

A Review of The Safe Third Country Agreement and The Right to Seek Asylum: A Critical Review of Legal Frameworks, Human Rights Standards, And Access to Protection

OGHENEHORO EVI ENI

Abstract- The Safe Third Country Agreement (STCA) is a bilateral arrangement between Canada and the United States that determines where asylum seekers may submit refugee claims at the shared land border. This review paper critically examines the STCA in relation to the internationally recognized right to seek asylum. Drawing on legislation, court decisions, policy documents, academic scholarship, and recent human rights reports, the paper reviews the legal foundations of the Agreement, its consistency with international human rights standards, and its practical impact on access to protection. The review finds that while the STCA is legally justified as a border-management tool, serious concerns remain regarding procedural fairness, access to exceptions, and the risk of indirect refoulement. Recent policy expansions and enforcement trends further challenge the balance between state sovereignty and refugee protection. The paper concludes that the STCA continues to restrict meaningful access to asylum and requires sustained legal scrutiny and policy reform to ensure compliance with human rights obligations.

Keywords- *Safe Third Country Agreement; right to seek asylum; non-refoulement; procedural fairness; Canada–United States border*

I. INTRODUCTION

Seeking asylum is a fundamental human right recognized under international law. According to the Universal Declaration of Human Rights, Article 14(1) every person has the right to seek and enjoy asylum from persecution in other countries (UN General Assembly, 1948).

This right is also reflected in regional and international treaties, including the 1951 Refugee Convention and its 1967 Protocol, which establish that people fleeing violence, persecution, or serious

harm should not be returned to danger, a principle known as non-refoulement (UNHCR, 2022).

Despite these protections, states retain the authority to regulate entry into their territory. In practice, this means that access to asylum is shaped not only by international law but also by domestic border and immigration policies. One such policy is the Safe Third Country Agreement (STCA) between Canada and the United States, two neighboring countries with closely linked immigration systems.

The STCA determines where asylum seekers can make refugee claims when they arrive at the shared land border. Under the Agreement, most asylum seekers entering Canada from the United States are expected to make their claim in the United States, rather than in Canada, unless they qualify for specific exceptions (Government of Canada, 2024).

The STCA was originally designed to manage bilateral cooperation and prevent “asylum shopping”; that is, movement from one country to another in search of better chances of protection (Harris and Albo, 2023). However, critics argue that the Agreement poses significant barriers to meaningful access to asylum, particularly because the United States’ asylum system has faced criticism over detention practices, limited legal support for claimants, and high thresholds for protection (Canadian Council for Refugees, 2023). These concerns question whether the United States consistently meets the conditions of a “safe” country under international human rights standards.

The Agreement also involves procedural limits that have drawn legal challenges. In Canada, courts have

reviewed whether the STCA violates constitutional protections by exposing individuals to risk of harm, but rulings have declined to strike it down, emphasizing legislative authority and diplomatic cooperation (Supreme Court of Canada, 2023).

Meanwhile, human rights advocates emphasize that legal form should not overshadow the actual lived experiences of asylum seekers who may face detention or deportation after being returned to the United States (The Guardian, 2026).

The STCA also expanded in 2023 to cover the entire land border, including areas where asylum seekers cross irregularly but present themselves within a short timeframe at a port of entry. This change increased the number of individuals affected by the Agreement and intensified public debate about access to protection (Harris and Albo, 2023; Reuters, 2025).

Given this context, a critical review of the STCA is timely and necessary. This paper seeks to examine how the Agreement aligns with international human rights obligations related to the right to seek asylum, what legal frameworks support or challenge its application, and how it affects access to protection for those fleeing persecution.

By synthesizing legal analysis, scholarly research, and human rights reporting, this review aims to clarify both the intentions and the real-world effects of the STCA.

