



Photo: Globe & Mail (unauthorized)

# THE STORY OF THE SUN SEA

By: Gisele Gauthier  
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In my heart I wish we could wrap our arms around every single person whose world has crumbled and shelter them from care and share with them the peace and safety we are blessed with here in Canada.

While noble in spirit, I realize my fantasy is not possible in life. The sheer number of the world's 43 million displaced and struggling innocents is overwhelming. Governments everywhere pool foreign-aid resources, and humanitarian groups feverishly scramble to follow in the wake of natural disasters, wars, and tyrants.

As citizens of Canada, many of us have deep personal ties to people who live outside our country, and our concerns and anxieties can't help but extend beyond our borders. As compassionate human beings, it's only natural that we care about what happens to immigrants and refugees when they do come here.

We also want our national security forces to protect unfailingly the peace and freedom we all so highly value. In addition to overseeing this huge country from within, we expect our officials to protect us from foreign criminals and extremists.

It's a tall order, and a controversial one. Not everyone in Canada embraces immigration, and some even go so far as to say we should close our borders altogether. We pretty much all agree on preventing crime and terrorism, but how it's done, and how criminals and terrorists are identified as such, also remains controversial.

All these complicated issues came together with the arrival of a small Thai cargo ship called the MV Sun Sea. Crammed in its hold were 490 Tamil men, women and children who had endured a three-and-a-half-month journey across the Pacific Ocean in order to escape persecution in Sri Lanka.

The plight of the Sun Sea illustrates the difficulties faced by those who seek refuge in this manner. It was last April when the small thirty-year-old ship left Sri Lanka. As a suspected people-smuggling vessel, she was spotted by the Philippine Coast Guard as she left the Gulf of Thailand in May. Loaded with her freight of Tamil families, she was approaching Australia when she was turned back by their navy. According to reports, the Sun Sea then changed her course and headed for Canada.

On August 13<sup>th</sup>, long before daybreak, in a large and varied flotilla, the RCMP and the Navy waited 200 miles from shore to intercept the Sun Sea as she entered Canadian waters. When she was within our

jurisdiction, orders were called over to her which were calmly and readily complied with. The Sun Sea was then boarded and secured. Two navy tugs attached to each end of the ship proceeded to guide her towards Vancouver's harbour.

How anxious the people aboard the vessel must have felt as they waited below deck! After almost four gruelling months at sea, they had finally reached dry land. In the next few hours the strangers they would be meeting would hold the key to their lives and to their children's lives. Imagine the hopes and fears they all shared that momentous last night together!

Aside from the large police and navy flotilla which filled the harbour, on shore a wide array of people awaited the passengers. Government, military and federal officials, border protection officers, doctors, translators, advocates, the press, - they all stood fixated, staring at the infamous boat as it finally appeared in the early morning light.

Seeing the distinctive blue and red striped cargo ship for the first time, they gasped in dismay. The two tug boats almost equaled the length of the Sun Sea's. Reporters marvelled that a ship so small, only 59 metres long, and 10 wide, could hold 490 people at high sea for over three months. On deck Canadian officials wore surgical masks for protection against potential health risks. Although most of the Tamil people were still below in the hold, a few curious faces could be seen peeking out from under a tarp, one young man giving people a shy wave.

It was still dawn and the little cargo ship's blue and red stripes reflected in the placid waters of the natural harbour. Above, the blue sky was bathed in a rosy glow. Towering cliffs covered with lush greenery provided a gorgeous backdrop for the gleaming cluster of white tents installed to process the new arrivals. Ambulances stood by to take those who needed medical attention to a nearby hospital. Police buses were on hand to transport all the others to several local

prisons where they would remain while being investigated by the Canadian Border Services Agency. Social workers had arrived to take the children into foster care. Members of the Tamil community from across Canada were flying in to volunteer professional services and material aid.

Slowly, slowly, one at a time, officials gently guided the people off the ship and over the gangplank, holding black umbrellas over them, presumably to shield them from the press. From a distance one could see a woman in a flowing white skirt, and a man carrying belongings in large clear plastic bags; slow moving elderly people and young children clinging to their parents' hands; a little boy frightened to walk on the gangplank being kindly encouraged by the officer who was leading him. As they crossed that walkway and stepped onto that green shore, one can only imagine their wildly racing thoughts and the pounding of their hearts. Slowly, one by one, they were escorted beyond the trees and beyond the public's sight.

