

From Security Threat to Subject of Protection: Examining Global Sexuality Politics in the Refugee Protection Regime

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This paper offers an argument of global sexuality politics focusing on the increasing attention over the past two decades to the rights of LGBTIQ+ people by Western governments in their foreign policy agendas sustained by a narrative of progress. International refugee protection serves as a crucial arena in which these politics unfold. Protection of “LGBTIQ+ refugees and asylum seekers” has emerged as an important issue for various actors, including UN agencies, international NGOs and the human rights diplomacy of the global North governments. However, the notion that human rights of queer people delineate a uniformly principled trajectory of human rights advancement needs critical examination. This is particularly pronounced when considering the history immigration and asylum policies of global North states such as the United States and Canada, where queer individuals were once categorised as a national security threat. Furthermore, recent immigration and asylum restrictions suggest that the shift in perception of queer refugees from being regarded as a threat to becoming subjects of protection does not invariably follow a linear and irreversible progression. Rather, the politics of asylum is reflected in the protection of LGBTIQ+ individuals. While refugees waiting outside the country are to be subjects of protection, asylum seekers on the move remain a security threat.

Keywords: global sexuality politics, queer, LGBTIQ+ , refugee, asylum, narrative of progress

I. Introduction

In 2023, UN Free & Equal, a “global campaign to promote equal rights for LGBTI people” led by the UN Human Rights Office, celebrated its 10th anniversary, reposting their campaign themes and videos on social media with *#UNFE10Rewind*. At the time of its original launch, UN Secretary-General Ban Ki-moon stated that the struggle for the protection of LGBT rights is “one of the great neglected human rights challenges of our time” (United Nations 2013). Ten years later, the

international human rights discourse has rendered what is now referred to as LGBTIQ+ rights issues visible.¹ The rights of LGBTIQ+ persons have become international human rights norms after a decade-long struggle that includes contestation among states regarding drafting, approval, voting and rejection the related human rights resolutions (Nogueira 2017). This paper discusses the normative engagement between human rights and global sexuality politics underpinned by the narrative of progress and how the context of refugee protection reinforces these politics

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by designating “LGBTIQ+ refugees and asylum seekers” as victims of homophobic countries, cultures and religions. A brief overview of the narrative of progress in global sexual politics is first provided by examining the trend over the last two decades for Western governments to emphasise LGBTIQ+ rights within their foreign policy frameworks. The international refugee protection regime, where rescue and saving discourses have already divided the global North and South, fits well in the narrative of progress and reinforces global sexuality politics. Certain genders and sexualities become markers for vulnerable refugees. Protection of LGBTIQ+ refugees has been on the agenda of UN agencies, international NGOs, as well as the human rights diplomacy of the global North governments. I carefully take a stance of scepticism towards the proposition that LGBTIQ+ politics delineate a uniformly principled trajectory of human rights advancement, particularly within the context of the historical immigration and asylum regulations of the United States and Canada, where queer individuals and communities used to be classified as a national security concern. At the same time, these two states have historically accepted the highest number of refugees for resettlement. I select them for analysis in this paper as they exemplify the way in which global sexuality politics is reflected in refugee and asylum policies and regimes. In the last part of this paper, I argue that the recent immigration and asylum restrictions implemented by both states suggest that the shift in perception of queer refugees from being a threat to being subjects of protection does not invariably follow a linear and irreversible progression.

II. Global sexuality politics —a narrative of progress

While discrimination and violence against gender and sexual minorities have long been addressed by queer communities, these issues have gained prominence as significant international issues since around 2010, particularly within the entities of UN agencies, international NGOs and government representatives engaged in discussions on global human rights. The Declaration of Montreal on LGBT Human Rights and the Yogyakarta Principles, both adopted in 2006, marked significant milestones in the international recognition of LGBT rights. These documents articulated principles and recommendations aimed at promoting and protecting the rights of LGBT individuals worldwide. One key outcome of these initiatives has been the mainstreaming of LGBT issues within discussions on global human rights, leading to increased attention and action from governments and international bodies. The concept of mainstreaming LGBT or human rights protection for LGBT people has emerged as a key topic in these forums.

The report published by the UN Office of High Commissioner for Human Rights (OHCHR) in 2012 titled “Born Free and Equal” asserts that issues related to sexual orientation and gender identity (SOGI) are fundamental human rights concerns and marks a pivotal moment in UN policy (Rahman 2019, 15). It emphasises that member states are obliged to uphold the rights of their LGBT populations (OHCHR 2012). In September 2013, the UN LGBTI Core Group convened, involving government officials from 11 countries, the European Union’s High Representative for Foreign Affairs and Security Policy, and international NGOs. This gathering culminated in a ministerial declaration affirming

a collective commitment to eradicate violence and discrimination based on sexual orientation and gender identity while upholding the human rights of LGBTI.² At the state level, advancing human rights around the world has been a diplomatic objective of Western liberal democratic governments such as the US, Canada, the UK, France and Germany.³ Many such countries encourage non-Western governments to overturn laws that criminalise consensual same-sex conduct and trans identity and to adopt laws and policies to determinedly fight homophobia and transphobia. Those governments tend to offer their “expertise, in particular to national human rights institutions, rights defenders and ministries in charge of security and justice” (Ministry for Europe and Foreign Affairs, the Government of France 2022).