II. METHODOLOGY

This review adopts a qualitative, narrative literature review approach to examine the Safe Third Country Agreement (STCA) between Canada and United States. A narrative review is appropriate because the topic combines legal analysis, human rights interpretation, and policy evaluation, which cannot be fully captured through statistical methods alone. Instead, it allows for a structured synthesis of legal texts, academic debates, and real-world evidence about how asylum seekers experience border governance (Grant and Booth, 2009; Snyder, 2019).

2.1 Research Design

The study uses a thematic review design, meaning that literature was grouped into major themes including:

Legal foundations of the STCA, International refugee law and the right to seek asylum, Human rights critiques and protection gaps, Procedural fairness and access to asylum systems, and Recent policy and enforcement developments.

This thematic structure helps to compare how different sources interpret the same policy from legal, humanitarian, and practical perspectives (Snyder, 2019).

2.2 Data Sources and Literature Selection

The review draws on multiple sources to ensure a balanced analysis:

2.2.1 International legal instruments: These include the 1951 Refugee Convention, the 1967 Protocol, and guidance from the United Nations High Commissioner for Refugees (UNHCR). These documents define core obligations such as non-refoulement and fair access to asylum procedures (UNHCR, 2022).

2.2.2 Domestic legal and policy documents: This includes Canadian immigration legislation, STCA regulations, and official policy statements from the Government of Canada (2024), as well as U.S. asylum policy frameworks.

2.2.3 Judicial decisions: Key court rulings, including decisions from the Supreme Court of Canada, were analyzed to understand constitutional interpretations of the STCA and its compatibility with rights protections (Supreme Court of Canada, 2023).

2.2.4 Academic literature: Peer-reviewed journal articles and books on refugee law, migration governance, and crimmigration studies were included to provide theoretical and critical perspectives (García Hernández, 2023; Foster, 2019).

2.2.5 Human rights reports and grey literature: Reports from organizations such as the Canadian Council for Refugees and international advocacy

groups were used to capture real-world experiences and documented protection concerns (Canadian Council for Refugees, 2023).

2.2.6 Recent media investigations and policy reporting: Credible journalism sources such as Reuters (2025) and The Guardian (2026) were included to reflect the most recent developments and enforcement patterns affecting asylum seekers at the border.

2.3 Inclusion and Exclusion Criteria

To ensure relevance and reliability, the following criteria were applied:

2.3.1 Inclusion criteria: these includes; publications from 2018–2026 (with some foundational legal texts included), English-language sources, peer-reviewed journal articles, legal reports, government documents, and reputable NGO publications, and materials directly addressing the STCA, asylum law, or refugee protection in North America

2.3.2 Exclusion criteria: these includes; opinion pieces without evidence or documentation, non-verifiable blog posts or informal commentary, and duplicate or outdated policy interpretations that do not reflect current STCA rules

2.4 Analytical Approach

The selected materials were analyzed using thematic content analysis. This involved: reading and coding texts according to recurring themes (e.g., “safety of third country,” “procedural fairness,” “risk of refoulement”), Comparing legal interpretations across different sources, Identifying areas of agreement and disagreement between governments, courts, and human rights organizations, and synthesizing findings into a coherent narrative about the effectiveness and limitations of the STCA

This approach allows for a structured interpretation of complex legal and human rights issues while maintaining flexibility to incorporate recent developments (Braun and Clarke, 2006).

2.5 Limitations of the Review

This review has several limitations. First, it relies heavily on publicly available documents, which may not fully capture confidential government assessments or unpublished asylum case data.

Second, media reports may contain narrative framing biases, although they are useful for identifying recent trends.

Finally, because asylum systems evolve quickly, some policy developments may change after publication, especially in politically sensitive border governance contexts.

Despite these limitations, the combination of legal, academic, and human rights sources strengthens the reliability of the findings and provides a comprehensive understanding of the STCA.

III. LEGAL FRAMEWORK OF THE SAFE THIRD COUNTRY AGREEMENT

The Safe Third Country Agreement (STCA) is a bilateral legal arrangement between Canada and United States that regulates where asylum seekers can apply for refugee protection at the shared land border.

