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Rights at the Border: Human rights and migration in the Canada-Mexico relationship

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There is much entailed in the theme of our panel: immigration flows, human rights and political refugees. Big topics, big implications, big numbers. Behind the theme and the big topics though lies the notion of borders, and that is where I would like to begin.

Canada and Mexico of course do not share a border: far from it in fact, we are separated by some 2000 kilometres. But borders are nonetheless still significant in our relationship and absolutely are of considerable, even central importance to each of the elements of our theme: immigration, human rights, and refugees. And of course we each do share a border, by far the most important border each of our nations faces, with the United States. And the distance is considerable - to travel those two borders – along the Rio Grande, across the Prairies, through pine forests of eastern Canada, is to cover some 12, 000 kilometres. Those two borders, that 12,000 kilometre long ribbon, weave themselves inescapably into numerous aspects of the Canada/Mexico relationship.

In human rights advocacy we frequently repeat the refrain: *human rights have no borders*. And of course they do not. But that refrain is not just powerful rhetoric; it stands for the essential principle at the heart of global human rights protection – that human rights are universal. No one has more or less rights just because she is she and not he, because she is poor and not rich, of a particular religious faith, or because of his political beliefs or the country in which he lives. No borders, universality: a beautiful principle, full of great hope. The challenge of course arises in the practice, because fundamentally rights are very much more and less enjoyed and found wanting for those precise reasons of economic status, religion, political views and geography.

The promise of universality cruelly does know very many borders – borders that can be excuses for human rights violations, as when nations assert their sovereignty and resort to their borders as a means of fending off international concern and intervention in the face of mass human rights abuses; and also borders that themselves become the locus of serious abuses such as the violence and many perils endured by the world's countless desperate border jumpers.

Borders are though, paradoxically also a symbol of human rights protection – most obviously in the sense of escape. For if the hard-line view of state sovereignty and borders keeps the world out when human rights violations occur, that same border offers

a place of safety and potential rights protection, if and when it is possible to get out; to the other side.

This notion of the border as an avenue for escaping human rights violations plays out across borders around the world every minute of every day – and certainly has been one notable aspect of the frontier relationship between Canada and Mexico. Certainly refugees have fled from one country to the other: For many years now significant numbers of Mexicans, consistently numbering over one thousand annually for the past five years, have sought asylum in Canada, for a variety of different reasons: claims of political persecution, cases of police officers and other government officials who have suffered repercussions for exposing corruption, women facing domestic abuse or gays and lesbians experiencing violence and discrimination. Some have been credible, others not. Some have made well-founded claims, others more far-fetched. Many have been accepted; most have been rejected.

I myself spent some time as a member of Canada's Immigration and Refugee Board and heard many, many Mexican claims during a year with the Board's Americas Team. That so many claims have been made in Canada by citizens of a country perceived to have a democratic government, a country that is an important trading partner and close ally of Canada, a country well-known to Canadians as an enticing holiday destination, has often sparked debates about Canada's refugee laws and policies. Some argue that there should be limits and restrictions on who can make a claim and who can not. But the fundamental tenet of Canada's refugee system remains – and very importantly remains – that access to the system is universal, not tied to geography or nationality.

As a footnote here it is worth noting that there have occasionally been some refugee flows in the opposite direction – I am thinking most particularly of the thousands of Canadian Mennonites, largely from the province of Manitoba, who over a span of twenty years beginning the early 1920's, left what they felt was growing government encroachment on their freedom of religion in Canada, and chose new lives, new homes in the Mexican state of Chihuahua. Decades later, though, some of those Mennonites or their descendents have returned, some resuming life as Canadian citizens, others having to again make the journey as refugees.

Beyond traditional political refugees, there is another important migratory, border-related dimension to the Canada/Mexico relationship, with crucial human rights implications – and that is the flow of migrant labour from Mexico to Canada. Some, thousands in fact, come yearly under the official auspices of the agricultural worker program, which has been open to Mexican nationals since 1974. Current levels are about 7,000 Mexicans admitted, temporarily, to Canada every year under this program, almost all of them men. Others, like nationals from countless other countries, reside in Canada as undocumented migrant workers, lacking official immigration status – perhaps having stayed on after the expiry of some other status, or perhaps having been trafficked into the country and into Canada’s sex trade through transnational criminal networks. And of course untold others never make it here, but might want to, if the borders were not so high and the options for crossing so limited.

