Homeland Security and International Migration: Toward a North American Security Perimeter?

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ABSTRACT: Prior to September 11, discussions concerning multilateral regimes to govern the movement of people among states in North America centered on the desire to *facilitate* flows. Common interests for more open migration among NAFTA countries pressed for a Ricardian approach to migration management similar to that utilized for trade and capital flows. For the U.S. and Canada, the information technology revolution created significant demand for highly-skilled labor, and certain sectors of the economy revealed a "structural embeddedness" of demand for unskilled foreign labor as well. For Mexico, emigration not only offers a safety valve for unemployment pressures, but also represented a significant source of foreign exchange—some $14 billion annually. The events of September 11 not only served to table existing plans for multilateral negotiations regarding migration, but also appeared to completely alter the strategic environment. After 9/11, recognition among policy makers in the U.S. and Canada of the close link between migration control and counter-terrorism prompted widespread acceptance of the view that increasing security is a precondition for openness to migration. Yet, as an inherently global phenomenon it would appear that security could be increased not only through new domestic policies, but also through increased multilateral cooperation. Is such cooperation likely in the area of migration and border control in North America, and what forms might it take? This paper examines the development of homeland security policies, institutions, and procedures in the United States after 9/11 and the possibilities for cooperation and policy harmonization among NAFTA countries. Although some cooperation has already been initiated, disparity of interests among North American states presents a significant political obstacle to regime formation, as do the logistical challenges facing Canada, the United States, and Mexico.

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"There is probably no more important tool for preventing attacks on U.S. soil than the nation's immigration system because the current terrorist threat comes almost exclusively from terrorists who arrive from abroad."[1]

--Steven Camarota, Center for Immigration Studies

"In many ways, the age of unilateralism in border controls may be over."[2]

--Demetrios G. Papademetriou, Migration Policy Institute

I. Migration and Homeland Security: The "New" Threat

The events of September 11, 2001, reintroduced a term to the American lexicon not widely heard since the "red scare" of 1950s McCarthyism: homeland security. Moreover, the fact that the 9/11 terrorists manipulated U.S. immigration laws in order to infiltrate the country and to carry out their attack on U.S. soil made the link between global terrorism and international migration explicitly clear.[3] In terms of the migration-terrorism link, the key questions facing policy makers were, "How did we get so vulnerable?" and "What can we do to protect ourselves from global terrorism?"[4]

Increasingly, policy makers, pundits, and the general public recognize that migration is an international phenomenon, one that both facilitates processes of globalization and interdependence, and is also affected by them.[5] Although immigration and border control have

[1] Steven A. Camarota, "The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001," *Center Paper 21* (Washington, DC: Center for Immigration Studies, 2003), p. 13.
[2] Demetrios G. Papademetriou, "A Grand Bargain: Balancing National Security, Economic, and Immigration Interests of the U.S. and Mexico." Typscript. Migration Policy Institute (April 2002), p. 7.
[3] Steven A. Camarota, "The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001," *Center Paper 21* (Washington, DC: Center for Immigration Studies, 2003).
[4] Christopher Rudolph, "The Front Lines of Homeland Security: U.S. Immigration and Border Policy After 9/11." Typescript. UCLA (2004).
[5] *See* Christopher Rudolph, "Globalization and Security: Migration and Evolving Conceptions of Security in Statecraft and Scholarship," *Security Studies* 13:1 (Fall 2004); Douglas S. Massey et al., *Worlds in Motion* (Oxford: Clarendon Press, 1998); James Mittelman, *The Globalization Syndrome* (Princeton: Princeton University Press,

long been central to our notions of sovereignty,[6] dynamics of contemporary international migration suggest that it is difficult, if not impossible, to achieve complete control over flows unilaterally.[7] Prior to 9/11, discussions regarding the need for a multilateral regime focused on addressing the need to *facilitate* flows for economic need, and/or reducing illegal immigration.[8] Although dialogue regarding migration regimes has been most rigorous in the European Union, strong interests exist among North American countries to craft policy in the EU mold. For the U.S. and Canada, the information technology revolution created significant demand for highly skilled labor, and certain sectors of the economy have shown a "structural embeddedness" of demand for unskilled foreign labor as well.[9] For Mexico (and other developing countries like it), emigration not only offers a safety valve for unemployment pressures, but also represents a significant source of needed foreign exchange—some $14 billion annually.[10]

2000); Saskia Sassen, "Beyond Sovereignty: De-Facto Transnationalism in Immigration Policy," paper read at the annual meeting of the American Political Science Association, Atlanta, GA (Sept. 1-5, 1999).

[6] Christopher Rudolph, "Sovereignty and Territorial Borders in a Global Age," paper read at the annual meeting of the American Political Science Association, Philadelphia, PA (Aug. 27-31, 2003); John Torpey, "States and the Regulation of Migration in the Twentieth-Century North Atlantic World," in *The Wall Around the West,* ed. by P. Andreas and T. Snyder (Lanham, MD: Rowman & Littlefield, 2000); Cheryl Shanks, *Immigration and the Politics of American Sovereignty, 1890-1990* (Ann Arbor, MI: University of Michigan Press, 2001); Aristide R. Zolberg, "Changing Sovereignty Games and International Migration," *Indiana Journal of Global Legal Studies* 2:1 (1994).

[7] Wayne A. Cornelius, Philip L. Martin, & James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford, CA: Stanford University Press, 1994).

[8] *Cf.* Bimal Ghosh, ed. *Managing Migration: Time for a New International Regime?* (Oxford: Oxford University Press, 2000); James F. Hollifield, "Migration, Trade, and the Nation-State: The Myth of Globalization," in *Reconsidering Immigration in an Integrating World,* ed. by Christopher Rudolph, *UCLA Journal of Int'l Law & Foreign Affairs* 3:2 (1998), special issue; Kathleen Newland and Demetrios G. Papademetriou, "Managing International Migration: Tracking the Emergence of a New International Regime," in *Reconsidering Immigration in an Integrating World,* ed. by Christopher Rudolph, *UCLA Journal of Int'l Law & Foreign Affairs* 3:2 (1998), special issue; Howard F. Chang, "Migration as International Trade: The Economic Benefits from the Liberalized Movement of Labor," in *Reconsidering Immigration in an Integrating World,* ed. by Christopher Rudolph, *UCLA Journal of Int'l Law & Foreign Affairs* 3:2 (1998) special issue.

[9] Wayne A. Cornelius, Thomas J. Espenshade, & Idean Salehyan, eds., *The International Migration of the Highly Skilled* (La Jolla, CA: Center for Comparative Immigration Studies, 2001); Wayne A. Cornelius, *The Role of Immigrant Labor in the U.S. and Japanese Economies* (La Jolla, CA: Center for U.S.-Mexican Studies, 1998).

[10] Philip L. Martin, "Trade, Aid, and Migration," *International Migration Review* 26:1 (1992); Sharon Stanton Russell, "Migrant Remittances and Development," *International Migration* 30:3-4 (1992); Peter Gammeltoft, "Remittances and Other Financial Flows to Developing Countries," *CDR Working Paper 02.11* (Copenhagen: Centre for Development Research, August 2002).

With the emergence of the homeland security linkage and the threat of global terrorism, discourse regarding the need for cooperation and coordination has again sustained momentum.[11] Given the clear tension between strong economic interests for policy openness and strong security interests favoring closure, we have seen policy makers increasingly argue that the only solution is to craft "smart borders": those that have an unprecedented ability to filter out terrorists, criminals, and other undesirables while enabling cross border flows to remain relatively unhindered. Secretary of Homeland Security, Tom Ridge, made this point clear: "We're working with Canada and Mexico to institute smart borders that will keep terrorists out, while letting the flow of commerce in."[12]

Given the traditional view of immigration and border patrol as the sole prerogative of domestic public policy, such pronouncements represent not only a radical departure from traditional views about immigration, but on the nature of sovereignty and the role of borders in international society. Significant advances in information technology certainly provide us with the tools necessary to facilitate a "smarter" border,[13] but having an increased *ability* to cooperate does not necessarily mean that states *will* cooperate. In this paper, I seek to address three primary questions: 1) What has been done to address homeland security concerns in the domain of migration and border policy? 2) Where is cooperation and/or coordination likely, and what challenges do we face in facilitating such endeavors?, and 3) What are the prospects for a regional migration regime—a north American security perimeter?

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[11] *Cf.* Demetrios G. Papademetriou, "A Grand Bargain: Balancing National Security, Economic, and Immigration Interests of the U.S. and Mexico." Typscript. Migration Policy Institute (April 2002); Deborah Meyers, "Security at U.S. Borders: A Move Away from Unilateralism?" *Migration Information Source* (August 2003); Deborah Waller Meyers, "Does Smarter Lead to Safer? An Assessment of the Border Accords with Canada and Mexico, *Insight* (June 2003).