## **THE STORY BEHIND THE STORY**

I've got to stop reading those appalling comments, the ones written in response to articles about the Tamil asylum seekers from Sri Lanka. The dehumanizing insults and fear mongering one can find in these crude and mean-spirited 'have your say' forums is shameful. If only they were merely representative of a small group of nasty, uninformed ranters. Sadly, I also read blatantly prejudiced and unsubstantiated statements coming from officials within the Canadian government itself, and to me, that is by far more worrisome.

I've always felt tremendous pride in Canada for being a decent law-abiding country. The majority, I believe, still values fairness and compassion and, contrary to what I read in these low-brow forums, it does not take delight in ridiculing other people's misfortunes. It

would be good if we could all resist reducing these desperate souls to mere stereotypes and instead allow due process to take place before passing judgment.

Sri Lanka, from which these families are fleeing, is very vocal in charging that these yet-to-be-identified people are all hardcore terrorists. They had claimed the same about 76 other Tamil refugees who arrived last fall on the Ocean Lady, but none of their accusations stood. Now these same alarmists are again ringing the same bell. In the face of the United Nations, Amnesty International and many other Human Rights organizations, Sri Lanka refuses an independent enquiry into war crimes committed while implementing the gruesome final strategies which brought its 26-year-long civil war to an end.

Their Defence Secretary, the President's brother, has on Canadian television threatened to hang Sri Lanka's imprisoned Army Commander for treason should he attempt to testify against the Rajapaksa government. It is their usual procedure to discredit anyone whose testimonies could reflect badly on them, and their diplomatic representatives are the personification of political interference. In Sri Lanka reporters, aid workers, ordinary citizens - those who could cause embarrassment or trouble - have been tortured and 'disappeared'.

They continue to hound Tamils in their adopted countries everywhere and shamelessly attack anyone they feel has sympathy for them, including international politicians and the heads of humanitarian agencies. Toronto's Sri Lankan consulate has organized several anti-Tamil events over the last two years alone.

Just what is more threatening: the influence of an aggressive foreign government accused of genocide and a full menu of human rights violations in its civil administration, or a boatful of unfortunates who, along with their precious children, have taken a shot at being accepted as refugees in the only way open to them? Let them get visas the

normal way, you say? The trouble with that is that Canada's visa officers have no access to the North in Sri Lanka and the Tamil people of the shattered North are under tight military control with no freedom of movement.

Last fall when the *Ocean Lady* arrived off the coast of British Columbia carrying 76 Tamil men, the Canadian government took on an 'expert witness', Rohan Gunaratna, to bolster their case against the asylum seekers. Gunaratna bluntly stated that all the claimants were terrorists. This so-called unbiased expert failed to disclose that since 1984 he has worked closely with the Sri Lankan government as an advisor and continues to promote their interests passionately. The 1980s were notorious for Sri Lanka's horrific state-supported violence against Tamil civilians. In the long run, none of Gunaratna's unsupported claims against the 76 asylum seekers held up.

Many of Gunaratna's resume credentials have been disproved. Yet inexplicably he is still advising our government, and for weeks politicians have been promoting his biased point of view in anticipation of this new boat's landing. Gunaratna still doesn't name his sources nor offer any evidence to back up his dangerous allegations. Without our knowing who's on board, these asylum seekers have already been stigmatized as terrorists on the grounds of their ethnicity. Oh, Canada!

Canada's top security official and the lead minister in the current situation, Public Safety Minister Vic Toews, has been adamant that there are terrorists and human smugglers on board the *Sun Sea*. He says the Government's position is that we have to make Canada a less appealing place for smugglers and that we have to send the signal that we don't tolerate terrorists and criminals.

When people present themselves without having the proper documentation and visas, or have arrived in an 'irregular' way, the procedure is for the claimants to be held in custody until cleared of

criminal or terrorist association. Two local prisons east of Vancouver were readied for this purpose, the Fraser Regional Correctional Centre and the Alouette Correctional Centre for Women.