It is built on the idea that a person must seek asylum in the first safe country they enter, rather than choosing between the two countries after arrival.

3.1 International Legal Basis

The STCA is grounded in international refugee protection principles, especially the 1951 Refugee Convention and its 1967 Protocol, which both countries have ratified.

These instruments require states to protect refugees and uphold the principle of non-refoulement, which means no one should be returned to a country where they face persecution or serious harm (UNHCR, 2022).

However, international law does not explicitly require asylum seekers to apply in the first safe country they reach. Instead, it requires that: asylum seekers have access to a fair and effective asylum

procedure, and they are not sent back to danger directly or indirectly (UNHCR, 2022).

This is where the STCA becomes controversial: while it is designed to organize responsibility-sharing, critics argue it may limit access to asylum procedures rather than expand protection.

3.2 Domestic Legal Foundation in Canada

In Canada, the STCA is implemented through the Immigration and Refugee Protection Act (IRPA). Section 102 of the IRPA allows the government to designate countries as “safe third countries” if they: are party to the Refugee Convention and the Convention Against Torture, respect human rights, and provide a fair asylum system (Government of Canada, 2024).

Under this law, the United States is currently the only country designated as safe for return purposes. The Agreement is therefore legally binding in Canadian immigration law, meaning that border officials must return asylum seekers to the U.S. unless they qualify for an exception.

3.3 Domestic Legal Framework in the United States

On the U.S. side, the STCA is not implemented as a single statute but operates through existing immigration laws and administrative enforcement systems. The U.S. asylum system is governed primarily by:

the Immigration and Nationality Act (INA), asylum regulations under the Department of Homeland Security, and immigration court procedures for refugee protection claims. Together, these rules allow the U.S. to receive returned asylum seekers from Canada and process their claims under U.S. law.

3.4 Structure and Operation of the Agreement

The STCA was first signed in 2002 and came into force in 2004 as part of the broader Canada–U.S. Smart Border Action Plan (LegalClarity, 2025).

Its legal rule is simple, asylum seekers must apply for protection in the first country they enter, either Canada or the U.S. (LegalClarity, 2025; Canada.ca, 2026).

However, the Agreement includes important exceptions, such as: individuals with close family members in the destination country, unaccompanied minors, certain visa or legal document holders, and public interest exemptions (Government of Canada, 2024)

These exceptions are intended to ensure compliance with humanitarian principles, but in practice they are often difficult to access due to fast border procedures and limited legal support.

3.5 2023 Expansion of the STCA

A major legal development occurred in March 2023, when Canada and the United States expanded the STCA to apply across the entire land border, not only at official ports of entry (Canada.ca, 2026).

Before this change, some asylum seekers crossed irregularly and still accessed the Canadian asylum system. After the expansion: individuals crossing anywhere along the border can be returned to the U.S., claims made within 14 days of entry may still fall under the Agreement, and enforcement became more consistent and stricter (Canada.ca, 2026). This expansion significantly strengthened the legal reach of the STCA and reduced alternative pathways for asylum seekers.

3.6 Judicial Interpretation and Constitutional Review

The STCA has been challenged in Canadian courts on the basis that it may violate constitutional rights, especially section 7 of the Canadian Charter of Rights and Freedoms (life, liberty, and security of the person).

In 2023, the Supreme Court of Canada upheld the Agreement, ruling that: the U.S. can still be considered a “safe” country in law, and existing exceptions provide sufficient legal safeguards (Supreme Court of Canada, 2023).

However, critics argue that the Court focused more on legal structure than on real-world outcomes for asylum seekers, including detention and deportation risks after return to the U.S. (Canadian Council for Refugees, 2023; Reuters, 2025).