[12] Remarks to the U.S. Conference of Mayors, Washington, D.C., January 23, 2002, cited in Deborah Waller Meyers, "Does Smarter Lead to Safer?" *Insight* (June 2003), p. 1.

[13] Rey Koslowski, "Information Technology, Migration and Border Control," paper read at the Institute for Governmental Studies, University of California, Berkeley, April 25, 2002.

II. Regime Formation

To provide a theoretical framework for my analysis, I draw on regime theory. There are three primary schools of thought concerning regime formation: realist, neoliberal institutionalism, and congitivism (i.e. constructivism).[14] For realists, "the distribution of capabilities among actors critically affects both the prospects for effective regimes to emerge and persist in an issue area and the nature of the regimes that result…."[15] In other words, power is the essential explanatory variable, and regimes are established only when they reflect the self-interest of the most powerful states.[16]

In the North American context, this would then place the United States and its perception of national interest squarely at the center of analysis. Within the realist paradigm, any North American security regime would necessarily be based on American interests and how political suasion may subsequently affect the interest calculus of its neighbors to the north and south. Rather than being the product of common interests among egoistic states operating under anarchy, realists would predict that a North American perimeter would be characterized as an "imposed regime."[17] In terms of duration of such a regime, realists would expect it to function in its original form only so long as it reflects the interests of the dominant state in the constellation of power at the point of implementation.

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[14] *Cf.* Stephen Krasner, ed., *Regime Theory* (Ithaca, NY: Cornell University Press, 1983); Stephan Haggard and Beth Simmons, "Theories of International Regimes," *International Organization* 41:3 (1987); Andres Hasenclever, Peter Mayer, & Volker Rittberger, eds., *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997); Andres Hasenclever, Peter Mayer, & Volker Rittberger, "Integrating Theories of International Regimes," *Review of International Studies* 26:1 (2002), pp. 3-33.

[15] Andres Hasenclever, Peter Mayer, & Volker Rittberger, "Integrating Theories of International Regimes," *Review of International Studies* 26:1 (2002), p. 9.

[16] *Cf.* Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981); Stephen D. Krasner, "Global Communications and National Power: Life on the Pareto Frontier," *World Politics* 43 (1991); Joseph M. Grieco, *Cooperation Among Nations: Europe, America, and Non-Tariff Barriers to Trade* (Ithaca, NY: Cornell University Press, 1990).

[17] *See* Oran R. Young, "Regime Dynamics: The Rise and Fall of International Regimes," in *International Regimes,* ed. by Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1983), pp. 93-113.

Where power is the primary variable forwarded by realists, neoliberal institutionalists argue that it is in fact the constellation of interests rather than the constellation of power that is essential in understanding regime formation.[18] Among neoliberal institutionalists, Arthur Stein suggests that international regimes are created to manage dilemmas of common interests and common aversions in an anarchic world.[19] In a world increasingly marked by both globalization and complex interdependence, states find their options strongly shaped by the interest calculus and decisions by other states.[20] Indeed, much of the recent discourse concerning both international migration and global terrorism highlight the fact that these forces are shaped by myriad forces in world politics, making them seemingly applicable to issues of regime formation in order to better control outcomes.

Stein makes a distinction between "regimes" based on collaboration (i.e. harmonization) and those based on coordination, and suggests that only issues dealing with collaboration require formal regimes. In terms of dilemmas of common interests, he suggests that unconstrained individual decision-making among actors (states) would result in sub-optimal outcomes. To remedy this, regimes are established that constrain individual decision making in order to establish a Pareto-optimal outcome. In contrast, dilemmas of common aversion can be resolved simply through coordination (and does not constrain individual decision making). To utilize such a framework within the context of a North American security perimeter requires that we

[18] *Cf.* Robert O. Keohane, "The Demand for International Regimes," in *International Regimes,* ed. by Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1983), pp. 141-171; Arthur A. Stein, "Coordination and Collaboration: Regimes in an Anarchic World," in *International Regimes,* ed. by Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1983), pp. 115-140; Robert Axelrod and Robert O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions," in *Cooperation Under Anarchy*, ed. by Kenneth A. Oye (Princeton: Princeton University Press, 1986).
[19] Arthur A. Stein, "Coordination and Collaboration," in International Regimes, ed. by Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1986), pp. 115-140.
[20] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little, Brown, 1977).

identify the constellation of interests among participants. Is the issue of migration and security one of common interests or common aversions? The answer would provide insight into whether a more comprehensive, formalized regime is likely (or possible), or whether more ad hoc coordination measures will be established.

Clearly, the distinction between realism and neoliberal institutionalism is a fine one, for it often seems that their similarities outweigh their differences. Indeed, Adreas Hasenclever, Peter Mayer, and Volker Rittberger have argued that little stands in the way of a synthesized approach incorporation both realism and neoliberal institutionalism. They write, "Neoliberalism and realism not only share a commitment to *rationalism* as a metatheoretical stance, but may fruitfully work together when it comes to explaining international regimes, thus offering the prospect of a more unified rationalist theory of international institutions."[21] They are less optimistic about integration of constructivist approaches.

Constructivists stress the role of social knowledge in the practice of world politics.[22] Where norms, ideas, and principles are seen as largely epiphenomenal to policy outcomes (such as regime formation) in both the realist and neoliberal camps, they are considered much more endogenous from the constructivist perspective. Constructivists not only suggest that structural environments are largely a social construct (i.e. "the world is what you make of it"),[23] but also that social constructs (such as identities) shape interests.[24] In other words, "We have to know

[21] Adreas Hasenclever, Peter Mayer, and Volker Rittberger, "Integrating Theories of International Regimes," *Review of International Studies* 26:1 (2000), p. 7.
[22] Nicholas Greenwood Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia, SC: University of South Carolina Press, 1989); Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999).
[23] Alexander Wendt, "Anarchy is What States Make of It: The Social Co nstruction of Power Politics," *International Organization* 46 (1992), pp. 391-425.
[24] Alexander Wendt, "Collective Identity Formation and the International State," *American Political Science Review* 88 (1994), pp. 384-396; Mathias Albert, David Jacobson, and Yosef Lapid, eds., *Identities, Borders, Orders* (Minneapolis, MN: University of Minnesota Press, 2001).

who we are before we can know what our *interests* are."[25] As applied more narrowly to issues of regime formation, the role of norms, ideas, and principles take several forms. The first involves perceptions regarding the interests and motives of other participants. Robert Jervis argues that in order for regimes to develop, participants must believe that others share their interests in regime design and targeted results.[26] This perspective clearly suggests overlap with neoliberal perspectives concerning the constellation of interests as primary causal variables. On the one hand, it appears supportive of Stein's view that shared interests are pivotal in regime formation. However, when mixed with the realist perspective, it raises the question of interests in situations of "imposed regimes." Can imposed regimes establish conditions of common interest? As applied in the North American context, such questions press for a more complete understanding of both individual interests (at the state level), as well as whether American leadership and/or suasion truly create a political environment of common interest if individually they are not congruent.

Another key area where ideas would seem to matter in the North American context is also closely linked to issues of power and interest. Specifically, shared histories shape national identities in the context of relationships between peoples and states. Current challenges facing states in North America must be cast within a historical context—one that involves social sensitivities to power differentials. The United States' role as the regional hegemon creates expectations that weaker neighboring states should "fall in line" with U.S. interests. This attitude was clearly articulated during Operation Iraqi Freedom, as U.S. policy makers pressed Canadian and Mexican policy makers to pledge support for the war effort. On the other side,

[25] Samuel P. Huntington, "The Erosion of American National Interests," *Foreign Affairs* 76:5 (1997), pp. 28-29. Emphasis added.
[26] Robert Jervis, "Security Regimes," in *International Regimes*, ed. by Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1986), pp. 173-194.

Canadian and Mexican policy makers are often weary of being bullied by their stronger neighbor or are weary to appear as a political lackey to U.S. interests.[27] Such power relationships have a strong effect on the national consciousness, engendering sentiments that a truly "sovereign" national identity requires at least periodic dissent against American interests. These issues come to the fore in cases where there is a disparity of interests and may significantly complicate the formation of "imposed regimes."