The staff at the nearby Victoria General Hospital was prepared to quarantine and treat those suspected of having any communicable diseases. These people had been at sea for over three months in a cramped cargo ship and rumours of raging tuberculosis and deaths were being reported. However, the day after their arrival, when officials had had the opportunity to examine the conditions on the Sun Sea, things appeared to be much better than first feared.

The people, they said, were in remarkably good shape and in good spirits. Only twenty seven of the 490 were sent to the hospital, and all, or almost all of them were soon discharged. One person had died at sea, but no communicable disease was found. Two of the women are pregnant.

The ship itself was mechanically sound, and alterations had been made to accommodate its human cargo. It had been kept clean and organized, and they had a system to deal with waste and garbage. There were a couple of washrooms. Although closely rationed, there had been enough water and food such as rice and dried fish. Tarps had been added to the upper deck to extend living space. Hammocks were hung to provide sleeping space.

The Tamil people were seen smiling and engaged with the officials in a willing cooperative manner. Some women and approximately fifty young children have been placed in the care of British Columbia's Ministry of Children and Family Development.

From here we can only hope that in spite of the apparent predisposition of our government and its agencies to presume guilt, the rights of these people to due process will be respected. According

to international law, those seeking asylum in Canada have the right to a fair hearing on the merits of their individual cases.

The Minister of Immigration, Jason Kenney has issued this statement via his spokeswoman, prior to the ship's landing: "This could end up being a prime example of individuals trying to take advantage of our generous immigration system. Our government is committed to cracking down on bogus refugees while providing protection to those that truly need our help." The Harper government holds the position that Canada is being exploited and being turned into a haven for criminals and terrorists. Amongst many others, opposition politicians Michael Ignatieff and Olivia Chow are asking people to resist prejudging and they are emphasizing in interviews that due process must take place and Canadian and humanitarian laws adhered to.

Last May, loaded with her freight of Tamil families, the Sun Sea was approaching Australia when she was turned back towards Christmas Island, a practice which leaves asylum seekers without protection and which the UN High Commission for Refugees regards as jeopardizing fundamental human rights.

Like Canada, Australia has signed on to the Refugee Convention which outlines the rights of refugees and how receiving nations are to treat them. However, Australia pays Indonesia to cut off and hold refugees who attempt to reach her shores and thereby avoids living up to her responsibilities. Last year Australia processed only 120 of the refugees detained by using this unethical loophole. Australia has suspended asylum claims from Afghanistan and Sri Lanka since early April, 2010 by designating these countries as being 'safe'. Even if they had been unwillingly towed to shore by the Indonesian navy, asylum seekers usually languish in locked refugee camps for decades waiting for a third country to accept them. As a Canadian, I am mortified to hear that there are people here who applaud the 'Australian solution' in spite of the disastrous consequences that befall the people who are seeking protection.

The phrase ‘terrorist sympathizer’ is too often used carelessly – or even worse, in a calculated way - by those who, rather than being genuinely concerned with national security, have other motives best served by fear mongering. In anticipation of the arrival of the Sun Sea, some of our officials shamelessly fed the media with inflammatory statements. Is it appropriate to hang the accused before a trial in Canada? That’s not a good trend. Scaring the public, then running to their rescue is an old political trick. Lives are on the line. Politics ought not to be played at the expense of people undoubtedly already traumatized by recent events.

As to what happens now that the asylum seekers are here, immigration lawyer, Lorne Waldman explains that there are definite procedures and steps which will be taken. As mentioned earlier, health issues were immediately addressed. In anticipation of severe health problems, the order had been given to the Victoria General Hospital to prepare as if for a pandemic. They had opened an unused emergency wing and readied it for the possibility of hundreds of horribly sick people. As it turned out, the migrants had been able to take reasonably good care of themselves and had arrived in surprisingly good health.

The Canada Border Services Agency and the Royal Canadian Mounted Police are conducting their investigation looking for the people smugglers responsible for this ship-load of hopeful souls. People smuggling is a very serious offense worldwide, and these individuals, if identified, will face vigorous prosecution.

Each passenger has been photographed, fingerprinted and processed for detention. Their fates will depend on the background checks that the government authorities are conducting. Immigration law requires a Detention Review within 48 hours of apprehension and then a second Review after seven days.