3.7 Human Rights Tensions in the Legal Framework

Although the STCA is legally valid in domestic law, it remains controversial under human rights standards. Major concerns include: whether the U.S.

consistently meets “safe country” standards in practice, whether returning asylum seekers exposes them to indirect refoulement, whether procedural barriers prevent meaningful access to exceptions, and whether the Agreement prioritizes border control over protection (UNHCR, 2022; CCR, 2023)

Recent reports also show increasing numbers of asylum seekers being returned and later detained or removed from the U.S., raising questions about whether the legal assumption of “safety” still holds in practice (The Guardian, 2026; Reuters, 2025).

Furthermore, the legal framework of the STCA is built on a combination of: international refugee law principles, Canadian immigration legislation (IRPA), U.S. asylum and immigration law, and a bilateral treaty between Canada and the United States.

While it is legally structured to promote cooperation and efficiency, its expansion and strict application have intensified debate about whether it still aligns with the right to seek asylum and international protection standards.

IV. THE RIGHT TO SEEK ASYLUM UNDER INTERNATIONAL LAW

The right to seek asylum is one of the most important protections for people fleeing persecution, violence, or serious human rights violations. It is not just a moral idea; it is also recognized in international law, even though its application depends on how states design their national asylum systems.

4.1 Legal Recognition of the Right to Seek Asylum

The right to seek asylum is first clearly stated in the Universal Declaration of Human Rights (UDHR). Article 14(1) provides that: “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (UN General Assembly, 1948).

However, the UDHR does not explain how asylum must be granted. Instead, it sets a broad human rights

principle that later legal instruments developed further.

The 1951 Refugee Convention and its 1967 Protocol are the main legal frameworks that define who qualify as a refugee and what protections they should receive. These treaties require states to identify refugees and ensure they are not returned to danger (UNHCR, 2022).

Importantly, international law does not give individuals an automatic right to be granted asylum in a specific country. Instead, it guarantees: the right to apply for asylum, the right to a fair hearing, and protection from being returned to danger (UNHCR, 2022).

4.2 The Principle of Non-Refoulement as the Core Protection

At the heart of asylum law is the principle of non-refoulement, which means that no person should be returned to a country where they face persecution, torture, or serious harm.

According to UNHCR, non-refoulement is: the “cornerstone of asylum and international refugee protection” (UNHCR, 2022).

This principle is found in: Article 33 of the 1951 Refugee Convention, International human rights treaties (such as the Convention Against Torture), and Customary international law, meaning it binds all states regardless of treaty membership (UNHCR, 2022)

This means: even if a country does not fully accept an asylum claim, it must not send a person back to danger. This principle is what gives real meaning to the right to seek asylum. Without it, asylum systems would not provide real protection.

4.3 Asylum as a Process, Not Just a Right

International law treats asylum as a process, not just an outcome. This means people must be able to: physically reach a country where they can ask for protection, access asylum procedures, and have their claim individually assessed

As UNHCR explains, asylum includes “protection from being returned to danger, permission to remain in the asylum country, and access to fair procedures” (UNHCR, 2022).

This is important because many modern migration policies do not deny asylum directly, they instead make access to the process more difficult (for example, through border rules or transfer agreements like the STCA).

4.4 Relationship Between Asylum and State Sovereignty

A major tension in international law is between: the right to seek asylum, and a state’s right to control its borders. States are allowed to decide who enters their territory. However, this power is limited by human rights obligations.

Courts and international bodies have consistently stated that border control measures must still respect non-refoulement and fair procedure standards (UNHCR, 2022; Khaitan and Krishan, 2022).

This means that while states can regulate migration, they cannot do so in a way that: blocks access to protection entirely, exposes people to return to danger, and denies fair asylum procedures

4.5 Modern Challenges to the Right to Seek Asylum

In recent years, scholars and human rights organizations have noted that the right to seek asylum is increasingly affected by externalization policies. These are policies where countries shift responsibility for asylum processing to other states or regions.