Lastly, and perhaps most significantly, the sovereignty norm will likely play a strong role in any potential regime formation in North America, particularly when applied to issues of migration and border control. Although neoclassical economic principles adopted in the contemporary Bretton Woods era have prompted many "trading states" to willingly cede some degree of sovereignty in terms of cross-border flows in order to obtain the economic benefits of such mobility,[28] this has generally not been applied in the realm of international migration.[29] Rather, control over who enters the country and who may be eligible to become part of the national polity remains a cornerstone of societal dimensions of sovereignty.[30] As such, efforts to shift policy making beyond the confines of the nation-state have continually met strong resistance or have been unable to overcome initial political inertia whatsoever. This has been the case even in Europe, where we have witnessed the most ambitious efforts to establish such a supranational regime.[31] Complicating the issue in the North American context is the disparity of

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[27] *See, for example,* Luis Herrera-Lasso, "The Impact of U.S. Immigration Policy on the U.S.-Mexico Relationship," in *Reconsidering Immigration in an Integrating World,* ed. by Christopher Rudolph, *UCLA Journal of Int'l Law & Foreign Affairs* 3:2 (1998), special issue, pp. 357-370.
[28] Richard N. Rosecrance, *Rise of the Trading State* (New York: Basic Books, 1986).
[29] Wayne Cornelius, Philip L. Martin, and James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford, CA: Stanford University Press, 1994); Christopher Rudolph, "Security and the Political Economy of International Migration," *American Political Science Review* 97:4 (2003).
[30] Christopher Rudolph, "Sovereignty and Territorial Borders in a Global Age," paper read at the annual meeting of the American Political Science Association, Philadelphia, PA, August 27-31, 2003.
[31] Kathleen Newland and Demetrios G. Papademetriou, "Managing International Migration: Tracking the Emergence of a New International Regime," in *Reconsidering Immigration in an Integrating World*, ed. by

views regarding migration and sovereignty. Whereas Canadians and Americans generally see the extension of control measures as an assertion of social/state sovereignty, Mexicans continually assert the right of individuals to migrate as a cornerstone of sovereignty—both domestically and internationally—a right explicit in the Mexican constitution.

Rather than begin dominated by a single causal variable, it is likely that regime formation in terms of a North American perimeter will involve the interaction of power-based, interest-based, *and* idea-based variables. Mexican president Vicente Fox and his administration have often spoken of a desire for a comprehensive agreement on migration—indeed, Fox has repeatedly said that this was the cornerstone of Mexican foreign policy.[32] For Mexican policy makers the objective was not an incremental or piecemeal approach, but rather (in their words), "the whole enchilada." However, when examining the interaction of the three primary variables identified here, such a "grand bargain" seems rather unlikely. Instead, we are more likely to see any regime formation take the form of bilateral rather than multilateral agreements, and these agreements will likely produce increased cooperation rather than coordination or harmonization.

III. U.S. Policy Response After 9/11

Obviously, the events of September 11 had the greatest impact on American perceptions of threat and subsequent calculation of national interests. In an October 2001 address, President Bush declared that the war on terrorism was the "urgent task of our time."[33] Public opinion polls revealed a widespread consensus among Americans supporting the president's position.

Christopher Rudolph, *UCLA Journal of Int'l Law & Foreign Affairs* 3:2 (1998), special issue; Demetrios G. Papademetriou, *Coming Together or Pulling Apart? The European Union's Struggle with Immigration and Asylum* (Washington, DC: Carnegie Endowment for International Peace, 1996).

[32] Jorge Castañeda, "The Forgotten Relationship," *Foreign Affairs* 82:3 (2003), pp. 67-81.

[33] "Terrorist Attacks in New York and Washington, DC," Press Release, October 20, 2001, U.S. Embassy, Caracas, Venezuela, URL: http://embajadausa.org.ve/wwwh888.html (accessed February 20, 2004).

American's felt strongly that the war on terrorism was the primary policy issue (over economic interests even in a time of economic stagnation), and the president's approval rating soared to a stunning 90%.[34] The transformation of policy was nearly instantaneous: the "war on terrorism" became the primary focus of U.S. foreign policy and the issue of "homeland security" dictated that this struggle would be waged both abroad and at home. Moreover, the strategies used by the Bush Administration to execute the war on terrorism have likely served to maintain the United States' position as the primary target of Muslim terrorist organizations.

These changing notions about America's security interests also quickly shifted public attitudes about immigration and border control. A Fox News poll found that 65% of Americans favored stopping *all* immigration into the country, at least temporarily, in response to the new threat to homeland security.[35] However, among policy makers, even though new security interests emerged as increasingly salient, they did not supplant economic interests. Indeed, in some ways the post-9/11 American strategy regarding migration and border control mirrors the logic that guided policy in the 1990s—one that sought to maximize economic gains from migration while mitigating the public's anxieties about migration flows, especially illegal immigration from Mexico.[36] However, where this tension between simultaneous desires for openness and closure were largely finessed through the use of symbolic policy in the 1990s, post-9/11 strategy aims to attempt a more instrumental approach. Policy developments in the U.S. reveal a desire to achieve unprecedented levels of control over migration flows without

[34] "Bush Rating Falls Back to Earth," *CBS News* (April 19, 2002), URL: http://www.cbsnews.com/stories/2002/04/19/politics/main506712.shtml (accessed February 20, 2004).
[35] Dana Blanton, *Fox News/Opinion Dynamics Poll: Americans Still Strongly Supporting Bush, War,* Nov. 2, 2001, available online at http://www.foxnews.com/story/0,2933,37940,00.html, (accessed Feb. 12, 2004).
[36] Christopher Rudolph, "Security and the Political Economy of International Migration," *American Political Science Review* 97:4 (2003); Peter Andreas, *Border Games* (Ithaca, NY: Cornell University Press, 2000).

compromising the overall volume of international migration. This involves significant improvements in three areas: intelligence, vetting, and control/tracking.[37]

a. Intelligence

Accurate intelligence is a necessary condition if vetting of immigrants, temporary workers, students, and visitors for security protocols is to be effective. The USA Patriot Act provides tools for law enforcement to facilitate intelligence gathering necessary to better screen visa applicants and others seeking entry into the country.[38] The Patriot Act dismantled the statutory "wall" between foreign intelligence and law enforcement agencies by amending the Foreign Intelligence Surveillance Act (FISA),[39] a move that was intended to facilitate interagency cooperation.[40] In addition, procedures allow the Attorney General to approve emergency FISA surveillance and search warrants at his discretion. Since 9/11, more than 170 emergency FISA warrants have been authorized by the Attorney General's office. The Act also expanded the definition of "terrorist activity" to include material support for terrorists and/or terrorist organizations as well as harboring known or suspected terrorists. This expanded definition of "terrorist activity" has directly affected immigration policy. This more expansive definition of "terrorist activity" is now used as grounds for inadmissibility for entry into the country.

[37] Christopher Rudolph, "The Front Lines of Homeland Security: U.S. Immigration and Border Policy After 9/11." Typescript. UCLA (2004).
[38] *See* Congressional Research Service, "The USA Patriot Act: A Legal Analysis," *CRS Report RL31377* (Washington, DC: CRS, 2002).
[39] Foreign Intelligence Surveillance Act (FISA), P.L. 95-511, Title I, Oct. 25, 1978, 92 Stat. 1796, codified at 50 U.S.C. § 1801 *et seq.*
[40] John Ashcroft, The War Against Terrorism: Working Together to Protect America (March 4, 2003), http://www.globalsecurity.org/security/library/congress/2003_h/03-04-03_ashcroft.htm.

b. Screening/Vetting

Much of the new intelligence gathered has been added to existing anti-terrorism databases used to screen immigrants and visitors. Unfortunately, there are currently 15 different anti-terrorism/law enforcement databases managed by several agencies dealing with homeland security at different levels. In order to integrate the wealth of new intelligence information being gathered by intelligence and law enforcement agencies, in early 2003 a multi-agency Terrorist Threat Integration Center (TTIC) was established to coordinate incoming intelligence information. Subsequently, a Terrorist Screening Center (TSC) was established to consolidate existing security databases and to provide 24/7 operational support for security screening by authorized agencies.[41]

In terms of vetting those admitted to the U.S. (either on a temporary or permanent basis), existing procedures have been tightened and new policies have been enacted to shore up loopholes that may be exploited by terrorists. Since 1996, the State Department and consular offices abroad have used Visas Mantis security protocols to vet visa applicants. These were originally established to control access and stem proliferation regarding expertise in areas such as the design and construction of weapons of mass destruction, design and construction of delivery vehicles or mechanisms, and sensitive industries (such as those relevant to biological or chemical weapons as well as sensitive information technologies).[42] Mantis procedures come in two forms: those that can be handled entirely by the consular office ("Eagle Mantis") and those that can issue a visa only after clearance by the State Department ("Donkey Mantis"). Procedures have been tightened since 9/11 by requiring a Donkey Mantis clearance for applicants having passports or who are employed by states designated by the U.S. government as

[41] U.S. Department of Homeland Security, "Fact Sheet: The Terrorist Screening Center," *Press Release* (September 16, 2003), URL: http://www.dhs.gov.

[42] Charles Piller, "Yanking the Mat for Scholars," *Los Angeles Times* (December 19, 2003), pp. A1 and A28.