*Tracking down missing documents is perhaps the single most helpful thing families and representatives of the asylum seekers can do to help them.* Canada Border Services Agency will need to confirm the identities of the passengers to determine whether they pose a security threat. Migrants are under obligation to produce proper identification documents and until they do, they will be held in detention. If the documents cannot be found, procedures for deportation will commence. The Government has the broad rights to hold individuals for four or five months while continuing their investigation. Eventually they must conclude whether or not the person is a security threat. Individuals cannot be held indefinitely.

When Canada Border Services Agency's investigation is finalized, they must produce evidence if they wish to lay a charge. In this case they are looking for proof of criminal behaviour or of connections to the Liberation Tigers of Tamil Eelam. The LTTE, who fought the Sri Lankan government in a civil war for the better part of the last quarter century were, until last May, in control of the northern part of Sri Lanka, from where the asylum seekers are most likely to originate. Because the LTTE formed the government of Tamil Eelam, does it follow that all Tamil civilians living in their traditional homeland are terrorists?

Provided that individuals have their documentation, and are cleared of any security-related charges, they are then referred to immigration officials who will start to process their refugee claim. If it is determined that a person will not be a flight risk, he or she may be released into the general population, usually with conditions attached.

It may take years to determine whether a claim is accepted, and the possibility of deportation hangs over the applicant's head all that time. It is unclear when the recent reforms designed to accelerate the processing time of claims will come into effect.

## **THE EXPERTNESS OF EXPERTS**

On August 6, a few days before the Sun Sea's arrival, the Canadian Tamil Congress organized a forum at beautiful Hart House in downtown Toronto to address concerns about this group of people and about Canada's role in offering protection to refugees in general.

The first up to speak was John Argue, the Sri Lanka Coordinator for Amnesty International Canada. Amnesty, he said, continues to express concern about those aboard the Sun Sea. Asylum seekers who reach Canada using any form of transportation have the right to a case-by-case hearing, and Amnesty International Canada and the Canadian Council for Refugees had sent a joint letter to Prime Minister Stephen Harper. At the time, a rumour that the ship would be prevented from reaching Canada by our navy not only involved breaking international law but also the condemning of its passengers to a tragic fate. In their letter, hope was expressed to the Prime Minister that the rumours were untrue and that Canada intends to follow due process and provide for fair refugee hearings.

'Expert witness' opinions aside, the continuing lack of safety for Tamils in Sri Lanka is a far more compelling argument than the unsubstantiated warnings of their constituting a national threat to Canada. Last May Amnesty International, amongst others, requested an independent inquiry into war crime allegations to examine the activities of both sides of the conflict. The Tamils supported the inquiry; the Sri Lankan government refused.

United Nations Secretary-General, Ban Ki-moon has appointed advisors to continue to brief him about the ongoing situation. As it stands, Mr. Argue continued, Tamils don't have a chance to be citizens in their own land. In Sri Lanka human rights activists, journalists, opposition politicians, anyone, really, can't express frank opinions under threat of torture and death.

Sri Lanka's Defence Secretary, Gotabaya Rajapaksa says that asylum seekers are involved with human smuggling and that their claim of being refugees allows terrorists to disguise themselves as civilians. This idea tries to take away credibility from all Tamil people as a group.

Victor Wong, the Executive Director of the Chinese Canadian National Council, which is a member of the Canadian Council for Refugees, warned about the attitudes which lead to criminalizing and stigmatizing people and detaining them for prolonged periods of time. This is a process which in turn prejudices their refugee claim, leading to deportation back to the very danger they risked their lives to escape. If the people on board the Sun Sea are maltreated as a group, it is conceivable that more groups of people will be marked by decisions driven by political objectives.

The current government's recent changes to refugee law call for countries to be divided into two categories: countries that are safe and those that are not. The determination of who falls on which side of the fence appears to be a political decision, rather than one guided by the experience of human rights groups. Those who come from 'safe' countries, as Sri Lanka is asserting itself to be, will not be given the same opportunities to defend their case as those who come from countries on the 'unsafe' list.