Rahul Rao (2020) offers a critical perspective on this tendency of Western governments to prioritise LGBT rights within their foreign policy frameworks. He observes that such policies often employ the mistreatment of LGBT individuals as a yardstick to label certain regions of the Third World (i.e., the global South) as “uncivilised” in contrast to the purportedly more advanced Western states (i.e., the global North).⁴ The instrumentalisation of LGBTIQ+ rights as a marker of progress contributes to the construction of new global hierarchies. LGBTIQ+ rights can be a solution to a lack of progress or development within certain cultures. Rao draws on Gayatri Spivak’s work on postcolonial feminism to highlight the troubling recurrence of a narrative of “white men saving brown women from brown men” (Spivak 1998, 287). In contemporary contexts where global sexuality politics is underpinned by a narrative of human rights and progress, he interprets Spivak’s insight as evolving into a scenario where “white homosexuals are saving brown homosexuals from brown homophobes” (Rao 2020, 145).

New global hierarchies are not the only consequences of the narrative of progress, but they are interwoven with nationalistic notions of this progress. Based on Lisa Duggan’s concept of new homonormativity (2003), Jasbir Puar (2007, 2013) analyses the intersections and collaborations between homosexuality and US nationalism. Puar conceptualises homonationalism as a phenomenon wherein the combined dominance of whiteness, imperialism, and secularism constructs lesbian-gay-queer individuals as “regulatory” figures over marginalised populations that are portrayed as feminised and deviant. Homonationalism is “an assemblage of geopolitical and historical forces, neoliberal interests in capitalist accumulation both cultural and material, biopolitical state practices of population control, and affective investments in discourses of freedom, liberation and rights” (Puar 2013, 337). Thus, it exposes how mainstream lesbian and gay rights discourses construct narratives of progress and modernity that privilege certain populations with cultural and legal citizenship while excluding and expelling racialised and sexual others and justifying violence against them (Puar 2013, 337). Queers who can marry, serve in the military, and be productive, white and middle class are included in the nation-state at the expense of excluding others. Although Puar’s work is based on the US in the aftermath of 9/11, her work has garnered significant attention outside of the US and has been applied to the context of other liberal democratic states where queerness and nationalism are tied together.

In addition to Western states and international organisations, the leading institutions of global capitalism have begun to take a proactive with regard to the rights of LGBT individuals and against homophobia (Rao 2020, 136-173). In an effort to frame LGBT rights as desirable human rights, current research is assigning measurable

values to the repercussions of homophobic legislation (Picq and Thiel 2015, 2). For example, the World Bank has continued working on reports estimating the economic cost of homophobia in the global South, including India, the Republic of North Macedonia and the Republic of Serbia (Badgett 2014, Flores et al. 2023a, 2023b). This is suggestive of Puar’s homonationalism argument in which some “productive” queers are incorporated into the global human rights while “unproductive” queers are left out. Global sexual politics need to be understood withing the interrelated contexts of global, international and national politics, discourse and history. These multifaceted dimensions underscore the complexity inherent in analysing the dynamics of sexual politics on a global scale.

III. LGBTIQ+ refugees and asylum seekers ——subjects of international protection

Among the “brown homosexuals” to be rescued from “brown homophobes,” queer refugees have gained international attention. In this section, I examine how queer refugees are considered a subject of international protection and how it fits into the narrative of the global sexuality politics. It is neither novel nor rare for individuals identifying as queer to experience violence and discrimination, often stemming from societal, communal or legal perceptions that deem their queerness as deviating from or falling outside established norms. Some individuals choose to move to other countries and seek humanitarian status. These people are today referred to as “LGBTIQ+ refugees and asylum seekers.” They are recognised as people in need of international protection and have been the

focus of attention in refugee and forced migration studies as well as queer migration studies since the 2000s. Currently, “membership of a particular social group,” one of five components of the refugee definition under the 1951 Refugee Convention⁵, is applied to some queer individuals, enabling protection for people exposed to violence related to heterosexist and cisgender norms. From the outset, their problems have been placed within the global human rights agenda. That said, critical reflection is required on how the boundaries between desirable queer refugees and those who are not can be generated by sexual politics.