"sponsors of terrorism." In addition to adding restrictions to the Mantis system, a new security protocol called Visa Condor has been established that requires that all applicants from certain nationalities be checked against CIA and FBI databases of known and suspected terrorists. At this point, the list of countries included in the Visas Condor protocol is classified, but it is likely composed of a combination of those nations listed as "state sponsors of terrorism" as well as predominantly Muslim countries. Men in these groups between the age of 16 and 45 have to wait up to 30 days for the Condor check before a visa can be issued.

These new security protocols have not stopped migration flows into the U.S., however they have significantly slowed the process. The logistical demands these protocols have placed on the existing security infrastructure are significant, as FBI records indicate an "explosive increase" in name checks for visa application.[43] For the fiscal year ending September 30, 2003, the FBI conducted some 200,000 security checks for visa applications.[44] From February 2001 to March 2003, the backlog of applications for work permits, permanent resident status, and citizenship being processed by the Bureau of Citizenship and Immigration Services (BCIS) increased from 2.9 million to 5 million.[45] The end result of such backlogs has been that visa approvals can now take up to four months for approval rather than a week or two.[46]

c. Entry Control and Tracking

Vetting protocols have also been combined with new tracking procedures and entry controls to increase security. In 2002, the National Security Entry-Exit Registration System (NSEERS) was established that required male foreign visitors from "politically sensitive areas" (primary Muslim

[43] Charles Piller, "Yanking the Mat for Scholars," *Los Angeles Times* (December 19, 2003), A28.
[44] *Ibid.*
[45] *Migration News,* http://migration.ucdavis.edu/mn, accessed November 17, 2003.
[46] *Migration News* (January 2004), http://migration.ucdavis.edu/mn (accessed March 5, 2004).

and/or Arab states) over the age of 16 to register with the Immigration and Naturalization Service. Registrants could then be screened against security databases and their information used to help monitor their status while in the country. Of the roughly 42,000 men that registered with the INS by mid-March of 2003, ten percent were detained and faced deportation.[47] NSEERS is now in the process of being phased-out in favor of the new US-VISIT program. Under the new US-VISIT system, non-immigrant visitors to the United States must submit fingerprints and a digital photo upon entry into the country and receive security clearance prior to admission. US-VISIT represents a significant expansion of NSEERS, in that it does not limit its scope to travelers from specific places of origin. Registration and tracking has also been focused on foreign students studying in the United States. In January 2003 a new Student and Exchange Visitor Information System (SEVIS) was established that requires schools to provide completed electronic files to immigration offices and the State Department for all students studying at their institution.[48] Institutions failing to comply with SEVIS requirements risk losing accreditation to host foreign students in the future.

In addition to new registration and tracking mechanisms, increased border enforcement measures have been taken to increase security. Border enforcement has been the cornerstone of U.S. policy, especially during the 1990s.[49] However, the new connection made between international migration and border security brought into sharp relief the disparity in the deployment of border enforcement resources. Although non of the 9/11 terrorists gained access to the U.S. by illegally crossing the U.S.-Canada border, the cases of Ahmed Ressam and Gazi Ibrahim Abu Mezer illustrated the potential danger of deploying resources disproportionately

[47] *Migration News* (December 2003) URL: http://migration.ucdavis.edu/mn
[48] *See* URL: http://www.ice.gov/graphics/enforce/imm/sevis/index.htm
[49] Peter Andreas, *Border Games* (Ithaca, NY: Cornell University Press, 2000); Christopher Rudolph, "Security and the Political Economy of International Migration," *American Political Science Review* 97:4 (2003).

along the southern border while leaving the northern border largely unguarded.[50] In 2000, there were only 334 Border Patrol agents deployed on the U.S.-Canada border, while there were some 9,000 deployed along the U.S.-Mexico border. Since 2001, however, the number deployed along the northern border has tripled, and now numbers about 1,000.[51] U.S. authorities have also tried to bolster enforcement through the use of high-tech sensors. The Integrated Surveillance Intelligence System (ISIS) being established utilizes seismic, magnetic, and infrared ground sensors to detect illegal border crossers, and has been deployed at 55 sites along the northern border.[52]

d. Domestic Restructuring and Coordination

For U.S. policy makers, the key challenge in facilitating screening, tracking, and entry control of migrants has been organizing human intelligence (HUMINT) and getting this information to the front lines of homeland security. In addition, coordinating the efforts of the myriad agencies involved in such endeavors also presents a formidable challenge. The most ambitious attempt to address the issues of intelligence and interagency coordination was marked by the reorganization of the federal government and the creation of the Department of Homeland Security. It was thought that bringing together 22 disparate agencies under unified control would foster interagency cooperation. In addition, formerly independent agencies were merged to avoid duplication in areas with significant degrees of overlap. For example, by linking customs enforcement with immigration control agencies (Customs Enforcement and Immigration and Naturalization Service are now unified within the Bureau of Immigration and Customs

[50] Steven A. Camarota, "The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001," *Center Paper 21* (Washington, DC: Center for Immigration Studies, 2003).
[51] Jerry Seper, "Patrol Tripled on Canada Border," *The Washington Times* (Jan. 24, 2004).
[52] Rey Koslowski, "Information Technology, Migration and Border Control," (paper presented at the Institute for Governmental Studies, University of California, Berkeley, April 25, 2002).

Enforcement), policy makers believed that they could increase their ability to improve homeland security by not only controlling the movement of potential terrorists, but also to track the movement of the money used to support such activities. Similarly, the Federal Air Marshals Service has been transferred from the Transportation Security Administration to ICE. As noted by the White House, "The movement of the Federal Air Marshals to Homeland Security's U.S. Immigration and Customs Enforcement will significantly increase the number of federal law enforcement agents available to deploy during times of increased threats to aircraft ultimately providing a surge capacity during increased threat periods or in the event of a terrorist attack."[53] Although this reorganization has presented formidable challenges to the agencies charged with securing the country from terrorist attacks,[54] such domestic integration and coordination makes strategic sense in the emerging war on terrorism.

IV. International Cooperation

Certainly, the same logic that is applied to domestic integration and coordination can be applied to desires for international integration and coordination. Enlisting the cooperation of foreign governments may not only facilitate the accumulation of intelligence on which new anti-terrorism programs depend, but they also offer the promise of extending security beyond the territorial borders of the country. This provides an increased "buffer zone" against potential terrorists. In an address to the Senate Judiciary Committee on March 4, 2003, John Ashcroft explained that "close working relationships with international allies" would allow the United

[53] The White House, "Homeland Security Announces New Initiatives," *White House Press Release* (September 2, 2003), http://www.whitehouse.gov/news/releases/2003/09/print/20030902-6.html
[54] Christopher Rudolph, "The Front Lines of Homeland Security: Immigration and Border Policy After 9/11," typescript, Department of Political Science, UCLA (2004).

States to “leverage our anti-terrorism efforts throughout the world.”[55] Within the scope of this paper, the key point to draw from the Attorney General’s remarks is the idea that international cooperation is seen as an extension of U.S. interests and strategy. This strategy to “leverage” U.S. efforts through international cooperation initially took two primary forms: the “Smart Border Declaration” with Canada and the “U.S.-Mexico Border Partnership Action Plan.”

a. U.S.-Canada Smart Border Action Plan

Bilateral cooperation between the United States has a long tradition, and some have even gone so far as to describe U.S.-Canada relations as “the most extensive bilateral relationship in the world.”[56] Tom Ridge, U.S. Secretary of Homeland Security, explained the desire for intergovernmental cooperation as an issue of common interests. He stated, “By working together we can better reach our common goals of ensuring the security and prosperity of our citizens.”[57] Yet, when we examine the parameters of the existing bilateral measures taken concerning migration and border control, it appears that “common interests” have not generated movement toward harmonization. Rather, the extension of egoistic self-interest (i.e. “leveraging” domestic efforts) is the driving force being the increased cooperation that we have seen, especially since 9/11.

From the American viewpoint, cooperation with Canada was deemed increasingly important for U.S. security because 1) it was recognized that some 50 terrorist groups were

[55] John Ashcroft, “The War Against Terrorism: Working Together to Protect America,” Testimony presented before the Committee on the Judiciary, United States Senate (March 4, 2003), available online at http://www.globalsecurity.org/security/library/congress/2003_h/03-04-03_ashcroft.htm
[56] Stephen Johnson and Sara J. Fitzgerald, “The United States and Mexico: Partners in Reform,” *Backgrounder No. 1715* (Wasington, DC: The Heritage Foundation, December 2003).
[57] Canadian Embassy (Washington, DC), “Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on the Smart Border Action Plan,” Press Release (October 3, 2003).

present and active in Canada,[58] and 2) Canadian immigration and border policies are widely regarded as being lax, especially those concerning refugees and asylum.[59] Canadian Deputy Prime Minister John Manley and (then) Governor Tom Ridge signed the Smart Border Declaration on December 12, 2001. The declaration was accompanied by a 30-point action plan based on four pillars: 1) the secure flow of people, 2) the secure flow of goods, 3) secure infrastructure, and 4) information sharing and coordination in the enforcement of these objectives.