Migration and refugee flows, significant in this bilateral relationship, are one of the most pressing human rights challenges the world faces. Globally, massive numbers of people are on the move, certainly millions are within this hemisphere – on the move for many different reasons but almost always in circumstances that give rise to serious human rights violations. Add the United States to our bilateral relationship – and there is no doubt that migration is likely the most critical trilateral human rights concern we face. It is notable that the UN Special Rapporteur on the human rights of migrants – an important post within the UN human rights system, established in 1999, chose those 3 countries – Canada, Mexico and the United States - as among the first to which she carried out official visits – in 2000 and 2002. The first person to hold the Special Rapporteur’s post was Costa Rican Gabriela Rodríguez Pizarro, over a span of six years. She has now been followed by Mexican Jorge Bustamante, who took up the post in August of this year.

Migration and human rights – inextricably linked. Human rights violations of some description almost always are at the root of migratory movements – be it torture, rape and mass killings that propel so-called political refugees into flight, or grinding poverty and a failure to protect basic economic and social rights that push migrant workers to seek out a brighter horizon. Violations far too frequently continue during migration: at the hands of unscrupulous and ruthless *coyotes* and *passeurs*, harsh policing

and border enforcement tactics, or now even the possibility of falling victim to private vigilante militias who have taken it upon themselves to help guard the border. And, sadly, violations may go on even at the end of the journey, particularly for the many, many migrants without lawful status, who find themselves easy prey and vulnerable to exploitation in many ways – forced into the sex trade, into unsafe and underpaid working conditions, or to endure domestic violence all with the fear that to speak out and complain would be to risk exposure and lead to deportation. This applies even when individuals do have lawful migrant status of some description, as is the case with Mexican agricultural workers or individuals who arrive under the live in caregiver program. The uncertainty of the status, which is of course not permanent, leads to some of the same trepidation and thus vulnerability to exploitation.

And let me pause here and note that these concerns arise even when individuals do not ever manage to cross an international border. Internal migration, within Mexico and also within the Canada, gives rise to many of these same very grave human rights problems. Think of the women from all over Mexico who have been drawn to the promise of jobs in the maquiladora world of Ciudad Juarez – hundreds of those women over the past decade have been killed or gone missing and only recently have authorities begun to recognize it as a serious human rights crisis that demands a high level, concerted and very serious response. I was in Juarez in August and struck deeply by the many tragic dichotomies perhaps most poignantly symbolized by the numbers of bodies of women that have been found within an easy stroll of bustling transnational assembly plants.

Think also of Indigenous women from reserves across Canada, marginalized and dislocated and drawn to the promise, the hope of something else in Canada's urban centres – hope that is realized for some, but cruelly betrayed for many, many others who fall further into despair and danger. Amnesty issued a deeply disturbing report last year, *Stolen Sisters*, documenting the alarmingly high levels of violence and discrimination experienced by Indigenous women in that internal Canadian “migration” from reserve to city.

Laws exist, of course, meant to provide protection and guard against abuse – national level, regional, international in fact. Laws exist, but enforcement is invariably weak. Notably, Mexico has, but Canada has not ratified the key international treaty in this area: the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. That split unfortunately reflects a worldwide pattern: countries that are the source of migrant workers have signed on, countries that are the destination have not.

There has been more and more attention paid to North American borders over the past decade. NAFTA of course has defined the commercial sense of those borders, seeking to open the border up as widely as possible for economic traffic, but much more reticent to allow people to move with anywhere near the same degree of freedom.

