and immigration at the centre of British politics. With these events in mind and supported by opinion polls taken after the riots that revealed public hostility to “colored” immigration and strong support for immigration controls, the British government passed in 1962 the *Commonwealth Immigrants Act* (Hansen, 2003; Hansen, 2002; Hatton and Wheatley Price, 2005; Joppke, 1996; Meyers, 2004; Rees, 1993; Rudolph, 2006). The most notorious consequences of this law were that it put an end to “one of the most liberal immigration regimes in the world, ... [which granted] citizenship to hundreds of millions of colonial subjects across the globe” (Hansen, 2000, p. 16). Moreover, it started a period of restrictive policies in which economic considerations would be subordinated to social and political questions (Hatton and Wheatley Price, 2005, p. 113).

³¹ “Race riots” occurred in Birmingham and Liverpool in 1948, in Deptford and Birmingham in 1949, in Camden in 1954, and in Birmingham and London in 1958 (Hatton and Wheatley Price, 2005, p. 128; Rudolph, 2006, p. 180).

The *Commonwealth Immigrants Act* of 1962 directed most of its immigration controls to the major source of immigrants: the New Commonwealth. The previous right of Commonwealth citizens of free entry to the UK was now contingent on holding a passport issued by the British government. The Act also established a system of entry vouchers for immigrant workers, and provided, for the first time, provisions for deportation. The expulsion of British Asians from Kenya rushed the government to introduce a new *Commonwealth Immigrants Act* to prevent their arrival to the UK (Hansen, 2000, pp. 109-111, 153; Hansen, 2002, pp. 265,274, Hayter, 2003, pp. 7-8; Joppke, 1996, p. 478; Joppke, 1999, p. 108; Layton-Henry, 2004, pp. 301-302; Rudolph, 2006, p. 181). The new Act added one more restriction on entry for Commonwealth citizens; they needed to have a parental or grandparental connection with the UK (Joppke, 1999, p. 109; Meyers, 2004, p. 69). As Rudolph (2006, p. 185) argues, the Act was a “more conspicuous indicator of the rise of societal security on the policy agenda than its 1962 precursor.”

A peak period of restrictiveness was reached after the approval of the *Immigration Act* of 1971. This Act not only established the basis of current British immigration policy; it also ended the free entry of British subjects and removed most of the privileges previously conceded to them (Flynn, 2005; Hatton and Wheatley Price, 2005; Joppke, 1999; Somerville, 2007). The immigration category “British subject” was assimilated to the “alien” category; shift that finally removed the difference between Commonwealth citizens and foreigners (Rudolph, 2006, p. 186; Joppke, 1999, p. 111). The *Immigration Act* explicitly defined patrials³², as the only group with the right to abode in the UK and who were neither subject of immigration control nor liable of deportation (Immigration Act, 1971, s. 5 (b)). Former entry vouchers were replaced with a more rigid

³² Sections 2(1(a-d)) and 2(2(a-b)) of the Act defines a patrial as a person with the right to abode. For detailed information on patrials consult Immigration Act, 1971.

work permit scheme that limited the right of permanent residence and of family reunification (Joppke, 1999; p. 111; Meyers, 2004, p. 69; Rees, 1993, pp. 97-101; Rudolph, 2006, p. 186). Under the Act, “illegal entrants” were subject of removal (deportation) and their right to appeal a removal order was subject to the authorities’ discretion (Immigration Act 1971, s. 13(4), s. 161(a)). Other mechanisms were introduced to punish human smuggling and to empower the government with mechanisms to prevent irregular migration (Immigration Act, 1971, s. 25 (1), Schedule 2).

As Flynn (p. 217) notes, “the control regime put in place by the 1971 Act proved remarkably durable across the succeeding two decades. Resort to further legislation was rare, and only in ways intended to supplement the basic form of the Act.” For instance, additional laws were mainly centered on citizenship,³³ and on limiting family reunification³⁴ that was the major source of immigrants. Another factor that played a key role in this quiet trend was that immigration itself remained relatively dormant from 1979 until the beginnings of 1990s, when concerns around irregular migrants and asylum seekers became at the top of the political agenda (Hansen, 2003, p. 29; Meyers, 2004, p. 71). The hysteria to distinguish between the “bogus” from the “*bona fide*” asylum seekers was triggered by the arrival of a large number of Tamils from Sri Lanka in 1985; and the increasing number of asylum applications between 1988 and 1991. The overall

³³ The 1981 *Nationality Act* replaced the *British Nationality Act* of 1948. It realigned citizenship and immigration law; replaced the concept of partiality by citizenship; and for the first time, British citizenship was confined to the territory of the UK. The Act established three types of citizenship: 1) British citizenship, 2) British dependent territory citizenship, and 3) British overseas citizenship. The second and the third categories of citizenship do not have the right to abode; therefore, in terms of the rights that citizenship must carry, the last two lacked of real content (Hansen, 2000, p. 212-214; Hatton and Wheatley Price, 2005, p. 126; Joppke, 1999, p. 111-112; Layton-Henry, 2004, p. 306; Rudolph, 2006, p. 187).

³⁴ With the double purpose of detecting “genuine” from “bogus” immigrants and to curtail family reunification, in 1980 the primary purpose rule was approved. Even though the rule was declared discriminatory by the European Court of Human Rights and fully relied on the officials’ discretion, it was implemented ferociously throughout the 1980s. The target of “effectiveness” was clear; around 87 percent of all refused applications resulted from its application (Hansen, 2000, pp. 231-233; Joppke, 1999, pp. 115-127; Layton-Henry, 2004, p. 205)

situation was exacerbated when already detained irregular migrants applied for asylum to avoid deportation (Hansen 2000, pp. 233-234; Hatton and Wheatley Price, 2005, p. 122; Joppke, 1999, pp. 128-131; Meyers, 2004, p. 73-74; Rudolph, 2006, p. 188-189).