Table 1 summarizes elements of the 30-point action plan most relevant to pillars 1, 3, and 4 of the Smart Border Declaration. Although recent status reports issued by the U.S. and Canadian governments describe many elements in terms of "coordination," it is more accurate to describe such activities as evidence of *cooperation* rather than *harmonization.* Indeed, according to a 2003 progress report of the Action Plan, there has been considerable progress made in the area of coordination. In terms of creating a "smarter" border through increased cooperation, the US-Canada NEXUS program represents a model example in terms of migration control. NEXUS is intended to concurrently facilitate migration flows while maintaining protocols to increase security. The program enlists the cooperation of several agencies on both sides of the border, including the U.S. Bureau of Immigration and Customs Enforcement (ICE), the Canadian Customs and Revenue Agency (CCRA), and Citizenship and Immigration Canada (CIC). NEXUS is intended to facilitate the flow of "low risk" travelers who are pre-screened and must be approved by officials in both Canada and the

[58] "North of the Border," *CBS News* (September 7, 2003) http://www.cbsnews.com/stories/2003/09/04/60minutes/printable571584.shtml (accessed February 18, 2004); LaVerle Berry et al., *Nations Hospitable to Organized Crime and Terrorism* (Washington, DC: Federal Research Division, Library of Congress, October 2003).
[59] Stephen Gallagher, "Canada's Dysfunctional Refugee Determination System," *Public Policy Sources* 78 (Vancouver, BC: The Fraser Institute, December 2003).

Table 1: Degree of Harmonization with Selected Elements of the U.S.-Canada Smart Border Action Plan

Area	Description	Coordination or Harmonization?
Biometrics	Establish common standards for biometrics	*Harmonization*
Single Alternative Inspection System	Expedited inspection lanes for frequent travelers	Coordination
Refugee and Asylum Processing	Share information regarding refugee/asylum applicants	Coordination
Refugee and Asylum Policy	Establishment of "safe third country" policy	*Harmonization*
Visa Policy Coordination	Increase cooperation in visa processing by sharing intelligence information	Coordination
Air Pre-clearance	Expansion of air pre-clearance procedures	Coordination
Advance Passenger Information	Provide passenger name records for travelers	Coordination
Joint Passenger Analysis Units	Cooperate on identifying potentially high-risk travelers	Coordination
Immigration Officers Overseas	Allow deployment of immigration officers between countries	Coordination
Integrated Border Enforcement Teams	Shared training and increased cooperation among border security and law enforcement agencies	Coordination
Integrated Intelligence	Establish Integrated National Security Enforcement Teams on a case-by-case basis	Coordination
Fingerprint information sharing	Implement electronic system for exchange of fingerprint and criminal records information	Coordination

Source: Canadian Embassy (Washington, DC)

United States.[60] The number of designated lanes for NEXUS participants has been continually expanding, beginning with one site in June 2000 (Port Huron-Sarnia) and expanding to 15 by the fall of 2003.[61]

[60] The White House, "United States-Canada Nexus Program," Press Release (September 9, 2002), available at: http://www.whitehouse.gov/news/releases/2002/09/print/20020909-1.html.

The expansion of the Integrated Border Enforcement Teams (IBETs) also suggests progress in bilateral cooperation in border control between the United States and Canada. Initially established in 1996 along the border in the western region of Washington state to combat drug smuggling and illegal immigration, IBETs have now been expanded across the entire U.S.-Canada border. IBETs establish coordination between numerous agencies, including ICE, the Bureau of Customs and Border Protection, the FBI, ATF, U.S. Secret Service, the Royal Canadian Mounted Police (RCMP), the CCRA, and numerous local law enforcement agencies on both sides of the border. These are then managed by a Joint Management Team from senior officials drawn from participating agencies that facilitate intelligence sharing and conduct joint operations for border security. Such cooperation, especially in terms of intelligence, increases control capacities for both Canadian and American agencies. Roy Hoffman, head of the ICE office in Blaine, Washington, suggested that, "Sharing information with our Canadian counterparts allowed both sides to better determine where our efforts had to be centered and gave all of us a better chance of success."[62]

Such improvements in bilateral coordination have been touted as evidence that security can be established without sacrificing security by creating smarter borders. In the one-year progress report, John Manley argued that, "The speed with which we have been able to expand programs like NEXUS, FAST and our Integrated Border Enforcement Teams demonstrates our commitment to making the smart border a reality."[63] As shown in Table 1, however, the level of integration in terms of the smart border remains relatively shallow, with few areas of true policy

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[61] Canadian Embassy, Washington DC, "Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on the Smart Border Action Plan," Press Release (October 3, 2003).
[62] Quoted in Jerry Seper, "Cooperation at the Border Bolsters Law Enforcement," *The Washington Times* (January 5, 2004), A7.
[63] Canadian Embassy, Washington DC, "Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on the Smart Border Action Plan," Press Release (October 3, 2003).

harmonization. The two areas that can be classified as evidence of movement toward harmonization include biometrics and refugee/asylum policy. Yet, there is a significant qualitative difference in the two areas. Harmonization of biometrics—those deemed appropriate for use in identification and the manner in which they are used on official documents—clearly places few restrictions on policy options. Harmonization of biometrics is a necessary condition to achieve successful cooperation in many areas of the smart border plan, but this harmonization does not involve foregoing independent decision making in policy formation. It should come as little surprise then that the highest level of harmonization can be found in this area.

More problematic has been the issue of *policy* harmonization—primarily focused on the issue of refugee and asylum processing. In the realm of refugee and asylum policy, there seems to be a considerable difference in attitudes between Canadian and American policy makers. At issue is whether or not Canada is "soft" on refugee and asylees, and both the ideational and political obstacles to policy change in this area to conform to American desires for increased security. As noted in a recent study commissioned by the Fraser Institute, "Canada's refugee-determination system and migration-control policies are out of step with what appears to be a clear convergence of policies and practices in the developed world."[64] Joe Bissett, former executive director of the Canadian Immigration Service, seconded this opinion: "We have the most generous refugee system in the world. Much too generous."[65]

Although harmonization of asylum policy is listed under the 30-point action plan, a closer look at the issue warrants pessimism as to the probability of increased collaboration. In terms of current policy, several dimensions of the Canadian system make it disproportionately open

[64] Stephen Gallagher, "Canada's Dysfunctional Refugee Determination System," *Public Policy Sources* 78 (December 2003), p. 5.
[65] Quoted in "North of the Border," *CBS News* (September 7, 2003), http://www.cbsnews.com/stories/2003/09/04/60minutes/printable571584.shtml.

relative to other advanced industrial states. These include high rates of approvals, a generous social welfare system, infrequent prosecutions, and lax deportation procedures. In 2002, the refugee recognition rate (for in-country determinations) in Canada was nearly double the U.S. rate, while the per-capita acceptance rate of refugees from 2000-2002 (in-country Convention refugee recognitions) was four times the American rate.[66] Moreover, authorities detain few refugees and asylees while their claims are pending adjudication, even though Canadian law permits detention of those applicants who might represent a possible security threat or flight risk.[67] In fact, generally only 5 percent of refugees entering Canada are detained, while the remaining 95 percent are released until their immigration hearing is held.[68] Moreover, in Canada there a few barriers to claimants working and accessing social entitlement programs while their claims are pending. In contrast, the 1996 IIRAIRA added to existing restrictions on access to social welfare for applicants while their case is being adjudicated by requiring that employment authorization not be authorized for a period of *at least* six months. Because "first instance" determination of asylum status must be processed within 180 days according to U.S. law, employment opportunities are reserved only for those who warrant an affirmative determination of their case.[69] Moreover, in addition to detaining claimants pending review of their case, the United States also has an "expedited removal" system in place that facilitates detention and removal of individuals apprehended at the border that do not have proper documents. In

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[66] United Nations High Commissioner for Refugees, *UNHCR Population Statistics* (Geneva: UNHCR, August 4, 2003), table 5, reprinted in Stephen Gallagher, "Canada's Dysfunctional Refugee Determination System," *Public Policy Sources* 78 (December 2003), pp. 18-19.

[67] Peter Rekai points to several causes for this failure to detain potential "high risk" applicants. These include lack of proper intelligence necessary for to identify "high risk" applicants, lack of adequate detention facilities, and humanitarian considerations. *See* Peter Rekai, "U.S. and Canadia Immigration Policies: Marching Together to Different Tunes," *C.D. Howe Institute Commentary* 171 (November 2002), p. 13.