Such policies raise concerns because they may: limit access to territory where asylum can be claimed, create legal “gaps” where no country takes responsibility, and increase the risk of indirect refoulement

UNHCR has repeatedly emphasized that states must ensure that asylum seekers have real and practical access to protection procedures, not just theoretical rights on paper (UNHCR, 2022).

4.6 Application to Contemporary Systems like the STCA

In the context of the Safe Third Country Agreement, the right to seek asylum becomes more complicated. While both Canada and the United States are considered “safe” countries in law, critics argue that: access to asylum may be restricted at the border, procedural fairness may be reduced due to fast processing, and individuals may not fully understand their rights or exceptions. These concerns highlight the gap between formal legal rights and practical access to protection.

Furthermore, the right to seek asylum under international law is a fundamental human rights principle, but it operates mainly through procedural guarantees and the principle of non-refoulement rather than a guaranteed right to enter a specific country.

While international law protects access to asylum procedures and safety from return to danger, its effectiveness depends heavily on how states design and apply their border and immigration systems.

V. HUMAN RIGHTS CONCERNS ASSOCIATED WITH THE SAFE THIRD COUNTRY AGREEMENT (STCA)

The Safe Third Country Agreement (STCA) between Canada and United States raises serious human rights concerns because it directly affects whether people fleeing danger can safely access asylum protection.

Although the Agreement is presented as a legal and administrative tool for managing border flows, many scholars, courts, and human rights organizations argue that its real-world effects can conflict with international refugee protection standards.

5.1 Risk of Indirect Refoulement

One of the most serious concerns is the risk of indirect refoulement, which happens when an asylum seeker is returned to a “safe third country” but is later deported from that country to a place where they face persecution or harm. Under international law, states must not return anyone directly or indirectly to danger (UNHCR, 2022). However, critics argue that

the STCA can create a chain of transfers where protection is weakened rather than guaranteed.

Human rights groups report that asylum seekers returned to the United States may face: expedited removal procedures, denial of protection claims in certain categories, and deportation to countries of origin despite safety risks.

This raise concerns that the STCA may indirectly undermine the non-refoulement principle, even if Canada itself does not directly deport individuals to danger (Canadian Council for Refugees, 2023).

5.2 Questioning Whether the United States Is Always “Safe” in Practice

The STCA is based on the legal assumption that both Canada and the United States are “safe third countries.” However, critics argue that “safe” in law does not always match “safe” in practice.

Reports from advocacy groups highlight that the U.S. asylum system includes: prolonged immigration detention in some cases, inconsistent access to legal representation, complex and restrictive asylum eligibility rules, and variations in how refugee claims are assessed (CCR, 2023).

For example, some individuals who qualify for protection under international standards may still be denied asylum under U.S. interpretations of refugee law, especially in cases involving gender-based or gang-related persecution (UNHCR, 2022). This raises the concern that returning asylum seekers to the U.S. may expose them to legal uncertainty and reduced protection outcomes.

5.3 Procedural Fairness and Barriers to Accessing Exceptions

Another major concern is procedural fairness, which refers to whether asylum seekers have a real and fair opportunity to present their case. Although the STCA includes exceptions (such as family ties or unaccompanied minors), in practice: decisions at the border are often made quickly, asylum seekers may not fully understand their rights, access to legal assistance is limited, and language barriers can affect communication

Recent human rights reporting suggests that many individuals who may qualify for exceptions are still returned due to lack of awareness or inability to provide immediate proof (The Guardian, 2026). This creates what scholars describe as a gap between formal rights and practical access to justice, where protections exist on paper but are difficult to use in real life.

5.4 Detention and Criminalization of Asylum Seekers

Another major concern is the detention of asylum seekers after they are returned to the United States under the STCA. Investigative reports show that some individuals transferred from Canada are: detained by U.S. immigration authorities (ICE), held for extended periods while their claims are processed, and sometimes subject to expedited deportation procedures

Such detention practices raise human rights questions because asylum seekers are not criminals; they are individuals seeking protection. Critics argue that detention can have serious psychological and physical impacts, especially for vulnerable groups such as families and trauma survivors (Arbel, 2024; The Guardian, 2026).