As it has been characteristic of the UK, authorities responded to the panic with three new, tougher laws. The first of them, the *Asylum and Immigration Appeals Act* of 1993, established an asylum-determination system which provided asylum seekers with the right of an in-country appeal. However, this law also created an especial procedure for claims without foundation and excluded from the right to appeal all those people whose deportation or departure was observed as conducive to the public good or in the interest of national security (AIAC 1993, c.23, s. 8-10, Schedule 1). The appeal system reduced the number of successful applications, but asylum applications continued to grow in the following years (Hansen, 2000; Hatton, 2005, p. 126; Joppke, 1999; Meyers, 2004). The second law, the *Immigration and Asylum Act 1996*, excluded more people from the right to appeal, which included people who after arrival failed to establish their identity or did not give any “reasonable” explanation for not carrying a passport or having false identity documents; to people who failed to prove fear of persecution; those whose reasons of flight no longer existed; or those who came through a safe third country (AIA 1996, c.49, s. 1-2). Moreover, the act included further measures to prevent immigration offences which included greater penalties for illegal entry or human smuggling, and arrest without warrant of anyone suspected of having committed an offence (AIA 1996, c.49, s. 4-7). One last feature of the Act was that it also limited access of asylum seekers to welfare benefits, housing, and employment (Fekete, 2001, p. 30; Hatton, 2005, p. 126; Meyers, 2004, p. 75).

The third law approved in the late 1990s was the *Immigration and Asylum Act 1999* which was implemented for the purposes of simplifying the asylum system and of reducing its costs and abuses. Measures to accomplish these tasks removed all benefits

from asylum seekers, limited rejected asylum applicants to one appeal, and prohibited the right to appeal to irregular migrants who instead would be subject of deportation and detention (Fekete, 2001, pp. 31-33; Hansen, 2000, p. 235; Meyers, 2004, p. 76-77). Overall, during the 1990s, the asylum policy was in an unending cycle of restrictionism (Hansen, 2000, p. 235) and the center of attention of societal security shifted from Commonwealth immigrants to irregular immigrants and, more specifically, to asylum seekers. Both immigration categories were subject to scrutiny, control and negative perceptions which resulted in their rights being curtailed through immigration and asylum laws.

The new millennium has witnessed the approval of two more pieces of restrictive legislation. On the one hand, the *Nationality, Immigration and Asylum Act 2002* defines, for the first time and in a very detailed fashion, what constitutes to be unlawfully present in the UK; broadens the causes of immigration offences; restricts the period in which asylum seekers can make a claim; reaffirms the safe third country provision; establishes causes for deprivation of citizenship and allows detention of asylum seekers, among other things (Nationality, Immigration and Asylum Act 2002, s. 4, 11, 55, 143; Rudolph, 2006, pp. 193-194). On the other, the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* further blurs the line between an irregular entry and an asylum seeker, by stating that a person “commits an offence if at a leave or asylum interview he does not have... an immigration document which — (a) is in force, and (b) satisfactorily establishes his identity and nationality or citizenship”.³⁵ This clause contravenes the Convention relating the Status of Refugees which solicits states refraining from imposing penalties to asylum seekers for their illegal entry or presence (UNHCR, 1951, Art. 1).

³⁵ Section 8 of the Act also includes provisions regarding the credibility of the claimant, and in section 14, the power of immigration officer to arrest without warrant is reaffirmed.

In 2006, the UK introduced a point-based system to channel skilled immigration into controlled schemes and to replace all previous work permit schemes. This has led some scholars to argue that the UK has moved away from its “zero-immigration” position because, for the first time, the British immigration program has given a relevant role to economic considerations in order to attract the “desired” immigrants to fulfill British economic needs (Odmalm, 2006, pp. 79, 84; Somerville, 2007, p. 5). Although it is true that the introduction of the point-based system provides certain flexibility to the British immigration program and signals its opening to skilled immigrants; it also reiterates those who are welcome and those who are not. Moreover, the analysis of immigration policies reflects a trend to securitize migration in the UK. In particular, the emphasis of British policies on restraining Commonwealth immigrants and on hampering irregular immigrants and asylum seekers supports the thesis that a general and a selective securitization has occurred. Regardless of the introduction of the point-based system, this trend of framing immigrants as a security concern in the UK is likely to continue.

Anti-terrorist Legislation in Canada and the United Kingdom: Implications for Non-Nationals

Terrorism is not a new phenomenon, but since the September 11 terrorist attacks it has been positioned at the centre of the international security agenda. As a response, many countries around the globe have reconfigured their national security agendas to include it as a “new” security topic. Even though prior to September 11 rigid immigration control programs were deemed necessary to prevent immigration channels from being used by criminals — such as human smugglers and traffickers as well as drug dealers — and to restrict “undesirable” immigrants from reaching destination countries; the perceived “immeasurable” consequences, the “far-reaching” scope and the “dynamic-adaptive” nature of terrorism has further overlapped immigration programs with national security interests (Bellamy and Bleiker, 2008, pp. 1-2; Fekete, 2006, p. 1-2; Schoenholtz, 2003, pp. 173-174).