[68] "North of the Border," *CBS News* (September 7, 2003), http://www.cbsnews.com/stories/2003/09/04/60minutes/printable/571584.shtml; James Bissett, "Canada's Asylum System: A Threat to American Security?" *Backgrounder* (Washington, DC: Center for Immigration Studies, May 2002).

[69] Stephen Gallagher, "Canada's Dysfunctional Refugee Determination System," *Public Policy Sources* 78 (December 2003), p. 11.

addition, out-of-status foreigners in the country for more than one year are barred from applying for asylum and are subject to deportation if apprehended.[70]

In contrast to its American usage, the use of the term "expedited" in the Canadian sense has been to "speed positive claims toward recognition."[71] Failure to detain applicants pending what is often a lengthy judicial review process is coupled with a de facto policy of failing to deport those who either fail to appear at their hearing or are denied refugee status. One analyst noted, "Not only does Canada permit anyone who arrives to make an asylum claim, but many of those eventually denied refugee status are never removed from the country. Only about 9,000 people are removed from Canada each year, and of these, approximately two-third[s] are failed asylum seekers."[72] According to the Auditor-General's 2003 report, Canadian authorities have lost track of 36,000 foreigners that were supposed to be deported over the past six years.[73]

Canada's refugee and asylum policies have resulted in trends that are disconcerting to security-minded American policy makers. Certainly, Canada's stance vis-à-vis asylum and refugees make it a first choice for those seeking protection, as well as those seeking admission that failed through other channels.[74] Unfortunately, this also creates conditions conducive for the infiltration of foreign terrorists. The Canadian Security Intelligence Service (CSIS) has confirmed the presence of some 50 active terrorist organizations operating in Canada, ranging in scope from the Irish Republican Army to Hezbollah, Hamas, and al Qaeda.[75] Known terrorists Hani Al-Sayegh, Gazi Ibrahim Abu Mezer, Nabil Al-Murabh, and Ahmed Ressam gained access

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[70] *Migration News* (April 2003).
[71] Gallagher, p. 14.
[72] James Bissett, "Canada's Asylum System: A Threat to American Security?" *Backgrounder* (Washington, DC: Center for Immigration Studies, May 2002), p. 5.
[73] LaVerle Berry et al., *Nations Hospitable to Organized Crime and Terrorism* (Washington, DC: Federal Research Division, Library of Congress, October 2003), p. 147.
[74] Gallagher, p. 9.
[75] "North of the Border," CBS News (September 7, 2003), http://www.cbsnews.com/stories/2003/09/04/printable571584.shtml.

to Canada by seeking political asylum upon entry.[76] Canadian officials were recently outraged when a report issued by the Federal Research Division of the Library of Congress listed Canada among the nations that are "hospitable to organized crime and terrorism."[77] The authors quoted a senior CSIS official who argued that, "in most cases, [terrorists] appear to use Canadian residence as a safe haven, a means to raise funds, to plan or support overseas activities or as a way to obtain Canadian travel documents which make global travel easier."[78] From a U.S. security point of view, this represents a potential threat to American security as terrorists can exploit Canadian policy and then use their Canadian base as a potential staging ground for terrorist attacks.

In the European Union, policy makers have sought to increase security through integration and policy harmonization, including "fast track" processing to dismiss "patently unfounded" asylum claims and applying "safe third country" and "safe country of origin" principles in asylum processing to reduce the practice of "asylum shopping." Indeed, in the case of Germany, EU harmonization provided a rationale for a significant tightening of asylum policy, one that had been the most liberal in post-WWII Europe and protected by the German *Grundgesetz*.[79] As of Spring 2004, there has been little movement toward an EU-style harmonization of asylum policy between the United States and Canada, though a "safe third

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[76] Al-Sayegh was suspected in the 1996 Khobar Towers bombing in Saudia Arabia; Abu Mezer was apprehended with plans to detonate a bomb on a New York City subway in 1997; Al-Murabh has been identified as a key operative of Osama bin Laden; and Ressam was arrested trying to enter the United States from Canada with 100 pounds of high explosives intended for detonation at Los Angeles International Airport on New Years Eve, 1999. "North of the Border," CBSNews.com (September 7, 2003), http://www.cbsnews.com/stories/2003/09/04/60minutes/printable571584.shtml.

[77] LaVerle Berry et al., *Nations Hospitable to Organized Crime and Terrorism* (Washington, DC: Federal Research Division, Library of Congress, October 2003).

[78] Ibid, p. 146; Originally cited in Jonathan Dube, "Safe Haven for Terror?" ABCNews.com (January 13, 2000), http://abcnews.go.com/sections/world/DailyNews/canada_terrorism000114.html.

[79] Christian Joppke, "Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain," *Comparative Political Studies* 30:3 (June 1997), pp. 259-298; Christian Joppke, *Immigration and the Nation-State* (Oxford: Oxford University Press, 1999).

country" agreement was drafted in July 2002.[80] However, the agreement has yet to be applied in practice. Moreover, recent developments do not bode well for increased harmonization.

On the Canadian side, the resistance to policy harmonization for asylum and refugees is palpable and resistance to strict limitations on "safe third country" entrants has a considerable history. In 1987, a Refugee Bill was tabled that included a "safe third country" provision was tabled in Parliament. After heated debate and considerable political opposition, the bill was approved in July 1988. However, when the new law came into effect, government officials were unable to establish a list of "safe countries." Moreover, the Cabinet did not consider the United States to be a "safe country" for Salvadorans and Guatemalans that fled Central America in the 1980s. Ultimately, the Minister of Immigration announced that, "at the present time I am prepared to proceed with no country on the safe third country list."[81] New legislation passed after 9/11 has yet to change Canada's position significantly. The Immigration and Refugee Protection Act, passed in November 2001, actually increases restrictions on applying the "safe third country" principle in the practical processing of asylum claims. A recent report points out that, "Article 102(2)(a) of the IRPA requires the government to 'consider' whether a 'responsibility-sharing' agreement exists between Canada and the transit country before a refugee claim can be considered 'ineligible' for determination in Canada." It adds, "Thus far, Canada has succeeded in reaching an agreement with only one country, the United States, and this agreement has yet to take effect."[82] Indeed, the very title of the legislation offers insight into Canadian priorities. In contrast to American legislation passed after 9/11 that stresses security interests (e.g. USA Patriot Act, the Enhanced Border Security and Visa Entry/Exit Reform Act),

[80] United States Immigration and Naturalization Service, "Meeting on Proposed Safe Third Country Agreement with Canada for Asylum Seekers," *Federal Register* 67 (July 12, 2002).
[81] Quoted in James Bissett, "Canada's Asylum System: A Threat to American Security?" *Backgrounder* (Washington, DC: Center for Immigration Studies, May 2002), p. 4.
[82] Gallagher, p. 15.

the title of the 2001 legislation touts Canada's commitment to refugee protection with no reference to security. Moreover, policy makers have made their discomfort at policy harmonization quite clear. In October 2001, Immigration Minister Elinor Caplan suggested that U.S.-Canada discussions concerning a security perimeter focus on information sharing rather than harmonization: "Let there not be any misunderstanding. Canadian laws will be made right here in the Canadian Parliament."[83]

On the American side, analysts have suggested that there is little incentive for a bilateral third country agreement with Canada, since the flow of asylum seekers generally flows toward Canada from the United States.[84] Moreover, U.S. treatment of the case of Maher Arar suggests wariness with Canada's commitment to the war on terrorism and may also hint at a reluctance to turn over individuals that appear on U.S. anti-terrorist watch lists. U.S. immigration officials at Kennedy Airport detained Arar, a naturalized Canadian citizen born in Syria, on September 26, 2002, when he was suspected of having ties to Al Qaeda. Rather than deporting him to Canada, American authorities unilaterally decided to send Arar to Syria, without consulting Canadian authorities.[85] A recent report by the Center for Strategic and International Studies suggests that, "By refusing to send [Arar] to Canada, the U.S. government appears to have believed Canada would let Arar walk free, or at a minimum fail to gain any information from him."[86]

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[83] Howard Adelman, "Governance, Globalization and Security: The Harmonization of Immigration Policy," paper presented at a conference on "Globalization, Multilevel Governance, and Democracy: Continental, Comparative and Global Perspectives," Queens University, Kingston (May 3-4, 2002).

[84] A U.S. State Department official suggested that the "safe third country" agreement is something that "…Canada wants and that we are willing to agree to as a trade-off for other important counter-terrorism measures." *See* United States House of Representatives, Hearing on the U.S. and Canada Safe Third Country Pact, Judiciary Committee, Subcommittee on Immigration (October 6, 2002); *also* Gallagher, p. 15.