Whereas LGBT refugees and asylum seekers have discursively become subjects of protection in foreign aid policies since the 2010s alongside international LGBT human rights advocacy, discussions on international protection for refugees and asylum seekers based on gender identity and sexual orientation (SOGI) began slightly earlier. “Protection” here mainly refers to the gaining of status allowing non-citizen individuals to remain in a country through administrative or legal processes based on international and national legal institutions. The 1951 Refugee Convention initially conceived of protection measures primarily for male political refugees amidst the aftermath of World War II in Europe. However, the increased visibility of refugee women during the 1980s, coupled with the emergence of concepts such as gender-based violence and gender-related persecution in the 1990s and 2000s, facilitated the acknowledgement of women-specific experiences of violence as forms of persecution. This recognition gradually illuminated the understanding that being female could qualify as “membership of a particular social group.” Consequently, feminist activism and research within the realm of refugee and forced migration studies have transcended the narrow

framework that confines gender considerations solely to issues concerning cisgender women. Such endeavours unveiled the systemic invisibility of gender and sexuality within international law, national legislation and refugee-related policies, particularly due to their association with the private sphere.

Over time, the interpretation of refugee as outlined in the 1951 Convention has broadened, particularly concerning the unique experiences of women and queer individuals. Notably, it was initially acknowledged in the Netherlands that persecution for membership in a particular social group may also include persecution on grounds of sexual orientation. This recognition subsequently spread to countries such as New Zealand, Canada, the UK, the US, Australia and others in the 1990s. The United Nations High Commissioner for Refugees (UNHCR) explicitly addressed sexual minority concerns in the 2000s. *Guidelines on International Protection No. 1: Gender-Related Persecution*, issued by UNHCR in 2002, mentions the gendered experience of persecution against women but also refers to the historical invisibility of claims by homosexual refugees who are at risk of persecution. In 2012, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity* provides guidelines for applying the definition of refugees to sexual minority individuals who experienced human rights violations or persecution. UNHCR has since released related discussion papers that highlight the risks and protection needs of sexual minority individuals throughout the various stages of forced migration. In practice, strategies for the protection of LGBTIQ+ refugees and asylum seekers are often integrated within initiatives addressing sexual and gender-based violence (SGBV), which recognises such individuals as one of the most “vulnerable” and at-risk groups in need

of protection. This development during the 1990s, 2000s and 2010s describes a notable shift in focus towards the inclusion of queer individuals within the protective ambit delineated by the legal and administrative frameworks of various states as well as the UN agencies.

Although the UN and other international organisations frame the protection of LGBTIQ+ refugees within a discourse of universal human rights and in alignment with international treaties and conventions, states in the global North, exemplified by the US and Canada in this following discussion, frequently contextualise the discourse within the sphere of public diplomacy. On February 4, 2021, President Joe Biden issued a memorandum instructing all US departments and agencies engaged abroad or involved in foreign aid, assistance and development programmes to undertake a series of actions aimed at promoting and safeguarding the human rights of LGBTIQ+ individuals. This memorandum serves as a reaffirmation and update of a similar directive issued by former President Barack Obama in 2011, signalling the continuity of the US's leadership on this critical issue:

Around the globe, including here at home, brave lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) activists are fighting for equal protection under the law, freedom from violence, and recognition of their fundamental human rights. The United States belongs at the forefront of this struggle—speaking out and standing strong for our most dearly held values. It shall be the policy of the United States to pursue an end to violence and discrimination on the basis of sexual orientation, gender identity or expression, or sex characteristics, and to lead by the power of our example in the cause

of advancing the human rights of LGBTQI+ persons around the world (White House 2021).

The memorandum directs relevant agencies⁶ to ensure that diplomacy and foreign assistance promote and protect the human rights of LGBTQI+ persons “everywhere,” but it implies the global South countries need to be assisted. The US is located “at the forefront of this struggle” resonating a nationalistic notion. Among the six sections in the memorandum, the second section is dedicated to “Protecting Vulnerable LGBTQI+ Refugees and Asylum Seekers” with a focus on those who are in the first country of asylum.⁷ Such individuals, for example, would include those who are outside of the US and residing in a refugee camp or country providing some form of humanitarian temporary status for a limited time period.

The government of Canada has also embedded 2SLGBTIQ+⁸ human rights issues into its foreign policy. In addition to a multilateral level of engagement to “reflect Canadian values on the international stage,” the Ministry of International Development in 2019 announced \$30 million in dedicated funding over five years, followed by \$10 million per year to advance human rights and improve socio-economic outcomes for 2SLGBTIQ+ individuals in developing countries (Global Affairs Canada 2019). Besides, Canada has earned an international reputation regarding its support of refugees. Since the early 1990s, the country has been actively accepting refugee applications based on sexual orientation or gender identity expression (SOGIE), recognising these social groups as potentially persecuted in their countries of origin. During the first decade of the 2000s, there was extensive media coverage in Canada regarding queer refugee claimants in which Canada was consistently portrayed as a

beacon of “progress,” “a leader” in 2SLGBTIQ+ rights and “a safe haven” for individuals worldwide seeking protection from violence, persecution and discrimination (Murray 2020). In June 2023, Prime Minister Justice Trudeau announced that the Government of Canada made a partnership with the non-profit organisation Rainbow Railroad to facilitate the government-led resettlement of LGBTQI+ refugees to Canada to provide them safe homes (Prime Minister of Canada 2023).