States have made use of multiple mechanisms to address the threat of terrorism. Those related to immigration control include: intelligence gathering and sharing on risk passengers, immigrants, and visitors; pre-screening of international migrants before they reach destination countries; including biometric features in identity documents like visas, passports, asylum registration and permanent resident cards; profiling; and detention of potential suspects (Schoenholtz, 2003). Additionally, “numerous governments have been embroiled in debates about curtailing civil liberties in the name of state security and several have looked for ways to bypass the rights of those they suspect of being implicated in terrorism” (Williams, 2008, p. 13). All the aforementioned government practices have had effects on the general population; however, immigrants have been their preferred target. This section analyzes the anti-terrorism laws of Canada and the United Kingdom (UK) given their impact on largely those non-nationals detained in both countries. Evidence shows that while the UK had previous anti-terrorist laws because of

its experience with the Provisional Irish Republican Army, laws approved post September 11 in both countries have put greater strains on immigrants as well as they reveal that in the front of the “war on terror” migration is also assumed as a threat to states' security.

Terrorism in Canada: the Red Alarm that Never Turned Back to Green

Prior to September 11, the major terrorist attack registered in Canadian history occurred in 1985 when the Air-India flight 182 exploded in mid-air off the coast of Ireland. Most of the three hundred and twenty nine people who died in the incident were Canadian citizens and permanent residents; however, this event was not pointed out by any authority as a major threat to the Canadian nation, its values or its people (Macklin, 2001, p. 399). Canada's stance on terrorism started to change in 1999 when an Algerian citizen named Ahmed Ressay was arrested by U.S. customs authorities while trying to enter the United States with the trunk of his car full of explosives (Adelman, 2002, p. 20; Flynn, 2003, p. 115; Pratt, 2005, p. 198; Rudolph, 2006, p. 1; Stoffman, 2002, p. 10). After his arrest, investigations revealed that he had a valid Canadian passport but under a false name and a Canadian driver's license deceptively obtained; he had been pointed by French authorities as a terrorist with ties to Osama Bin Laden; and he had planned to detonate the explosives during the worldwide millennium celebration at Los Angeles International Airport. The media extensively reported the arrest of four more people connected to Ressay. More significantly, the media exposed a report of the Canadian Security Agency in which it was confirmed that there were approximately 50 active terrorist organizations in Canada, and that, as a consequence of its proximity with the United States, its liberal immigration laws and its border's porosity, Canada was an attractive place to terrorists (McKenna, 1999, p. A.1). Moreover, some authorities in the United States depicted Canada as a safe haven for terrorist activities and started to

pressure for a better management of the U.S.-Canada border (Lee, 2000, p. 210; Osler Hampson and Appel Molot, 2000, p. 12). In sum, the Ressam case turned red the terrorism alarm, one that would never turn the clock back, especially after September 11.

In the wake of September 11, Canada's "lax" immigration policy and, more specifically, the U.S-Canada border were labeled as providing an easy entry for terrorists. Even after learning out that none of the hijackers involved in the attacks had entered *via* Canada, the once labeled "world's largest undefended border" started to be considered as a source of vulnerability (Andreas, 2003b, p. 8). As part of the strategy to address terrorism,³⁶ Canada reached the Smart Border Agreement³⁷ and the Safe Third Country Agreement³⁸ with the United States for a better control of the border, and approved Canada's first anti-terrorism legislation. The Anti-terrorism Act (Bill C-36) has been described by the government as a preventive legislation which was

designed to create a balance between the need to protect the security of Canadians and the protection of their rights and freedoms, [as well as to] provide

³⁶ Besides the Anti-terrorist Act, the Smart Border Agreement and the Safe Third Country Agreement between Canada and the United States, the Canadian strategy to address terrorism has also included the formulation of the first national security policy contained in the document entitled *Securing an Open Society: Canada's National Security Policy*; and additional funding to enhance capacities in various security-related departments and agencies (Bell, 2006).

³⁷ The Smart Border Agreement is primarily intended to facilitate low-risk crossings at the border and to detect high-risk flows of people and goods. The principles of the agreement have been secure flow of goods and people; secure infrastructure; and better coordination and information sharing. As a product of the agreement certain features of border control and immigration policy of the two countries are now harmonized, for example coordination of visa policies, common standards for biometric identifiers for documents, data sharing, among others (Chute, 2005, p. 4; Keeble, 2005, pp. 360-361; Pratt, 2005, p. 199).

³⁸ The Safe Third Country Agreement forces refugee claimants arriving to either country to seek asylum in the country of first arrival. From the government perspective, the agreement has been successful since it has reduced dramatically the number of refugee claims done at the border. From the perspective of human rights activists, immigrant-serving agencies, and several scholars the agreement violates the rights of refugees because the United States cannot be considered a safe third country since its procedures in the refugee-determination system are highly questionable, and its asylum regime is deficient. The Federal Court of Canada determined that the agreement violated the rights of refugees; however, the government is appealing the case and the agreement is still in place (CCR, 2007b; Chute, 2005; Cr  peau and Nakache, 2006; Macklin, 2003; Pratt, 2005, pp. 198-199).

additional statutory tools needed to effectively deter, disable, identify, prosecute, convict and punish terrorists (DJC, 2008).

In spite of the relative “inoffensive” nature of the government’s position on Bill C-36, this legislation has several implications for immigrants and it is intricately related to immigration regulations contained within the *Immigration and Refugee Protection Act (IRPA)* which is considered a supportive piece of legislation to address terrorist threats.