Mr. Wong explained that those agencies which focus on helping refugees need to anticipate media buzz and its dramatic need for a 'bad guy' and to try to counter the negative profiling by insisting on rational investigation and due process. When the Ocean Lady's passengers were detained in British Columbia last year, they were provided with legal council, interpreters, and for those without Canadian relatives, host families by the Canadian Tamil community and by non-governmental organizations. It would be advisable to be prepared to repeat these forms of help to the new arrivals. Mr. Wong spoke of past situations where people were turned away with tragic

consequences, and urged everyone to work towards the proper and fair treatment of all immigrant groups.

John Cartwright, President of the Toronto & York Region Labour Council, and Chairperson of the coalition of human rights groups forming 'Canadians Concerned About Sri Lanka', urged that we get involved with building the kind of Canada we want to share together. Canada has a mixed history in dealing with immigrants and we need to hold it to high standards. Allowing Sri Lanka to whip up hysteria about the asylum seekers is unacceptable, and a fair hearing is critical for a just society. In order to overcome the shame of past injustices, certain standards must be met, and no asylum seeker can be branded as a terrorist in lieu of a just hearing.

Liberal Member of Parliament Rob Oliphant hoped that the information shared at the forum would better equip everyone in reaching the desired goal: that the proper process of refugee determination be extended to everyone. To spontaneous applause Mr. Oliphant said our Government should exercise discretion in accepting the 'expertness of experts'. It is unseemly that Canada should advance the propaganda of a state almost universally accused of crimes against humanity.

Michael Ignatieff, the leader of the federal Liberal party, has said that he frankly wished there be a moratorium on the 'T' word as it's so often used to bias Canadians purposely. Mr. Oliphant reiterated the need for the Canadian public to rally against propaganda. He encouraged lawyers and human rights groups to continue to educate the media and the public by presenting factual information rather than rhetoric. The refugee determination process, he said, is definitely worth the money and effort.

Hadyat Nazami is a Human Rights lawyer currently representing several of the refugees who arrived last October on the Ocean Lady. He thanked the hosting organization of the forum, the Canadian Tamil

Congress, for the support the community provided for the asylum seekers. They had provided advice, legal council, therapy, translators and phone cards. Mr. Nazami went on to say that the recent statements made by the Harper Government made the support of the Opposition parties essential to maintain a balanced handling of the situation.

Our government's 'unbiased' expert witness is sworn to advance Sri Lanka's interests, not Canada's. Rohan Gunaratna and his fellow agents publicly pressured our government to confront the ship before it reached our waters. That's internationally illegal. In the past when Canada turned ships filled with refugees around, the people died. Recently Prime Minister Harper extended formal apologies for several such occurrences.

Mr. Nazami deplored the use of the terms 'bogus refugees' and 'queue-jumping', saying they painted false impressions of how immigration law works. There's nothing unusual about refugees coming to Canada. There's nothing unusual about having to check people for security reasons. But political interference can be hurtful and illegal. Although legal caution is understandable, during the Ocean Lady case, laws were broken and people were stigmatized.

Compassion was sadly absent in a haunting memory he shared of a traumatized Tamil man from the Ocean Lady, found crying in his solitary cell as he waited to hear of his fate. The charges against him and others like him were based on the opinions of Rohan Gunaratna and the Sri Lankan Army. Months later, when Canada Border Services Agency was pressed by Immigration Canada to produce evidence, all of the charges were dropped - in spite of earlier claims that they were in possession of 'secret evidence'.

Gunaratna has been allowed to enter Sri Lankan prisons – a highly unusual 'privilege' – to interrogate prisoners about the Tamil Tigers. He needed the use of translators as this 'expert on Tamils' cannot speak their language. Although he claims they answered his questions

readily, it has been revealed that prior to his interrogation these forlorn people had been subjected to torture. This is a common practice, resulting in approximately 80% of Sri Lankan prisoners being tortured. The 'Canadian Centre for Victims of Torture' has observed that because of fear or trauma, such victims, in interviews often hide the fact long after they have left the offending country - which in turn jeopardizes their claim. Mr. Nazami emphasized that the Canadian government must take care to avoid becoming complicit in torture.