It is clearly not my intention in this paper to contest the importance of attaining legal status in the country of arrival or the necessity of obtaining substantive citizenship for queer individuals relocating across borders, nor the long-standing effort of the civil society and community members to support queer refugees and migrants. Nevertheless, it is crucial to engage in a critical examination of this trend and carefully deliberate on the manner in which we conceptualise the prioritisation of international protection for LGBTQI+ individuals. While the inclusiveness inherent in such initiatives may initially appear commendable and worthy of celebration, thorough examination is necessary to understand the broader implications and potential challenges associated with the institutionalisation of this approach. When examined within the context of forced migration, this narrative of “saving” or “rescue” appears to find further justification under the international refugee protection regime. This regime often reinforces a dichotomy between the global North, characterised by tolerance and respect for human rights in receiving refugees, and the global South, where violence and human rights violations are rampant, prompting refugees to flee. However, this dichotomy oversimplifies the realities of refugee movements, as many refugees seek safety in neighbouring countries, which are often categorised as part of the South. In fact, as

of the end of 2022, 73% of refugees were hosted by developing countries (UNHCR 2023).⁹ When the politics of sexuality concerning the protection of women and queer individuals is introduced into this fictional division, the discursive dichotomy between the global North and South becomes even more pronounced (Cammaing and Marnell 2022,14). More progressive and advanced countries tend to emphasise the importance of freedom and liberation for women and queer people, while violence against women, homophobia and transphobia are prevalent in less developed or “barbaric” countries, regions or specific religions.¹⁰

As Cynthia Weber (2016) notes, this geopolitical hierarchy of global sexual politics does not actually “free” those from the global South when they move to the global North carrying their civilising deployment on the move. At first glance, they may appear to have successfully assimilated into a more sexually progressive society where human rights of LGBTIQ+ people are protected. However, a global Southerner, in particular, an unwanted immigrant in the global North lives “two temporalities” simultaneously. They are “never-quite-finished-developing” and will never be considered as “developed.” Unwanted immigrants are always situated as inferior in global sexuality politics because of how they arrive, where they come from, their race, religion, class, ability, gender and sexuality (Weber 2016, 83-85).

Moreover, since the early 2000s, the requirement for proof of being a sexual minority and reinforcement of essentialist concepts of gender and sexuality have become noteworthy issues in academic discussions. References to Western-centric stereotypes about gay, lesbian and transgender individuals, structural power relations in asylum application systems that undermine the agency of asylum seekers and racial discrimination have long been criticised (McGhee 2000; Morgan

2006; Rollins 2009; Hanna 2005). Asylum seekers must construct a coherent and credible narrative using essentialist identity concepts to gain access to asylum/refugee status. Further, asylum seekers’ experiences and narratives are structured within the power dynamics related to other elements, including age, nationality, race, ethnicity, religion, language, legal status and the embodied geopolitics (Kudo 2022). Their asylum narratives are expected to depict the country of origin as homophobic and the country of asylum as safe. Such constructing of narratives is a pragmatic tool necessary for individuals to be recognised in the context of asylum applications. For asylum seekers to gain legal status, their narratives presented to asylum officers or other decision-making officials need to reflect these politics of sexuality and colonial perspectives (Kudo 2022). For those who can narrate the dichotomy of homophobic countries and gay-friendly welcoming state that underpins homonationalism, a door can be open.

As mentioned above, it was around 2010 when high-profile politicians in the liberal democratic countries of the global North started designating LGBT human rights as an important issue and putting it in the context of human rights diplomacy. As explained in Puar’s discussion of homonationalism, the desirable, vulnerable and possibly productive queer to be saved needs to be situated in relation to homophobic others; both justify the state’s intervention (often with force) in the homophobic global South. One such example can be found in the speech below by former Vice President Biden at an event organised by the Human Rights Campaign in Los Angeles, California in March 2014:

In Nigeria, even supporting LGBT organizations can land you in prison for a decade. Closer to home, in Jamaica, we hear

corrective rape for lesbian women. The world was outraged when we found out about genital mutilation that takes place in some African countries. Corrective rape? What in God's name are we talking about? How can a country that speaks in those terms be remotely considered to be a civil society? (Applause.) [...] Uganda, a nation where you can go to prison for life for so-called aggravated homosexuality whatever the hell that is. (Laughter.) Aggravated homosexuality? Whoa. There are some sick people in the world. (Laughter and applause.) [...] Barack [Obama] and I believe that the rights of LGBT people is an inseparable part of America's promotion of human rights around the world. No, no, no, it really— it cannot, is not distinguishable. It's a false distinction made in the past. The first and most important thing this administration has done is to use the bully pulpit of the most powerful nation on Earth to stand up in defence of LGBT rights around the world. It means speaking up against the criminalization of LGBT status or conduct, as President Obama has ordered all agencies working overseas to do (White House 2014).