5.5 Unequal Protection and Inconsistent Outcomes

A further concern is that the STCA can lead to unequal protection outcomes, depending on where a person makes their claim. Two individuals fleeing the same danger may receive very different results: one may access Canadian asylum procedures, and another may be returned to the U.S. and face stricter standards or denial

This inconsistency raises questions about fairness and equality in international protection systems. Scholars argue that asylum protection should not depend on geographic entry points alone, but on the individual’s need for protection (Foster, 2019).

5.6 Judicial Debate and Ongoing Criticism

The STCA has been challenged in Canadian courts on human rights grounds, especially under constitutional protections for life and security. While the Supreme Court of Canada upheld the Agreement in 2023, it did so based on the assumption that

existing legal safeguards are sufficient (Supreme Court of Canada, 2023).

However, legal scholars argue that courts may not have fully accounted for: real-life experiences of asylum seekers, systemic barriers in accessing protection, and evidence of detention and deportation risks. As Arbel (2024) notes, judicial reasoning in STCA cases may not fully reflect how the Agreement operates in practice, especially for vulnerable claimants.

Furthermore, the main human rights concerns associated with the STCA include: risk of indirect refoulement, uncertainty about the safety of asylum systems in practice, limited access to procedural fairness and exceptions, detention and harsh treatment of returned asylum seekers, and unequal protection results depending on entry location. These concerns suggest a persistent tension between border management objectives and international protection obligations.

REFERENCES

- [1] Arbel, E. (2024). Border trouble: Critical reflections on the Canada–US Safe Third Country Agreement litigation. *International Journal of Migration and Border Studies*, 8(3–4), 240–260. <https://doi.org/10.1504/IJMBBS.2024.145491>
- [2] Braun, V., and Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.
- [3] Canadian Council for Refugees. (2023). Why the United States is not safe for refugees. CCR.
- [4] Foster, M. (2019). *International refugee law and the protection of asylum seekers*. Oxford University Press.
- [5] García Hernández, C. C. (2023). *Crimmigration law and immigrant detention*. Oxford University Press.
- [6] Government of Canada. (2024). Canada–United States Safe Third Country Agreement: Policy overview. Immigration, Refugees and Citizenship Canada. <https://www.canada.ca>
- [7] Grant, M. J., and Booth, A. (2009). A typology of reviews: An analysis of 14 review types. *Health Information & Libraries Journal*, 26(2), 91–101.
- [8] Harris, K., and Albo, G. (2023). Expanding the Safe Third Country Agreement: Legal and humanitarian consequences. *Journal of Migration Studies*, 11(2), 88–104.
- [9] Khaitan, P., and Krishan, J. (2022). The obligation of non-refoulement and its erga omnes character. *Harvard International Law Journal*.
- [10] LegalClarity. (2025). US–Canada Safe Third Country Agreement explained. <https://legalclarity.org>
- [11] Reuters. (2025, September 18). Canada turns back more asylum seekers to U.S. despite third-country deportation risk.
- [12] Snyder, H. (2019). Literature review as a research methodology. *Journal of Business Research*, 104, 333–339.
- [13] Supreme Court of Canada. (2023). *Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship)*.
- [14] The Guardian. (2026, May 23). ‘Canada is handing people over to ICE’: refugees rejected at border face U.S. detention.
- [15] UN General Assembly. (1948). *Universal Declaration of Human Rights*. United Nations.
- [16] UNHCR. (2022). Access to territory and non-refoulement: Legal framework and guidance. <https://emergency.unhcr.org>
- [17] UNHCR. (2022). Advisory opinion on non-refoulement obligations. United Nations High Commissioner for Refugees.
- [18] UNHCR. (2022). Asylum and refugee status: Frequently asked questions. <https://help.unhcr.org>