Among the most relevant features of Bill C-36 are that it amended the Criminal Code to introduce definitions of terrorist activity and terrorist group; to enact more criminal offences related to the financing and facilitation of terrorism, as well as the participation in a terrorist group; and to enable the Governor in Council to determine a list of entities related or involved in terrorist activities (ATA, 2001, s. 83.01 (1) (a) (b), s. 83.02, s. 83.03, s. 83.04, s. 83.05). These changes have been a source of distress based on the fact that terrorism is defined in a broad, vague and imprecise way, and also because they open the possibility of targeting both citizens born outside Canada and non-citizens from particular “risky” ethnicities, religious beliefs and countries of origin (Forcese, 2008; Macklin, 2001; Roach, 2007).³⁹ In this sense, the selectivity of securitization has been related to immigrant’s profile and not to the category of irregular migrant and refugee claimant.

This practice is not only exemplified by the Maher Arar case, it also reveals that deficient information gathering and sharing can have very harmful consequences. Maher Arar, a Syrian-born Canadian citizen, was detained in New York as he was returning to Canada. He was later deported to Syria presumed to be linked to Al Qaeda (Carter, 2006, CBC, 2007). After a year facing torture in Syria, the Canadian government

³⁹ Changes to the Criminal Code via Bill C-36 have introduced a process of deregistration of charities involved or connected to terrorism; however, this has been also criticized since charities serving “risky” communities are most likely to be subjected to this procedure (Macklin, 2001; Roach, 2007).

secured Arar's release and his return to Canada. However, the case became a public scandal and it forced the government to call a Commission of Inquiry (Whitaker, 2008). The report of the Commission determined that Arar had no terrorist links, but that his inclusion as a "person of interest" in the Project called A-O, and the improper dissemination of this information to American authorities were the most likely reasons that led to his arrest and eventual deportation (Whitaker, 2008). The Commission also found the following: that some Canadian authorities were willing to accept evidence obtained by torture; were aware of the possibility of Arar's deportation to Syria; committed many mistakes while handling the case and sharing inter-agency information; were engaged in profiling; and leaked classified information to the media to discredit Arar (Whitaker, 2008). Maher Arar received monetary compensation and an official apology from the Canadian government. However, this case shows that concerns over anti-terrorism legislation are not unfounded. It also demonstrated that Canadian citizenship does not guarantee immigrants the possibility of equal treatment in law. As Cr peau and Nakache point out, Arar's Canadian citizenship allowed to bring the case to public attention and scrutiny, but it did not exempt him from being treated as a foreigner (2006, p. 24).

The preventive detention and investigative hearings of Bill C-36 also brought great attention and concern (Forcese, 2008; Roach 2007). Preventive detention was approved when "reasonable grounds" existed to believe that the arrest of a person was necessary in order to prevent the carrying-out of terrorist activity (ATA, 2001, s. 83.3 (4)). Any preventive arrest was limited to a maximum of 72-hour period (s. 83.3 (6-7)); however, a person could be ordered to enter into recognizance for a period of twelve months, which could be turned into one year of prison if the person refused or failed to enter into recognizance (s. 83.3 (8) (a)). In relation to investigative hearings, Bill C-36 created the figure of "order for the gathering of information" through which the person

named in it would be forced to answer any question relating to terrorist activities (s. 83.28 (4)). The person named in the order could not be excused from being interrogated on the grounds of self-incrimination, but this evidence could not be used against him or her and judicial supervision and the right to counsel was provided (s. 83.28 (5), 10 (a) (b), 11). Although the government decided in February 27, 2007 not to renew these two provisions,⁴⁰ their significance lays in the fact that they reflected a will to extend practices of detention to citizens (Macklin, 2001, p. 394). The elimination of the figure of preventive detention in Bill C-36 has enhanced the role of *IRPA* as a supportive legislation and as security instrument to address both the terrorist threat and to detain international terrorists (Crépeau and Nakache, 2006, p. 21).

IRPA provisions on detention are broader than the ones established in Bill C-36 (S.C. 2001, c.27, s. 55). Under them detainees have no right of appeal if found inadmissible on security grounds (s. 64), and preventive detention can continue for an indefinite period with reviews every 30 days (Crépeau and Nakache, 2006, p. 22). The consequences of detention of *IRPA* are even more worrying if one considers the role of security certificates that allow detention without charge based on secret information held by the state and not shared with the detainee (S.C. 2001, c.27, s. 82). After the widely known case of *Charkaoui v. Canada*,⁴¹ the Supreme Court of Canada proposed the use

⁴⁰ Under Bill C-36 preventive detention and investigative hearings were subject of renovation and of an expiration clause. Bill C-36 also demanded a revision of the House of the Commons and the Senate after three years of coming into force in order to evaluate its effects. However, the sunset of the two provisions was decided before the Parliament knew the results of the three-year review (Forcese, 2008; Roach, 2007).

⁴¹ The case of *Charkaoui v. Canada* involved three appellants who were presumably involved in terrorist activities and, as a consequence, were named in security certificates and detained. Their main argument was that those certificates were unconstitutional and that they violated sections seven, twelve and fifteen of the Canadian Charter of Rights and Freedoms concerning to liberty, unusual treatment or punishment and equality rights, respectively (House of Commons Canada, 2007, p. 6; Transnational Law Associates, 2007 p. 30-35). However, the Supreme Court of Canada, ruled that detentions based on security certificates were not unconstitutional; indeed it recognized them as needed even in the absence of a fully documented case, and pointed out that they should be executed more expeditiously (Kunes, 2007 p. 3; Supreme Court of Canada, 2007 at para. 93, 96).

of a special advocate to review the non-disclosure information that supports the issuance of the security certificates. Bill C-3, assented in February 2008, amended *IRPA* to create the figure of special advocate whose main role is to protect the detainees' interests when they are named in a security certificate and their case is based on secret evidence.⁴² The Canadian Council for Refugees stated that this kind of special advocate is not the solution since security-related cases must not be solved with immigration law but with criminal law (CCR, 2007a). Besides, the special advocate will not address the use of discretionary powers and secret intelligence against a detainee (Roach, 2007, p. 23). As Catherine Dauvergne (2007) has suggested, terrorist-related detentions have been conducted through immigration law because its standards of proof are lower compared to criminal procedures, and by doing so, detention has been primarily directed to non-nationals. Therefore, legislation passed after the September 11 terrorist attacks seems to securitize migration in a more general than in a selective way, a fact that is becoming evident in deportation cases.