By depicting Nigeria, Jamaica and Uganda as prime examples of homophobic and uncivilised countries, which even led to the audience laughing, Biden confirmed that the US, “the most powerful nation on Earth,” must defend LGBT rights and the world. In this same speech, Biden referred to existing human rights diplomacy policy for the protection of LGBT refugees and asylum seekers. Reflecting on US history, the narrative that once framed refugees from Cuba and Vietnam as protected subjects championed under the guise of saving victims from communism and socialism during the Cold War has already lost its diplomatic value.

Instead, in the last decade, we have witnessed the emergence of a new narrative: the construction of “LGBT refugees and asylum seekers” as a focal point, reinforcing the US's advocacy for LGBT rights and potentially justifying intervention in homophobic countries deemed underdeveloped.

In the case of Canada, Suzanne Lenon and OmiSoore Dryden (2015) argue that homonationalism collaborates and revitalises Canada's image of being a peaceful safe haven. An example of this narrative can be found in the portrayal of Canada as a refuge for African and African American refugees escaping slavery in the US during the nineteenth century through the Underground Railroad.¹¹ The idealised vision of Canada, rooted in hopeful mythology, allows the Canadian nation-state and its citizens to overlook not only the harsh realities of slavery in the past but also the ongoing presence of racism in Canada (McKittrick 2007). Lenon and Dryden note the use of railway terminology in the site of homosexual inclusion, such as Civil Marriage Trail of 2004, an event where US couples came to Canada for marriage in memory of the historic freedom trail route from New York State to Toronto, Ontario. Another recent example they mention is the name of the organisation, Rainbow Railroad, an NGO now partnering with the government for queer refugee resettlement. The organisation positions itself as continuing the historical legacy by assisting LGBTIQ+ individuals around the world (Lenon and Dryden 2015; Rainbow Railroad 2021), while their current actual programme employs more nuanced approach, seeking expertise and knowledge from local queer communities where queer refugees stay, than what their railway terminology indicates.¹²

IV. Queer immigrants as a threat to homeland security

The notion that LGBTIQ+ rights and protection represent a consistently principled history of human rights expansion needs to be reconsidered. This section aims to briefly historicise the “protection of LGBTIQ+ refugees and asylum seekers” by reminding us of how such individuals were excluded as national security threats, using the US and Canada as examples.

Throughout much of the twentieth century, non-heterosexuality and non-cis gender were considered and categorised as immoral, deviant, criminal and/or diseases in North American discourses on nationalism and citizenship. Particularly during the Cold War, parallel to the repression of internal political dissent, an anti-homosexual security campaign was waged both in Canada and the US, linked to anti-communist and anti-Soviet campaigns. Through a critical reading of the Canadian state security documents from the late 1940s, 1950s and 1960s, Gary Kinsman (1995) investigates how homosexuality was designated a “national security threat” based on the “character weakness” of such individuals and how the conception of character weakness was used as part of such campaign. In conservative and even liberal discourse, homosexuals were associated directly with communism or were seen as easy targets for blackmail (Kinsman 1995, 138). Canada’s response to Cold War security concerns was reflected in amendments to the 1952 Immigration Act (Girard 1987). The provisions of 1952 Immigration Act marked the first explicit exclusion of homosexuality and the use of homosexuality as a basis for denying entry into Canada. Homosexuals were categorically excluded from Canada, alongside groups such as “prostitutes,” “pimps” or those deemed to be

arriving for “any other immoral purposes.”¹³ This exclusion continued until 1977 when the discriminatory provisions were repealed, thereby lifting the ban on gay men and lesbians from entering the country (LaViolette 2004).

Although it is known that the anti-communist campaign was more extensive in the US than in Canada, US immigration law did not explicitly exclude homosexuals during the same period. Instead, homosexuality had been included in the categories of immoral behaviour, burdens on public charge and mental deficiency. Margot Canaday (2009) and Eithne Luibhéid (2002) examine the US’s historical exclusion of queer individuals dating back to the nineteenth century. In 1891, the Immigration and Naturalization Act (INA) introduced related clauses like “public charge” and “moral turpitude provision,” which were employed to exclude homosexual aliens by labelling them as potential public burdens or perpetrators of moral crimes. The Immigration Act of 1917 specifically restricted entrants who exhibit “constitutional psychopathic inferiority,” a legislative classification also used to discriminate based on sexual orientation. In addition, the 1952 revision of the 1917 INA explicitly cited “psychopathic personality” as grounds for the exclusion and deportation of homosexuals (Canaday 2009, 214-215). These exclusionary clauses persisted, barring the entry of queer foreigners until 1990.¹⁴

While queer citizens and non-citizens were both viewed through the prism of national security, queer aliens were subject to extensive control by the state. Immigration control, with its power to deny individuals entry or physically expel them through deportation, actively shapes the delineation of citizens and non-citizens or desirable and undesirable aliens. It is a domain where the state simplifies intricate social realities into legible

categories, such as homosexual (Scott 1998), enabling selective legal status while excluding others who are tied into security concerns. Thus, what we have witnessed since around 2010 is a significant shift in the categorisation of some queer individuals from threat to subjects of protection.