[85] Canadian Foreign Minister Bill Graham was notified three days after Arar's arrest that he had been deported to Syria.

[86] Andre Belelieu, "Canada Alert: The Smart Border Process at Two: Losing Momentum?" *Hemisphere Focus* 11:31 (Washington, DC: Center for Strategic and International Studies, December 10, 2003), p. 7.

Clearly, when we differentiate between coordination and collaboration, current bilateral progress is centered primarily on the former rather than the latter. The Smart Border plan articulates several areas to cultivate increased cooperation but few regarding policy harmonization. Moreover, the only area concerning policy harmonization—refugee and asylum processing—is marked by an agreement that has yet to come into force. Howard Adelman notes that, "Immigration and refugee policy has not been harmonized between Canada and the United States. Nor are there any indications that they will be."[87] There are many obstacles facing the creation of a North American security perimeter regime on both sides of the border. For Canadians, immigration and border policy is based on 1) maximizing the economic gains from migration, 2) upholding Canada's liberal humanitarian tradition, including refugee and asylum, 3) facilitating the integration of newcomers, and 4) managing access to Canada.[88] Liberal, open policies have strong domestic lobbies in Canada that have been instrumental in shaping both immigration and asylum policies. Moreover, consistent with the liberal state hypothesis forwarded by James Hollifield and other migration scholars,[89] the human rights and immigration law lobbies have successfully institutionalized protections for migrants within the judiciary (as well as the Immigration and Refugee Board) that constrain policy makers from enacting restrictionist policies. A Fraser Institute report argues, "…any effort to harmonize policies with other developed countries to address the challenge of illegal immigration…will evoke strong criticism from refugee advocacy and human rights groups as it has in all other developed

[87] Howard Adelman, "Governance, Globalization and Security: The Harmonization of Immigration Policy," paper presented at a conference on "Globalization, Multilevel Governance, and Democracy: Continental, Comparative and Global Perspectives," Queens University, Kingston (May 3-4, 2002), p. 24.
[88] Paul Henry, Trade Policy Analyst, Ecnomic Policy and Programs Division, Selection Branch, Citizenship and Immigration Canada (CIC) put this priorities schema forward.
[89] *Cf.* James F. Hollifield, *Immigrants, Markets and States* (Cambridge, MA: Harvard University Press, 1986); David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore, MD: Johns Hopkins University Press, 1996); Yasemin Soysal, *The Limits of Citizenship* (Chicago: University of Chicago Press, 1994)

countries."[90] Indeed, defense of Canadian liberal identity is also evidenced in their preference for the term "zone of confidence" rather than "security perimeter" when discussing bilateral cooperation.[91] Moreover, protection of Canada's approach to immigration reflects its distinctiveness and sovereignty. John Manley made this expression of a defense of Canadian sovereignty explicit: "Working closely with the United States does not mean turning over to them the key to Canadian sovereignty."[92]

The Americans also have a strong interest in relatively liberal border policies. On this point, there is commonality between American and Canadian interests. However, the emphasis the Bush administration has placed on security and the war on terrorism warrant that economic interests cannot be forwarded at the expense of security. It is here that interests diverge. The Americans see coordination as a necessary means to increase security. Pressing for policies that reduce the number of potential terrorist-aliens that may seek to cross the border is clearly an important priority which would enable policy makers to maintain a relatively more open stance vis-à-vis migration, as would also mitigate the prohibitive costs that a radical enforcement of the border would entail. However, like their Canadian counterparts, U.S. policy makers are also keenly defensive of their sovereignty in the issue of migration, making true coordination on policy issues difficult. Echoing the sentiments of Canadian policy makers, President Bush remarked, "You pass your laws, we'll pass our laws."[93] Christopher Sands of the Center for

[90] Gallagher, p. 31.

[91] Peter Andreas, "A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9-11," *Working Paper No. 77* (La Jolla, CA: Center for Comparative Immigration Studies, UCSD, May 2003), p. 12.

[92] Quoted in Paul Wells, "We Don't Pull Our Own Weight: Manley," *National Post* (October 5, 2001), p. A6; also cited in Donald Barry, "Managing Canada-U.S. Relations in the Post-9/11 Era: Do We Need a Big Idea?" *Policy Paper on the Americas Vol. XIV, Study 11* (Washington, DC: Center for Strategic and International Studies, November 2003), p. 11.

[93] Quoted in Steven Frank and Stephen Handelman, "Drawing a Line," *Time* (Canadian edition) (October 8, 2001), p. 45; also cited in Donald Barry, "Managing Canada-U.S. Relations in the Post-9/11 Era: Do We Need a Big Idea?" *Policy Paper on the Americas Vol. XIV, Study 11* (Washington, DC: Center for Strategic and International Studies, November 2003), p. 11.

Strategic and International Studies argues, "It is not at all clear that the United States has abandoned its preference for managing the border unilaterally since September 11. Indeed, in the absence of any clear Canadian initiatives or counterproposals for improving border security and fighting terrorism in North America, the bilateral cooperation since September 11 is impossible to distinguish from a combination of U.S. unilateralism and Canadian acquiescence to the U.S. agenda."[94]

b. The U.S.-Mexico Border Partnership Action Plan

The United States' southern border with Mexico has been a security concern for policy makers since the President's Commission on Migratory Labor issued a warning in 1951 about an emerging "wetback invasion."[95] This perception of threat has continued since then, evidenced by public statements regarding "regaining control" of our "neglected border" in the 1970s and 1980s, to the "alien invasion" in the 1990s. The nature of the perceived security threat was never linked to a military dimension, but rather to a combination of security's economic and societal poles.[96] Concern over securing the southern border has dominated U.S. policy making over the past 30 years, with a disproportionate amount of resources and manpower allocated to achieve this goal.[97] The events of 9/11 have only served to strengthen support for this approach, and

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[94] Christopher Sands, "Terrorism, Border Reform, and Canada-United States Relations: Learning the Lessons of Section 110," paper presented at the conference "Linkages Across the Border: The Great Lakes Economy," held at the Federal Reserve Bank of Chicago, Detroit Branch (April 4, 2002), p. 12.

[95] President's Commission on Migratory Labor, *Migratory Labor in American Agriculture* (Washington, DC: U.S. Government Printing Office, 1951).

[96] *See* Christopher Rudolph, "Security and the Political Economy of International Migration," *American Political Science Review* 97:4 (2003). Most recently, a highly controversial article by Samuel Huntington again defined the southern border as a societal threat. See Samuel Huntington, "The Hispanic Challenge," *Foreign Policy* (March/April 2004).

[97] *Cf.* Peter Andreas, *Border Games: Policing the U.S-Mexico Divide* (Ithaca, NY: Cornell University Press, 2000); Christopher Rudolph, *National Security and International Migration,* typescript, UCLA (2004).

have increased demands for more rigid controls of migration flows between the United States and Mexico.

The Mexican perspective of the border—and migration in general—sharply contrasts the American view. For Mexicans, migration is a fundamental way of life and is considered a basic human right. This right of free movement is codified in the Mexican constitution, but public opinion shows attitudes toward open migration that don't stop at the nation's borders. A 2002 Zogby poll found that 57% of Mexican respondents agreed with the statement, "Mexicans should have the right to enter the U.S. without U.S. permission."[98] In addition to ideational aspects, material interests also favor open migration policies. For a country that continues a sometimes-rocky road to advanced industrialization, international migration offers an important safety valve to stem unemployment pressures in the Mexican economy.[99] Moreover, the increasing volume of currency remittances from emigrants working abroad—now estimated to amount to at least $14 billion annually—offers a significant inflow of foreign exchange necessary to increase the country's balance of payments position. For Mexico, it is estimated that remittances represent the third-largest source of hard currency for the economy.[100]

It is little wonder then, that Vicente Fox has consistently placed the issue of international migration at the top of high foreign policy priorities. Indeed, the Mexican government views the issue of migration at least as important as the issue of trade, and considers both integral facets of any North American integration regime.[101] Among the leaders of North American countries, Fox has been the most forceful in pushing for a deepening of regional integration following the

[98] Cited in Jon Dougherty, "Mexicans: Southwest is Ours," *WorldNetDaily.Com* (June 13, 2002), online at http://www.worldnetdaily.com/news/printer-friendly.asp?ARTICLE_ID=27941 (accessed February 18, 2004).
[99] Kevin O'Rourke and Jeffrey Williamson, *Globalization and History: The Evolution of a Nineteenth Century Atlantic Economy* (Cambridge, MA: MIT Press).
[100] Alonso Urrutia, "Remesas de migrantes equivalen a 83% de la inversion de EU en Mexico," *La Jornada* (October 30, 2000), p. A1.
[101] Marc R. Rosenblum, "Moving Beyond the Policy of No Policy: Emigration from Mexico and Central America," *Latin American Politics and Society* 46:4 (2004), forthcoming, p. 10.