Anti-terrorist Legislation in the United Kingdom and the Threat from Within

Compared to Canada, the United Kingdom has a longstanding history of dealing with terrorism. During the twentieth century, and more specifically after the 1970s and until the late 1990s, most of Britain's experience with terrorism and anti-terrorism legislation was centred on addressing activities carried by the Provisional Irish Republican Army (IRA) (Van der Veen, 2007, p. 3). Instead of managing terrorism through criminal processes or criminal law, the British government chose unusual legal

⁴² The special advocate shall be appointed by a judge, but the detainee can also request the appointment of particular person. Even though the special advocate is supposed to protect detainee's interests, its role is limited since it is not part of the proceeding and his/her functions are not that of solicitor (Bill C-3, 2008).

means — such as detention without trial and restrictions on freedom of movement and residence — to deal with it (Bonner, 2007, p. ix; Fekete, 2001b, p. 95-96).

Despite of the emphasis on dealing with PIRA, ever since the *Immigration Act 1971*, the immigration legislation of the UK has also included detention and deportation provisions of foreign nationals who are either perceived as a threat to national security or whose removal is deemed as conducive to the public good. However, a more visible shift of the existing emphasis from IRA to foreign nationals came about after the end of the Gulf War in 1991 when much of the law relative to deportations was developed based on security grounds and involved individuals — Iraqis and people related to the Palestine Liberation Organization — who were thought to be connected to terrorist activities in the UK or in their countries of origin (Bonner, 2007, p. 126-127).

At the beginning of the twentieth century, the *Terrorism Act 2000* marked a break from Britain's approach to terrorism by introducing a new definition of terrorism,⁴³ by broadening the definition to include three different sources of terrorism — those connected with Northern Ireland, with domestic terrorist groups and with international terrorism, and by including a list of proscribed organizations that commit, participate, prepare, promote or are concerned to terrorist activities (Bonner, 2007, p. 204; Fekete, 2001b, p. 97, TA 2000, s. 3 (5)). Moving away from the previous approach, the Act works within a criminal prosecution model intended to deal with the political, the material, and the financial dimensions of terrorism (Bonner, 2007, p. 205). The Act provided to the criminal prosecution model with some components to extend the counter-terrorism

⁴³ In 1973, terrorism was for the first time defined in a law. The *Northern Ireland Emergency Provisions Act 1973* defined terrorism as “the use of violence for political ends and includes any use of violence for purposes of putting the public or a section of the public in fear” (As quoted in Bonner, 2007, p. 19). Even though the definition introduced by the *Terrorism Act 2000* kept most of these elements, the definition was broadened to include besides political causes, religious and ideological as well. The Act also extended the definition scope to any terrorist action performed either inside or outside the United Kingdom and/or taken for benefit of a proscribed organization (TA 2000, s. 1 (1-5)).

powers of authorities to arrest a terrorist suspect without warrant,⁴⁴ and to enhance search tools to gather incriminatory evidence⁴⁵ to prove that a person is involved in terrorism (TA 2000, s. 41, s. 44-53). The Act also adds criminal offences exclusively related to terrorism as any kind of participation in a proscribed organization,⁴⁶ the instruction and training to carry out a terrorist activity, the financing of terrorism, and the gathering of information for terrorist purposes (TA 2000, s. 12, Part III, s. 54 (2), s. 58).

Current analysis of scholars about the effects of the *Terrorism Act 2000* on immigrants indicates that the creation of a list of proscribed organizations could provide to authorities a justification to target specific immigrant communities perceived as having links with terrorism, and to engage with impunity in practices of profiling. In both cases the envisaged consequence would be that British citizens born abroad and non-nationals from supposedly “risky” ethnicities, religious beliefs and countries of origin could become criminalized and stigmatized. Previous legislation has produced this effect and nothing within the Act offers guarantees this will not happen again (Fekete, 2001b, p. 96-98; Fekete, 2004, pp. 8-9, 12). Even more important is that the Act incorporates regulations for immigrants’ detention and deportation (TA 2000, Schedule 7). As a result, immigrants are subject to a double jeopardy through immigration and anti-terrorism laws. In this sense, both legislations draw a link between immigration and security, and reinforce the securitization of migration.

After the September 11 attacks, the *Terrorism Act 2000* was amended and strengthened by the approval of an emergency legislation, the *Anti-terrorism, Crime and*

⁴⁴ Arrest without warrant can last from 48 hours up to 28 days with judicial approval (TA 2000, s. 41, Schedule 7-8).

⁴⁵ The Act institutes the practice of “stop and research” as the main method to achieve this objective. The search of evidence can be carried out within a vehicle, and might involve searching the driver and/or the passenger of a vehicle as well as in anything carried by a pedestrian suspect (TA 2000, s. 44).