V. Unsaved queer asylum seekers at the border and before entry

The transformation of queer individuals, once perceived as a threat, into subjects of protection represents a pivotal aspect of global sexual politics. If we see this transformation from threat to subject of protection as “progress,” we run the risk of overlooking queer individuals who remain a threat and are left “unsaved.” It is also imperative to recognise that this transition is not a unidirectional, immutable process. The paradigm shift does not necessarily guarantee a universally safe place for all LGBTIQ+ refugees and asylum seekers, in particular when national security concerns regarding unwanted immigrants increase to the point of ignoring desirable queer others. The last part of this paper presents the case of border control policy under the Trump administration (2017-2020) which ultimately targeted queer asylum seekers as subjects of restriction and the work of Edward Ou Jin Lee (2018) that emphasises the settler colonial history of Canadian migration policy and highlights the experiences of queer individuals before entry and their long-term relationship with refusal.

While the term “refugee” has been used broadly in this paper, at this point, I highlight the instrumental distinction between the terms “refugee” and “asylum seeker” that underlies the politics of asylum. As mentioned previously, refugee protection systems in some Western

countries such as the US, Canada, Australia, Germany, UK and France can be broadly categorised into two types: refugee resettlement, which involves the reception and placement of refugees outside the country, and asylum, which involves evaluations of asylum claims from individual asylum seekers (or refugee claimants) within the territory or at the border of the country. However, the differences between the two are not merely institutional but also involve multiple political factors. Matthew Gibney (2004) explains the difference between resettlement and asylum from three perspectives: international and moral obligations regarding refugee protection, the ease of managing the number and profile of arrivals, and the state’s response to security concerns. When deciding on reception through resettlement, refugees usually stay in refugee camps or cities in the first country of asylum before arriving in the resettlement country. Therefore, at this point, states are not required to adhere to the international obligation of the non-*refoulement* principle and can determine who and how many refugees to accept based on their interests and available resources. In contrast, the arrival of asylum seekers triggers international obligations, as they are physically present within state territories; at the same time, the number of arrivals and asylum seeker profiles are not easy to anticipate and control.

From a geographical perspective, discussions have revolved around the spatial aspects of asylum, focusing on these dynamics. The global North countries have considered the arrival of asylum seekers in their territories, where national sovereignty is exercised as a matter of national security. Jennifer Hyndman and Alison Mountz (2008) highlight the geographic externalisation of asylum since the 1990s and identified state strategies that seek to prevent the possibility of asylum seekers physically reaching the territory

where national sovereignty is exercised without explicitly violating the non-refoulement principle. J. Hyndman and Wenona Giles (2011) argue that portraying refugees who remain in the global South and await third-country resettlement as vulnerable, passive and immobile beings contributes to the feminisation of asylum. By contrast, asylum seekers moving to the global North are endowed with aggressive masculinity, which categorises them as a threat and transforms them into subjects of restriction. This politics of asylum has also been reflected in the protection of LGBTIQ+ refugees and asylum seekers. The global politics of sexuality only function in the protection of resettlement refugees but not asylum seekers at the border or in the territory. The above-mentioned policies and discourse focus only on refugees to be resettled who are still outside of global North countries.

Refugees and asylum seekers have often been employed in former US President Trump's rhetoric of immigration exclusion and have also been restricted in practice. Over the four years of the Trump administration, a total of 472 administrative measures related to immigration policies were instituted (Bolter et al. 2022). The most successful among these measures, especially in terms of restricting access to asylum at the US-Mexico border, was the Migration Protection Protocol (MPP), commonly known as the Remain in Mexico policy, implemented on 28 January, 2019 that has lasted until October 2022. Under the MPP, asylum seekers at the border were prevented from remaining within US territory, forcing non-Mexican nationals without regular entry status to await their turn for processing and proceedings on the Mexican side for several months. The MPP primarily targeted individuals from El Salvador, Honduras and Guatemala. As of December 2020, 68,039 individuals had returned to Mexico under the MPP, of which 19,707

were subjected to MPP screening. Among those subjected to MPP screening, only 531 individuals received humanitarian considerations, such as asylum recognition or withholding removal after immigration court proceedings (Department of Homeland Security 2021).

