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# Expanded border deal ‘unrealistic, unfair, and exclusionary,’ say legal scholars, refugee advocates

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Law professor Idil Atak says the closure of Roxham Road ‘bad news for asylum seekers’ that will increase vulnerability to smugglers and traffickers as they seek out less-visible and more-dangerous crossings.

While the news that Canada would be expanding the Safe Third Country Agreement came as no surprise, refugee advocates and legal scholars say the decision to officially close irregular junctions like Roxham Road while offering only 15,000 spots to displaced people is “unrealistic, unfair, and exclusionary.”

Announced during United States President Joe Biden’s official visit to Canada on March 24, Prime Minister Justin Trudeau (Papineau Que.) said the decision to expand the agreement was made because both countries believe in “safe, fair, and orderly migration, refugee protection, and border security.”

Signed in 2002, the Safe Third Country Agreement (STCA) mandates that a potential asylum seeker who arrives at an official border crossing should be turned away to pursue their claim in the first safe country they entered. However, be-

cause the agreement had only applied to official crossings, refugees hoping to remain in Canada had found a loophole, turning to unofficial crossings like the one at Roxham Road in Quebec.

The newly expanded agreement, which took effect on March 25 at 12:01 a.m., will now apply to the entire Canada-United States border, including “internal waterways,” effectively closing that loophole.

As part of the deal, Canada has also agreed to accept 15,000 migrants from the Western Hemisphere over the next year through official immigration channels. Those new spots, Trudeau said, are compensation for the closure of the irregular border crossing.

Idil Atak, an associate law professor at Toronto Metropolitan University, told The Hill Times that while she had expected the expansion of the agreement, the decision was still disappointing, calling it “unrealistic, unfair, and exclusionary.”

“My first reaction is that it’s a terrible decision,” Atak said, and considering the agreement is currently facing a con-

Although only announced last week, Immigration Minister Sean Fraser signed the expanded Safe Third Country Agreement with the United States one year ago on March 29, 2022. The Hill Times photograph by Andrew Meade

stitutional challenge, she also believes it to be a politically motivated decision rather than one intended to effectively address irregular migration.

“It’s bad news for [asylum seekers] and for Canada’s values and commitment to refugee protection,” Atak said, pointing to Canada’s domestic commitments under the Charter of Rights and Freedoms and its international obligations as a party to the United Nations Refugee Convention.

Jamie Liew, an associate law professor at the University of Ottawa, also called the expanded agreement a “political ploy” to draw attention away from Roxham Road and turn a blind eye to undocumented crossings that will continue to occur as asylum seekers risk “life and limb” in search of less-visible and more-dangerous routes.

Liew, who has served as counsel for one

of the intervenors in the Charter challenge of the STCA's constitutionality, told The Hill Times that the expansion was unsurprising given how forcefully the Canadian government has defended it in court.

In June 2020, the Federal Court ruled that elements of the STCA violate the constitutional guarantee of life, liberty, and security under Section 7 of the Canadian Charter. However, the Federal Court of Appeal sided with the federal government and set aside that decision a year later, sending the case to be argued before the Supreme Court of Canada.

Liew said she found it curious that despite political pressure from Quebec Premier François Legault and the federal Conservatives, the government hadn't waited until the Supreme Court had decided on the deal's constitutionality before expanding it.

In a letter to Trudeau on Feb. 21, Legault said the refugee claims at the irregular crossing are pushing Quebec's social services to their limits and raising humanitarian concerns. Later that day, Conservative Leader Pierre Poilievre (Carleton, Ont.) said the government should devise a plan to close Roxham Road within 30 days.

According to Statistics Canada, of the 39,540 asylum seekers who entered Canada through unofficial crossings in 2022, 39,171 entered into Quebec through Roxham Road. In January and February of this year alone, there have already been more than 9,392 interceptions of asylum claimants entering Quebec through the crossing.

In February, Trudeau had said the only way to close Roxham Road would be to renegotiate the deal, but did not provide

a specific timeline. He also did not provide specific details on what its plans for the renegotiations were, despite the fact the agreement had already been signed by Immigration Minister Sean Fraser (Central Nova, N.S.) nearly a year ago, on March 29, 2022.