⁴⁶ Section 13 goes as far as to establish that a person in a public place commits a criminal offence if he or she wears, displays or carries any article that arise suspicion of his or her membership or support to a proscribed organization.

Security Act 2001 (ATCSA). This new legislation took further measures on the financing of terrorism; the gathering of information to include retention of communication data; the addition of security measures linked to aviation, weapons of mass destruction and dangerous substances; and the strengthening of police powers to identify terrorists (ATCSA 2001; Bonner, 2007, p. 209; Brouwer, 2003, p. 404). The most striking aspects of the *ATCSA* were the draconian and controversial measures described in part four which made an explicit connection between asylum, immigration and terrorism (Somerville, 2007, p. 39), established a process of certification (explained below), and approved indefinite detention without a trial.

The *ATCSA* authorizes the Secretary of State to issue a certificate to a person whose presence in the UK is a risk to national security or who is suspected to be a terrorist (ATCSA 2001, s. 1 (a) (b)). Even if the certificate is cancelled, changes in circumstances or grounds for the certification empower the Secretary of State to issue another certificate (ATCSA 2001, s. 27 (9)). Those who have been certified may be detained for deportation to their home country or other country; however, when deportation is not feasible the Act sanctions indefinite detention (ATCSA 2001, s. 22; Brouwer, 2003, p. 421; Chirinos, 2005, p. 266; Guild, 2003, p. 493). Asylum seekers who have been certified are precluded from a substantive determination of their claim, they are not entitled to the non-*refoulement* principle,⁴⁷ and they are liable to indefinite detention until their deportation (ATCSA 2001, s. 33; Bonner, 2007, p. 209).

The aforementioned measures have been controversial for two main reasons. First, in order to implement indefinite detention, the UK derogated from its obligations of

⁴⁷ The Convention and Protocol Relating to the Status of Refugees states that no contracting State any state part of the Convention 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. Exceptions to the non-*refoulement* principle are established in Article 33 (2) and are mostly related to security concerns of the state.

liberty of the person under article 5 of the European Convention on Human Rights (ECHR).⁴⁸ This derogation not only lowered the legal standards for detention of non-nationals, but it has also produced a legal limbo for people who are left in indefinite detention without charge or trial because their deportation would only be feasible by infringing international law (Chirinos, 2005, pp. 265-266). The second reason of concern is related to the Special Immigration Appeals Commission (SIAC). Even though the role of the SIAC is relevant because it provides detainees with a review and a hearing process, the SIAC accepts “closed evidence,” which is, concealed from the suspect or its attorney and it is only known to an appointed “special advocate” who neither has contact with the suspect during the hearing nor acts as the defender of the suspect (Chirinos, 2005, pp. 266-267; Bonner, 2007, pp. 276-283). The use of secret evidence, even when a “special advocate” is provided, violates the right to a fair trial and lowers the standards of proof established in article 6 of the ECHR⁴⁹ (Bonner, 2007; Chirinos, 2005; Guild, 2003).

The challenges in the Courts⁵⁰ to the *ATCSA* as well as the expert review of it held in 2003 reflected a general concern with part four and proposed a legal prosecution model to address these problems (Bonner, 2007; Chirinos, 2005; Forcese, 2008). The

⁴⁸ In time of war and public emergency threatening the life of the nation, under article 15 of the European Convention on Human Rights (ECHR) a state can derogate from its obligation under the Convention (ECHR, 1950, art. 15). The UK making reference of this article declared itself temporarily immune from article 5 which establishes limits to detention for the purposes of deportation (Chirinos, 2005, p. 265).

⁴⁹ Article 6 explicitly states that

everyone is entitled to a fair and public hearing... by an independent and impartial tribunal established by law... Everyone charged with a criminal offence has the ... right to... have adequate time and the facilities for the preparation of his defence (ECHR, 1950).

According to this article defence should include to examine or have witnesses, and the right to choose a legal attorney. Any of both are allowed in the SIAC.

⁵⁰ One of the first successful cases was the *M Case* in which the detainee was released and led to the first appeal by ten detainees to the highest judicial body, the House of the Lords. This appeal, called *A and Other*, the court ruled that *ACTSA* is discriminatory, inconsistent with derogation measures under article 15 of the ECHR, and does not adequately address its objective (Bonner, 2007, pp. 228-230; Chirinos, 2005, pp. 268-273).

British government response to the detention without a trial issue was to repeal and replace part four of *ACTSA* by the *Prevention of Terrorism Act 2005* (PTA) and its system of “control orders” (Bonner, 2007; Chirinos, 2005; Forcese, 2008, Sivanandan, 2006). The *PTA* creates two kinds of control orders, the “non-derogating” type that has an effect of 12 months with the possibility of renewal and does not involve detention, and the “derogating” type that has an effect of six months subject to renewal and enables detention or house arrest (Bonner, 2007, pp. 234; PTA 2005, s. 2 (4) (a), 4 (8), 5)). The system of control orders entails more judicial scrutiny, as a consequence, their use has been avoided and instead, non-nationals have been detained *via* immigration law’s provisions of deportation and detention, on the basis of national security premises that are not subject to judicial review (Bonner, 2007, pp. 235-237). Despite the fact that the use of control orders applies to nationals and non-nationals, data has revealed a bias towards foreign nationals and British citizens of minority communities (Bonner, 2007, p. 239; Sivanandan, 2006, p. 5). The *PTA* might have not made an explicit reference to asylum and immigration like the *ATCSA*, but its effects on immigrants, once more, proves that migration is conflated with security concerns, and that securitization of migration has occurred in a general and not in a selective way.