Among the Trump administration's immigration policies, no specific measures tailored to immigrants or refugees from sexual and gender minority backgrounds were identified. The only exception is a mention of exemptions from the MPP in its guidelines issued to standardise discretion in the field. The initial guidelines, issued in January 2019 when the MPP was introduced stated that unaccompanied children and those with physical or mental health issues were exempt from the MPP (Customs and Border Protection 2019). Almost two years after the introduction, such exemption criteria were revised in December 2020. Specific instructions stated that individuals who identified as gay, lesbian, bisexual, transgender, intersex or gender non-conforming would not be exempt solely based on their identity. The fact that gender identities and sexual orientation were explicitly mentioned here suggests that individuals from these backgrounds may have previously received exemptions from the MPP to some extent. Some conservative media have criticised such exemptions as abuses of the asylum system (Giaritelli 2019). The guidelines aim to restrain these individuals by explicitly naming them. The intensified securitisation policies appear to have sought to include queer asylum seekers in a group of general asylum seekers who are subject to restriction. The functionality and effectiveness of pushing back asylum seekers at the border exceed the intention to "save brown homosexuals."¹⁵

Queer individuals who attempt to move to Canada by themselves also easily become subject to border control and immigration restrictions.

Edward Ou Jin Lee (2018) analyses the intricate dynamics of Canada's border regime, which effectively obstructs individuals hailing from the global South from gaining entry. Lee undertakes a critical analysis of this restrictive border apparatus through the prism of coloniality, elucidating how the lives of queer and trans migrants are indelibly influenced by the obscured history of colonial violence. Lee's work contextualises the visa eligibility barriers encountered by queer and trans individuals originating from countries such as Rwanda, Cameroon and Jamaica seeking entry into white/Western states. Lee inquires into the "long-term relationship with ineligibility" experienced by certain interview participants, stressing a protracted state of marginalisation rather than merely transient encounters with visa restrictions. These individuals recount enduring rejections dating back to their teenage age with recurrent endeavours to secure temporary visas or study permits due to the geopolitical and locational contexts within which queer migrants are situated. Lee argues that prevailing narratives portraying selected LGBTIQ+ refugees as exceptional beneficiaries of Canada's benevolence perpetuate a discourse that obfuscates the stark realities faced by individuals from the global South, including queer asylum seekers, who encounter systematic refusals prior to their entry.

Despite the autonomy maintained by both North American nations in administering their respective immigration, refugee and asylum protocols, their border policies conspicuously exclude queer migrants and asylum seekers who come to change their situations by themselves. Queer individuals fleeing from the global South whose regions and countries are discursively entrenched in homophobic ideologies must wait to be "rescued" within the first country of asylum. Once such individuals are on the move by of

their own accord, they again become national security threats. The act of moving on to seek asylum invariably triggers a reinstatement of their categorisation as potential national security threats, thereby perpetuating a cycle of marginalisation and vulnerability.

VI. Conclusion

Western governments currently emphasise LGBTIQ+ rights within their foreign policy frameworks based on a narrative of progressive global sexuality politics. The international refugee protection regime adds legitimacy to and reinforces this narrative with its discourse of rescue and saving. Queer refugees and asylum seekers are now considered subjects of international protection, needing to be rescued from homophobic countries in the global South by sexually progressive liberal democratic countries in the global North. However, the notion that LGBTIQ+ politics represent a consistently principled history of human rights expansion must be critically historicised. This paper points out that the US and Canadian immigration regulations, for example, have historically framed homosexuals as a national security threat. In addition, recent immigration and asylum restrictions in the global North indicate that the change in perception of queer refugees as threats to subjects of protection does not necessarily indicate linear irreversible progress but rather reflects the politics of asylum. Queer individuals who attempt to move to safe havens of their accord are subject to border control and immigration restriction due to continued categorisation as threats, while LGBTIQ+ refugees waiting for rescue can remain subject of protection. While it has been argued that those excluded from a nation-state and subjected to state-driven

violence are (imagined) “brown homophobes” in Puar’s homonationalism, “brown homosexuals” are also subject to exclusion within refugee and migration regimes. Homonationalism works hand in hand with global sexuality politics and claims to save LGBTIQ+ refugees within a framework of refugee resettlement, but it does not rescue “brown homosexuals” who are on the move and do not wait for its progressive and generous gesture of rescue.

As a last note, I will share a recent remark by Suella Braverman, former British Secretary of State for the Home Department. On September 2023, Braverman delivered a speech at a meeting of the American Enterprise Institute, a conservative think tank based in Washington, DC. She delivered her keynote on “uncontrolled illegal immigration as a serious shared global issue” in which she addressed the problems of the global asylum system as a factor of the immigration crisis and rereferred gays and women:

Let me be clear, there are vast swathes of the world where it is extremely difficult to be gay, or to be a woman. Where individuals are being persecuted, it is right that we offer sanctuary. But we will not be able to sustain an asylum system if in effect, simply being gay, or a woman, or fearful of discrimination in your country of origin, is sufficient to qualify for protection (American Enterprise Institute 2023).