While Liew wasn't expecting the government to scrap the STCA entirely, she said she was surprised it seems to believe expanding the agreement will lead to more effective border management.

While updating the deal may temporarily ease crossings at Roxham Road, Liew said people will still try to evade detection from authorities through surveillance gaps along the 6,000-kilometre Canada-U.S. border, creating even more dangerous "pop-up borders."

Atak said that the official closure of Roxham Road would also mean an end to the "pretty orderly and safe" crossings that had been taking place there. Rather than acting as a deterrent for asylum seekers, the newly expanded agreement will only further exacerbate their vulnerability to smugglers and human traffickers, she said.

She added that deterring asylum seekers from more regularized points of entry—including at Roxham Road, where the government had already spent half a billion dollars to put systems in place to process claims—will only increase the number of tax dollars directed towards policing the border to monitor for new irregular crossings that will inevitably appear.

"What makes [the government] think this will be solved by simply turning people away at every possible juncture?" asked Liew.

Atak also questioned how exactly border agents would be able to track when asylum seekers had crossed the border to determine whether they could be turned back to the U.S. She pointed to a document related to the deal released by the United States Department of Homeland Security that it will apply to migrants arriving between official ports of entry who "make an asylum or other protection claim relating to a fear of persecution or torture within 14 days after such crossing."

"How would the officials prove that the person is caught within 14 days if the crossing is undetected ...there would be no stamp on the travel document," Atak said, noting that asylum seekers would not be motivated to disclose it themselves for fear of jeopardizing their claim. "How would those who are caught after 14 days prove that?" As for the "compensation" Canada offered in return for the closure of those irregular crossings, Atak said the announcement of 15,000 migrants from the Western Hemisphere excludes the vast majority of claimants seeking asylum in Canada.

According to data from the Immigration and Refugee Control Board of Canada, of the top 10 countries of origin for the more than 81,000 refugee claims made at irregular border crossings between 2017 and 2022, only three are countries from the Western Hemisphere: Haiti, Colombia, and Venezuela, accounting for a little more than 25,000 claims.

Atak said that Canada should learn from the European Union's "Dublin Regulation," which was adopted in 2003 and similarly requires asylum seekers to make their claim in the first state through which they entered Europe.

“This has been tested in the EU for nearly 20 years now, and there is a lot of research and evidence from their experience that this doesn’t work,” Atak said, adding that the regulation had similarly exacerbated the vulnerability of migrants travelling to Europe and increased costs both in tax dollars and in the lives of refugees.

“The best way to limit those costs is to rescind the agreement so people can make refugee claims at official points of entry where they will undergo an eligibility determination, as well as security and health checks, and making applications safer and orderly possible,” Atak said.

“It’s not like refugee advocates are saying ‘let everybody in,’” Liew added, noting that Canada’s system to determine the legitimacy of an asylum claim is already “the best in the world.”

“We’re simply asking for people to have the opportunity to make their claim and to have the process do its work,” Liew continued. “Why aren’t we allowing that system to work and function as intended?” Minister Fraser’s office did not provide specific answers to a series of questions from The Hill Times, instead providing a statement from Immigration Refugees and Citizenship Canada.

“Canada and the U.S. are committed to supporting safe, orderly, and regular migration in the Americas, including promoting regular migration pathways, strengthening asylum systems in the region, supporting migrant transit and host countries, and countering xenophobia and discrimination against migrants and refugees,” wrote IRCC spokesperson Rémi Larivière, adding that the 15,000 spots for asylum seekers from the West-

ern Hemisphere would bolster those efforts by helping relieve pressure points in irregular migration routes such as the Darién Gap region between Colombia and Panama.

Larivière also pointed to existing immigration programs available for those outside the Western Hemisphere, including for residents of Hong Kong, Turkish and Syrian temporary residents, and the Economic Mobility Pathway Pilot.

“Canada is a safe haven for those in need,” the statement continues. “We will continue to explore additional ways to provide a safe home for those who need protection.”

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