The anti-terrorism legislation in the UK was further boosted after the July 7, 2005, suicide bombings in London. The *Terrorism Act 2006* expanded the time that the police can detain terrorist suspects without any charge to 28 days (TA 2006, s. 25). As Amnesty International (2008) mentions, the longer the time a person spends in pre-charge detention the higher the risk to jeopardize his/her right to silence and, as a consequence, to confess under pressure of the authorities. The Act also introduced changes to describe further criminal offences related to terrorism such as the encouragement to terrorism; the dissemination of terrorist publications; the incitement, conspiracy or attempts to commit a terrorist offence; and the glorification of terrorism

(Bonner, 2007, pp. 215-216; Hampshire and Sagar, 2006; Sivanandan, 2006, p. 5; TA 2006, s. 1, 2, 16 (5), 20 (2)). Although the *Terrorism Act 2006* does not include migration-specific proposals (Hampshire and Sagar, 2006) this legislation was not meant to substitute any of the previous anti-terrorism laws. Consequently, provisions related to immigrants and the links between security and migration that they have drawn are still in place.

Conclusion

The immigration and anti-terrorism laws in Canada and the United Kingdom have shown that government laws and policies can be used to determine whether or not the phenomenon of securitization of migration has occurred. This is the case because laws and policies are part of the discourses linking immigration to security. As critics of the securitization theory have pointed out, securitization is dependant on the context in which it occurs. This fact has been manifested in the two cases analyzed in this paper. In Canada, the circumstances that triggered framing immigrants as a security concern have been related to: the backlog in the refugee-determination system; the arrival to the shores of Canada of vessels carrying irregular immigrants and asylum seekers; the perception of asylum seekers as economic migrants or as “bogus” refugees; the prejudice that refugees are welfare abusers; the concern about public violence involving immigrants or foreign-born citizens; and more recently, the belief that irregular immigration channels may be used by terrorists. In the case of the United Kingdom (UK), the thresholds have been associated with the immigration of “undesirable” people from countries of the New Commonwealth; the process of family reunification during the 1970s; the increasing number of asylum seekers and irregular immigrants during the 1990s; the occurrence of “race riots” since 1950s; the hysteria to distinguish between “bogus” and “*bona fide*” asylum seekers; and the obsession to address terrorism, both from the outside and from within.

Canadian immigration policy has been perceived as a lenient one, while the British has been assumed as aggressively anti-immigrant. However, the link that both countries have established between immigration and security has led to similar changes in their immigration policies. For instance, Canada and the United Kingdom (UK) have included provisions to deport, detain and exclude non-nationals based on security grounds. Their processes to determine if an immigrant is a risk to the state’s security

have been based on discretionary powers that, in turn, had resulted in a number of questionable measures, including indefinite detention, the use of secret evidence, and the restriction of detainee's right to appeal. Furthermore, the halo of distrust to which asylum seekers have been subjected has lead Canada and the UK to limit the access of refugees to welfare benefits, to restrict the issuance of work permits to them, to diminish the legal support in the refugee determination and appeals processes, and to demand from them a proof or a "satisfactory" explanation of identity.

The aforementioned measures have been justified in the two countries under the rationale that they hinder irregular immigration and discourage "bogus" refugees from making a claim. In this sense, the securitization of migration has been selective because it has been directed to irregular immigrants and refugees. Nevertheless, the emphasis on these two immigration categories has decreased since the September 11 terrorist attacks and the overall category of "immigrant" has become securitized. This is evident when one considers that not only asylum seekers and irregular immigrants are subject to control, but also that the immigration legislation introduced post-September 11 includes mechanisms to deprive "regular" immigrants of their permanent resident or citizen status. Consequently, the thesis of selective securitization is useful to explain the objectives of immigration policies only in specific periods of time. In Canada, the corresponding period is the one occurred throughout the 1980s and the 1990s when several bills were introduced to amend the *Immigration Act 1976* until the approval of the *Immigration and Refugee Protection Act* in 2001. In the British case, selective securitization took place during the approval of immigration policies after the *Immigration Act 1971* and until the *Nationality, Immigration and Asylum Act 2002*.

Compared to immigration law, the selective securitization thesis hardly explains the process through which immigrants are included as a security concern in the anti-terrorism legislation. Even though in the age of "the war on terror" it has been argued

that irregular channels of migration and the asylum system can be used for terrorist purposes, the primary goal of the anti-terrorism legislation has not been to target specific immigration categories such as irregular immigrants and asylum seekers. As a result, the anti-terrorism legislation of Canada and the UK has securitized “immigration” as a whole. The exception to this general securitization would be that anti-terrorism law in both countries has been directed to non-citizens and foreign-born citizens from perceived “risky” ethnicities, religious beliefs, and countries of origin. In this sense, the selectivity of securitization would not be related to immigration category or status but rather to people’s personal characteristics.

Despite discussion on the effectiveness of the selective securitization thesis, one thing appears to be certain in relation to anti-terrorism legislation: citizenship no longer provides certainty to immigrants. In Canada, as the case of Maher Arar shown, foreign-born citizens are at an increasing risk of being deprived of their liberty and rights based on security concerns that further support negative stereotypes regarding their ethnicity, religion or country of origin. Furthermore, since the preventive detention and investigative hearing provisions in the *Anti-terrorism Act* were not renovated, Canadian immigration policy has emerged as a key legislation to detain terrorist suspects and to deprive “dangerous” individuals of their permanent resident or citizen status. In the UK, the *Prevention of Terrorism Act* created control orders that could potentially be used to detain both citizens and non-citizens. Nonetheless, since those control orders are subject of more judicial scrutiny, suspected non-national terrorists have been detained on the security grounds provided by immigration law. Control orders have predominantly involved non-citizens or foreign-born citizens of specific minority groups, outcome that suggests — just as in the case of Canada — that citizenship no longer provides certainty to immigrants. Additionally, in both countries challenges to anti-terrorism law and difficulties in implementing law’s most stringent features have been translated in giving

to immigration law a more prominent role. As a consequence, immigration policy and anti-terrorism law have had a complementary and a supportive role through which the control of “undesirable” and “dangerous” immigrants and foreign-born citizens is guaranteed.