Braverman’s statement reveals the reversible nature of the shift in categorisation from security threat to subject of protection with regard to gender and sexuality. The global discourse on forced migration and its intersection with sexuality continues to be a pressing issue that demands nuanced discussions including on the necessity as well as

the danger of advocating for the expansion and institutionalisation of international protection for LGBTIQ+ refugees and asylum seekers.

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Notes

- 1 In this paper, I use LGBT, LGBTQ, and LGBTIQ+ interchangeably but also the choice reflects the evolving usage of these terms over time and the context: LGBT was more prevalent prior to the early 2010s; LGBTQ gained prominence in the 2010s and LGBTIQ+ in the 2020s.
- 2 Regardless of this shared international commitment, there were discussions regarding the legitimacy of SOGI rights persist within the Commonwealth (Lennox and Waites 2013) and the Inter-American Court on Human Rights (BBC News 2018).
- 3 Besides the Government of France, which is cited here, see the Government of Germany (2021) and the Government of Canada (2023). It is noted that states that promote LGBTQ rights include some non-global North countries, such as Brazil (Nogueira 2017).
- 4 While Rao’s use of the dichotomy of the Third World and the West requires further nuanced and contextualised interpretation, I use the terms the global South and the global North in this paper to highlight the discursive dichotomy as well as hierarchy, which may not reflect the complexities in many contexts. Both the term Third World and the global South are not to be understood exclusively in a geographical or territorial sense. They speak of the history of imperialism and colonialism and

are capable of projecting a subaltern geopolitical identity, presenting different ways to belong in the international system (Ballestrin 2020).

5 The four other components are race, religion, nationality and political opinion.

6 Designated agencies include the Departments of State, the Treasury, Defence, Justice, and Homeland Security, the US Agency for International Development (USAID) and others.

7 In the US context, those in a country of first asylum means refugees waiting for third-country resettlement. Note that in the EU and other contexts, the concept of country of first asylum has been mainly applied to deny asylum to those who come through other countries before their arrival.

8 The “2S” stands for “Two-spirit” and refers to conceptions of sexuality and gender in some Indigenous communities in Canada. The acronym LGBTQ2I was also commonly used.

9 This population do not include Palestine refugees under UNRWA’s mandate.

10 While this paper focuses on the discourse around queer refugees and asylum seekers, scholars have also investigated how refugee women are linked to “vulnerability” (e.g. Freedman 2007).

11 The Underground Railroad was a clandestine network operating in the Northern states of the US before the Civil War. Its purpose was to aid escaped slaves from the Southern states, guiding them to safety in the North or Canada with the assistance of sympathetic Northerners. The name “Underground Railroad” was metaphorical, signifying the need for secrecy in its operations, often conducted under the cover of darkness or disguise. (Britannica 2024, <https://www.britannica.com/topic/Underground-Railroad>).

12 Although Lenon and Dryden (2015) are critical of the organisation’s use of the Underground Railroad terminology, I have observed that representatives of Rainbow Railroad actively engage in critical discussions about racism and xenophobia in Canada. These issues were addressed, for example, at a Pride Toronto event meeting titled ‘Understanding the State of Global LGBTQI+ Persecution and How Can Canada Help?’ held at Canadian Club Toronto in June 2024.

- 13 Immigration ACT R.S.C. 1952, c.325, s.5(e)
- 14 Security concerns surrounding HIV/AIDS further marginalised queer migrants until 2009. See Kudo (2022, 63-65).
- 15 See Kudo (2023) for further analysis of MPP as well as the public health-related border control policy.

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要旨

脅威から保護の対象へ ——グローバルなセクシュアリティの政治と難民保護

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本稿は、ここ20年で人権外交においてLGBTIQ+の権利に注目が集まってきた事象に焦点を当てながら先進性のナラティブに支えられたグローバルなセクシュアリティの政治について考察する。特に、難民保護レジームが、こうした政治が展開される重要な場として機能していることを議論する。難民の「救済」のナラティブは、ホモフォビックな国からの「救済」と共鳴し、「LGBTIQ+ 難民・庇護希望者」の保護は、いまや国際的な優先課題と認識されている。しかし、アメリカやカナダの移民政策の歴史を紐解けば、クィアな人々がこれまで国家の安全保障上の脅威とされてきたことが指摘できる。さらに、近年の移民や庇護希望者の規制政策は、クィアな難民を脅威から国際的保護の対象とみなす変化のプロセスが、決して直線的で不可逆的なものとはいえないことを示している。むしろ、ここには庇護のポリティクスが反映されており、移動を試みる庇護希望者は安全保障上の脅威であり続けていることがわかる。

キーワード：グローバルなセクシュアリティの政治、クィア、LGBTIQ+、難民、庇護、先進性のナラティブ

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