More recently, national security has very much come to define the borders as well – security has of course long been a very visible and active presence along the US/Mexico border, but is now also becoming a major aspect of the northern frontier as well. The case of Maher Arar, the subject of a continuing public inquiry is one reminder of that. His case has come to symbolize a certain sense of U.S. contempt for the Canadian border and a callous willingness to figuratively close that border, even to someone with a clear right to traverse it. Makes me wonder whether there are any parallels as to how US Drug Enforcement Agency officials have viewed the Mexican border in the past with the notorious abductions of Mexican citizens into the United States to stand trial.

There is more afoot in securing the borders of North America. I'm not going to get into this, I know other panels will. The debate about proposed new laws and practices with respect to passport requirements when crossing from Canada into the United States, is another reminder. So too, the recent news that the Minutemen militia, self-appointed vigilante guardians of the US border with Mexico have moved up the Pacific coast and begun some patrols along the border between B.C. and the state of Washington.

And of course earlier this year, our three North American leaders gathered in Waco, Texas and announced the establishment of the Security and Prosperity Partnership of North America which calls for a “common approach to security to protect North

American from external threats, and prevent and respond to threats within North America.”

12,000 kilometres of border with serious implications for the protection of fundamental human rights. But very little to show for that in the deals and agreements negotiated among North American governments. NAFTA is the most significant of course, but it is about facilitating cross-border movement of goods and services and people directly associated with those goods and services. Certainly not about people more generally. More recently, when the Security and Prosperity Partnership was adopted in March of this year, North American leaders to some degree updated their vision of the North American relationship. There are several references in that document to the flow of people within North America, all prefaced with the qualifier “legitimate” and, in one place more precisely described as “facilitating further the movement of business persons within North America.” Nothing in NAFTA, nothing in the SPP, about human rights and the movement of people, human rights and migration, certainly no elaboration of a human rights based approach to managing North America’s borders. For that we are left looking elsewhere.

I’ve already mentioned the one notable shortcoming of Canadian – and I should add US as well, failure to ratify the key UN Convention on Migrant Workers. Canada, the US and Mexico have, however, all been actively participating for close to a decade now in an intergovernmental forum on international migration – often informally known as the Puebla Process, more officially the Regional Conference on Migration. Eight other countries, Central American with the addition of the Dominican Republic take part in these ongoing meetings. Through that process, governments have set themselves a 4 part human rights action plan which includes (1) full respect for existing legal provisions regarding the human rights of migrants; (2) strengthening those provisions; (3) ensuring the protection of refugees; and (4) addressing concerns about the health needs of migrants. It’s all pretty soft at present – draft guidelines, ideas about pilot projects – all against a backdrop where it seems clear that the real policies and practices are being hammered out elsewhere or simply being advanced unilaterally. Nonetheless Puebla is a process deserving of ongoing support, cautiously.

One possible agenda for strengthening human rights protection for migrants in North America emerges very clearly through a review of the reports coming out of the Special Rapporteur's visits to each of Mexico, the United States and Canada. Let me at this juncture just quickly highlight 5 key themes that run through all of those reports.

First, better legal protection. This means ratifying key international instruments such as the Migrant Workers Convention, but also the two recent protocols to the UN Convention against Transnational Organized Crimes, one dealing with human smuggling the other human trafficking. It also means stronger laws at national level.

Second, better actual protection. A comprehensive action plan needs to emerge here, including improved policing practices, enhanced training, better mechanisms to monitor abuses, effective and accessible complaints mechanisms, and ensuring that anyone who violates the rights of migrants is held accountable and brought to justice.

Third, increased support for civil society. In all three countries it is apparent that civil society groups are often the ones most easily able to access and thus provide protection and support to vulnerable migrants. Their ability to continue with that work has to be expanded.

Fourth, move towards regularizing status. It appears that President Fox's push for a migrant workers program of some description for Mexicans in the United States is not progressing. But those are precisely the ideas and proposals that have to advance.

And fifth, deal with racism and xenophobia. At the heart of much of the violence and abuse migrants suffer is vicious racism and ugly xenophobia. A concerted, collaborative effort among the three North American governments to confront this bigotry and hatred is sorely needed.