While Canada has avoided making an explicit and open relation between migration and terrorists within its anti-terrorism and immigration laws, the UK has overtly done it. Regardless the subtlety of each country's legislations in this regard, the final outcome has been the securitization of migration. Of further importance is to highlight that, in the age of the “war on terror,” securitization of migration in Canada and the UK is likely to continue through more stringent policies to control “undesirable” and “dangerous” immigrants. The most regretful outcome, as it has been the case until now, will be the persistent restriction and violation of immigrants' rights.

Appendix

Table 1. Total world population, international migrants and refugees

Year	World population (millions)	International migrants (millions)	International migrants percentage change ¹	International migrants as a percentage of the world population	Refugees (millions)	Refugees percentage change ¹	Refugees as a percentage of international migrants	Refugees as a percentage of the world population
1960	3023.67	75.46	NA	2.5	2.16	NA	2.9	0.1
1965	3338.04	78.44	3.95	2.4	3.87	78.82	4.9	0.1
1970	3696.13	81.34	3.69	2.2	3.89	0.45	4.8	0.1
1975	4073.75	86.79	6.7	2.1	4.22	8.52	4.9	0.1
1980	4442.31	99.28	14.39	2.2	9.07	114.92	9.1	0.2
1985	4843.93	111.01	11.82	2.3	13.2	45.58	11.9	0.3
1990	5279.52	154.95	39.57	2.9	18.5	40.15	11.9	0.4
1995	5692.35	165.08	6.54	2.9	18.49	-0.03	11.2	0.3
2000	6085.57	176.74	7.06	2.9	15.66	-15.33	8.9	0.3
2005	6464.75	190.63	7.86	3	13.47	-13.96	7.1	0.2
	Average		11.29	2.5		28.79		0.2

¹ Estimation based on figures from United Nations (2006).
Source: United Nations 2006.

Table 2. Total population, international migrants and refugees in Canada

Year	World population (millions)	International migrants (millions)	International migrants percentage change ¹	International migrants as a percentage of the world population	Refugees (millions)	Refugees percentage change ¹	Refugees as a percentage of international migrants	Refugees as a percentage of the world population
1960	17.91	2.77	NA	15.4	48.28	NA	0.3	1.7
1965	19.68	3.02	9.19	15.3	10.08	-79.12	0.1	0.3
1970	21.72	3.25	7.64	15	18.9	87.49	0.1	0.6
1975	23.14	3.52	8.2	15.2	13.88	-26.55	0.1	0.4
1980	24.52	3.81	8.32	15.5	75.3	442.48	0.3	2
1985	25.84	3.89	2.21	15.1	102.58	36.24	0.4	2.6
1990	27.7	4.32	10.89	15.6	145.26	41.6	0.5	3.4
1995	29.3	5	15.85	17.1	157.66	8.54	0.5	3.2
2000	30.69	5.56	11.02	18.1	136.76	-13.26	0.4	2.5
2005	32.27	6.11	9.91	18.9	145.74	6.57	0.5	2.4
		Average	9.25	16.13		56.0		1.9

¹ Estimation based on figures from United Nations (2006).
Source: United Nations 2006.

Table 3. Total population, international migrants and refugees in the United Kingdom

Year	World population (millions)	International migrants (millions)	International migrants percentage change ¹	International migrants as a percentage of the world population	Refugees (millions)	Refugees percentage change ¹	Refugees as a percentage of international migrants	Refugees as a percentage of the world population
1960	51.57	1.66	NA	3.2	168.5	NA	0.3	10.1
1965	53.55	2.54	52.96	4.7	165	3.84	0.3	6.5
1970	54.83	2.95	15.89	5.4	162	2.39	0.3	5.5
1975	55.43	3.2	8.51	5.8	154.25	1.08	0.3	4.8
1980	55.53	3.47	8.61	6.3	147	0.19	0.3	4.2
1985	56.01	3.62	4.35	6.5	135	0.86	0.2	3.7
1990	56.76	3.75	3.6	6.6	44.83	1.34	0.1	1.2
1995	57.67	4.2	11.85	7.3	88.03	1.6	0.2	2.1
2000	58.67	4.76	13.5	8.1	167.59	1.73	0.3	3.5
2005	59.67	5.41	13.5	9.1	295.53	1.7	0.5	5.5
Average				6.29		1.64		4.72

¹ Estimation based on figures from United Nations (2006).
Source: United Nations 2006.

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Nationality, Immigration and Asylum Act 2002

Prevention of Terrorism Act 2005

Terrorism Act 2000

Glossary

Asylum seeker: The United Nations High Commissioner for Refugees defines it as a “person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.”

International migrant: A person who left his or her country of origin and has been living outside of it for more than one year.

Irregular immigrant: A person who entered or remained in a country without the proper authority of the state.

Refugee: According to the 1951 Geneva Convention Relating to the Status of Refugees, a refugee is a person “who owing a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”