A second Human Rights lawyer, Robert Blanshay, was next to speak. His opening comments were about his colleague, Nadyat Nazami, who had just addressed the room. Mr. Nazami, he said, is representing several asylum seekers from the Ocean Lady, which arrived last fall. He was given ten minutes of preparation time to cross-examine Rohan Gunaratna, the 'expert witness of choice' of the Canadian Government. In this short period of time, Mr. Nazami was able to uncover substantial misrepresentation on Gunaratna's part. He had failed to disclose that he had been closely linked with the government of Sri Lanka since the 1980s, and still is.

Responding to the discovery, Gunaratna claimed that this revelation was just a simple oversight, that he'd simply forgotten to mention it!! Our government did not react to this incredible conflict of interest. Did anyone think that such forbearance would be extended to any Tamil person, Mr. Blanshay asked. With further investigation, many of the credentials on Gunaratna's resume turned out to be completely fabricated and he has been discredited internationally. But he's still our 'expert witness'!

As people are arriving all the time to seek asylum in Canada, the question of how we treat refugees should be focused not only on the Tamil arrivals. In fact, Canada has reduced the number of refugees over the last few years at a time when the world is full of people needing help. Third world countries take in far more refugees than do Western nations. The game amongst Western countries seems to be

how to avoid living up to international standards and conventions by making it increasingly difficult for would-be refugees to qualify.

Far from being an exercise in charity, immigration has always been necessary to Canada and is closely linked to employment needs and foreign trade and policy. Most refugees, the majority being women and children, though having gone through great upheaval and personal loss, never do leave their countries, and are known as Internally Displaced Persons. IDPs as such are not counted as Refugees. The world's Refugee statistics do not show these people in their tally. The comparative few that do arrive in Canada represent a tiny proportion of the quarter million immigrants we process each year.

Mr. Blanshay spoke of 'Risk Assessments' which examine what the country of origin is like in regards to the safety of the would-be refugees should they be sent back. For many reasons, including monetary ones involving major international loans and grants, Sri Lanka cannot afford to be seen as a state which does not live up to its Human Rights requirements. It will do anything it can to discredit any allegations against its record.

To this day President Rajapaksa maintains that there are no minorities in Sri Lanka and that no civilians were killed in the final months of the civil war, that his army was on a rescue mission. The remnants of these 'rescued' Tamil people were locked up in appallingly inadequate prison camps. From babies to elders, the survivors were starving and severely wounded from Sri Lankan scatter bombing and heavy weaponry being fired into civilian 'safety zones' and hospitals. Minimal medical help was permitted, and international aid and journalistic communities were banished. In spite of their efforts, Sri Lanka could not block the harrowing stories from leaking out of the camps, and these stories subsequently were heard around the world.

It comes down to this: people must educate themselves in order to avoid falling prey to biased political strategies and to hold our elected

officials accountable for how they manage situations such as this. Mr. Blanshay expressed grave concern that the Canadian government was still receiving advice from Gunaratna.

Mr. Wong added that what happened last year with the Ocean Lady is actually a good case study on how the process works. The government had put security certificates on about 25 of the 76 migrants. Since the evidence presented by Rohan Gunaratna was unusable, they had to withdraw these certificates. Rule of law resulted in all 76 people being cleared of terrorist charges and allowed them to live amongst the general public while their claims were being processed.

Mr. Wong expressed gratitude to those who didn't just ignore the Ocean Lady case. "What will happen to the next group of migrants if what happens to this group is ignored?", he asked. If false assumptions and rhetoric are not challenged, it becomes progressively more difficult for those who follow.

Absolutely no one is suggesting that national security be compromised - quite the contrary. The integrity of our security and emergency alertness is crucial. Last year alone, Canada processed 34,000 refugee claims, and our government needs to prevent violent individuals and organizations from exploiting Canada. The concern here involves the ethical application of existing laws, the quality of the intelligence being used by our government, and the perception that decision-makers are being unduly influenced by foreign entities whose agendas are anathema to the kind of nation we pride ourselves on being.

None of us knows what the future will bring. We all do our best to comprehend this confusing world of ours, and sometimes it seems we are worlds apart in our views and conclusions. We just have to keep trying to be decent people and to mix compassion with caution. I think of those Tamil hopefuls, far away from their families and friends, waiting to see what their future will be. I pray it will be a good and secure one – for all of us.