I am fast running out of time I know, but I do want to say a word or two about refugees in particular before I wrap up. There is a refugee flow between Mexico and Canada, as I highlighted earlier – claims rising significantly over recent years – just over 2,000 Mexicans sought refugee status in Canada in 2004. Some ease in doing so as there is no visa requirement for Mexicans wishing to travel to Canada, meaning that those with the means to fly, and thus avoid having to cross the United States by land, are fairly readily able to get here.

Refugees – Mexican or other nationalities, seeking asylum in Canada or elsewhere have had a difficult time in this era of heightened global security. Worldwide, and certainly in both Canada and the United States, fingers frequently are pointed at refugees as being the source of insecurity in our midst. Refugee systems are porous we are told, Canada's in particular, ripe for abuse, easy pickings for would-be terrorists planning their next attack. As such there are demands for restrictions, exclusions, more detention, more deportations. In the rush to blame refugees, what is frequently overlooked is that while there is inevitably any system that is about human beings and human lives, the vast majority of refugees themselves are fleeing insecurity and violence, and need and deserve protection.

One very concrete outcome of this security-related focus on refugees has been the implementation between Canada and the United States of what is often termed a “safe third country” agreement, operational as of December 29, 2004. Under that agreement the bulk of refugee claimants who pass through one country on their way to the other will be bumped back to the first country and told to make their claims there. In practice this means that a large percentage of the approximately ten thousand refugee claimants who pass through the United States each year on their way to Canada will no longer be able to access Canada's refugee determination system and will instead be required to make their claims for asylum in the United States.

A couple of side notes and reminders are instructive here. First, the simple, unchangeable reality of the refugee journey is that for very many there is no other way to Canada other than through the United States. Certainly for Latin Americans traveling overland that goes without saying. Although Mexican are likely the one exception to that pattern – as the bulk of Mexican claiming refuge in Canada arrive by air – due to the fact that they do not require a visa to travel to Canada, but do for the United States, a distinction that does not generally apply to other Latin Americans. And of course even for refugees from other parts of the world, traveling by air, there are very few direct routes into Canada that do not involve a change of plane in the United States, or perhaps Europe.

Second, while this agreement is certainly described as a two-way street – a responsibility sharing arrangement – the overwhelming impact will be on refugees

traveling north to Canada. Very, very few refugees come through Canada on their way to make claims in the United States. For that reason, it is something that Canadian officials have long been interested in – a very crude way to reduce dramatically the numbers of refugees making claims in Canada every year. In any given year between perhaps 1/3 and 1/2 of refugees claiming status in Canada arrive by way of the United States, many of them Latin American and many of them having passed also through Mexico.

So what is the concern here. After all, isn't the real objective to make sure that refugees are safe. Does it really matter whether that place of safety be Canada or the United States, even if the individual him or herself may have particular reasons for preferring one over the other?

And that is precisely what the fundamental test should be. Safety. Which should be judged by one clear and essential standard – the international human rights obligations that are at stake. And at the border, at the moment decisions are being made and refugees are told that they cannot cross, that they cannot make a refugee claim in Canada, human rights are very much in play. And a number of fundamentally important human rights issues are being overlooked. Let me highlight two. First to stop a refugee at the border and turn him or her back is to put that individual at risk of arbitrary detention. Second if the refugee is a woman fleeing abuses such as domestic violence, or so-called honour crimes, it is to put her at real risk of being denied the protection that is her right. We can go into those concerns in greater detail if anyone wishes, in questions.

I have put this – something arguably a bilateral Canada/US matter - on the table here because it is a serious concern, and is indirectly about Mexico as well, because it can impact on Mexican refugees and does certainly effect refugees who have passed through Mexico on their way to seeking safety in Canada. But I mention it as well because there has been long suspicion that there may be interest on the part of the U.S. government in moving this model south and applying it at the U.S./Mexico border as well – the ultimate prospect – certainly not an immediate one, but not an entirely fanciful possibility - being one of refugees bumped further and further south in the Americas, ultimately unable to flee at all. One last telling reason now, to commit to a North American human rights agenda, with strong provisions about migration, including the protection of refugees, at its very core.