European model.[102] His vision for a deepening of NAFTA integration is based on facilitating the free flow of people, in addition to goods and capital.

Initially, the election of George W. Bush seemed to bode well for a new round of negotiations regarding immigration. During the election, Bush sought to build his foreign policy base on the positive relationship he had established with Fox when he was governor of Texas. Politically, the divisive anti-immigration rhetoric that proved volatile in the United States during the 1990s was quelled by a combination of the economic boom and the highly visible border defenses that had been established at key points along the border.[103] After a February 2001 meeting between Fox and Bush, the U.S-Mexico High Level Working Group on Migration was established and a subsequent meeting between the leaders was held on September 5, 2001 to further this agenda.[104]

The political effects of September 11 clearly affected the momentum of the migration talks and U.S.-Mexican relations more generally. As noted by Peter Andreas, "Fox's border-free vision of North America was one of the first casualties of the devastating terrorist attacks…."[105] Bilateral talks regarding migration were immediately and indefinitely tabled as the United States focused on the issue of homeland security and the emerging war on terrorism. Fox soon complained that the U.S. had become too focused on the issue of security and that the U.S.-Mexican relationship was suffering because of it.[106] Jorge Castañeda, the Mexican Foreign

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[102] Interview with Vicente Fox, *The News Hour with Jim Lehrer* (March 21, 2000), available online at http://www.pbs.org/newshour/bb/latin_America/jan-june00/fox_3-21.html.
[103] Christopher Rudolph, "Security and the Political Economy of International Migration," *American Political Science Review* 97:4 (2003).
[104] The White House, "Joint Statement Between the United States of America and the United Mexican States," Press Release (September 6, 2001), available at http://www.whitehouse.gov/news/releases/2001/09/20010906-8.html.
[105] Peter Andreas, "A Tale of Two Borders
[106] *Migration News* (October 2002).

Minister, suggested that, "In many ways, the region, at least in terms of U.S. attention, has become one again an Atlantis, a lost continent."[107]

From the American perspective, the newly acknowledged link between migration control and terrorism cast the southern border in a new light. What had been largely a political problem prior to 9/11 had now become a key issue for strategic security. A Library of Congress report suggested that, "Because of its close proximity to the United States, its porous borders, its strategically significant oil industry, and a large U.S. commercial and tourism presence, Mexico may serve as a transit or target environment for a foreign terrorist operation."[108] The issue of porous borders is particularly sensitive to U.S. security interests. Traditionally, Mexico has served as a transit point for economic migrants coming from Central and South American countries. This, however, poses a risk that terrorists and their organizations may exploit the same openness. Describing the border situation, Mexican Congressman Emilio Zebadua said, "The Mexican government is either unable or unwilling to really take this southern border as a major priority." He added, "They have pretty much left it as an open border."[109]

Prior to September 11, the United States government pressured the Fox Administration to address the security by suggesting that increased security is a necessary condition for talks concerning a bilateral migration accord. The result was the *Plan Sur* ("South Plan") that was aimed at apprehending and repatriating illegal aliens crossing Mexico's southern border. The events of 9/11 increased U.S. support for the program and prompted material support. The U.S. government supplied boats to the Mexican navy to patrol the southern sho re, and also provided needed capital to pay for the repatriation program. In 2002, the program repatriated 120,000

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[107] Jorge Castañeda, "The Forgotten Relationship," *Foreign Affairs* (May/June 2003), p. 70.
[108] LaVerle Berry et al., *Nations Hospitable to Organized Crime and Terrorism* (Washington, DC: Federal Research Division, Library of Congress, October 2003), p. 171.
[109] Quoted in Hugh Dellios, "Mexico Struggles to Secure Its Southern Border," *AberdeenNews.Com* (March 4, 2004) available at http://www.aberdeennews.com.

immigrants to their home countries, and another 141,000 were returned in 2003.[110] Though such measures have increased security on the border somewhat, it is far from "secure." A representative of the UNHCR suggested that control remained elusive: "Controlling this border is impossible. And it's not only a question of will. It's a question of geography, corruption, violence and the well organized nature of the trafficking."[111]

The issue of government corruption not only plagues security along the southern border, but also in terms of access into Mexico and the United States more generally. Moreover, events immediately following 9/11 suggested that this could contribute to infiltration by terrorists, who would then attempt to cross the border into the United States. In October 2001, an Iraqi-born migrant smuggler confessed to establishing a working relationship with a corrupt Mexican immigration officer in order to smuggle over 1,000 migrants from the Middle East into the United States. A Heritage Foundation report argues, "Despite direct intervention by President Fox to end bribery on the U.S.-Mexican border, customs and immigration services are weak elsewhere and plagued by corruption."[112]

Mexico has long been sensitive to U.S. policy makers referring to illegal immigration as a security threat. Ironically, though, security has paved the way for a renewal of talks on a bilateral accord dealing with migration. Although from a normative standpoint framing migration in a security context is anathema to Mexican sensibilities, it provides a "more politically palatable rationale for Mexico to cooperate on immigration control."[113] The key issue

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[110] Hugh Dellios, "Mexico Struggles to Secure Its Southern Border," *AberdeenNews.Com* (March 4, 2004) available at http://www.aberdeennews.com (accessed March 5, 2004).
[111] Ariel Riva, local director for the UNHCR, quoted in Hugh Dellios, "Mexico Struggles to Secure Its Southern Border," *AberdeenNews.Com* (March 4, 2004) available at http://www.aberdeennews.com (accessed March 5, 2004).
[112] Stephen Johnson and Sara J. Fitzgerald, "The United States and Mexico: Partners in Reform," *Heritage Foundation Backgrounder No. 1715* (December 18, 2003).
[113] Peter Andreas, "A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9-11," Working Paper 77 (La Jolla, CA: Center for Comparative Immigration Studies, UCSD, May 2003), p. 10.

is where the "security" focus is placed. For Mexicans, immigration control is not problematic so long as it is not directed primarily at them but rather, other foreign nationals who may use the country as a transit point to gain entry into the United States. Moreover, using a security rationale has also given Mexican diplomats another tool to use to garner U.S. support for two of its primary foreign policy goals: 1) amnesty for the current population of undocumented workers living in the United States, and 2) a legal alternative to undocumented access to the American economy. Mexican policy makers are careful in how they define the security interests involved. Interior Minister Santiago Creel remarked, "The Mexican migratory flow represents no risk whatsoever, even less if it is documented."[114] Careful to emphasize that Mexican migrants do not represent a potential terrorist threat, Creel argued that, "Migrant regularization would provide the United States with a greater margin of security than the one it currently has."[115]

American desires to leverage its homeland security program by garnering assistance from its neighbors, combined with the emerging desire of Mexican officials to leverage cooperation in return for renewed talks concerning migration led to the U.S.-Mexico Smart Border Agreement, announced in March 2002. The agreement put forward a 22-point action plan that outlined the specific areas for increased coordination and harmonization in three categories, including the secure flow of people, goods, and infrastructure.[116] Table 2 lists the elements of the 22-point action plan specifically addressed to the issue of bilateral cooperation in the category of international migration. As is the case with the Smart Border agreement between the U.S. and Canada, the action plan is intended to identify areas where increased cooperation can be mutually beneficial and establishes a framework for future development.

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[114] Quoted in Justin Gest, "Mexican Official Touts Amnesty as a Security Booster for the U.S.," *Los Angeles Times* (July 11, 2003), p. A8.
[115] Ibid.
[116] Available online at http://www.whitehouse.gov/infocus/usmxborder/22points.html.

Table 2: Degree of Harmonization with Selected Elements of the U.S.-Mexico Smart Border Action Plan

Area	Description	Coordination or Harmonization?
Pre-Cleared Travelers	Expand the use of SENTRI lanes at high-volume ports of entry	Coordination
Advanced Passenger Information	Establish a joint APIS system for US-Mexico flights	Coordination
Facilitate Travel Within NAFTA Countries	Explore methods to facilitate the movement of NAFTA travelers	Coordination
Safe Borders	Increase safety along the border for migrants; reduce migrant smuggling	Coordination
Visa Policy	Continue consultations on visa policies and visa screening procedures. Share intelligence information.	Coordination
Joint Training	Conduct joint training in the areas of investigation and document analysis	Coordination
Compatible Databases	Develop systems for exchanging and sharing intelligence	Coordination
Screening Third-Country Nationals	Enhance cooperative efforts to detect, screen, and deal with potentially dangerous third-country nationals	Coordination

Source: The White House

When examining the U.S.-Mexico agreement and action plan in detail, two features are readily apparent. First, as is the case with the U.S.-Canada agreement, the emphasis is exclusively on increasing *coordination* rather than *harmonization.* Second, the verbiage on many of the items in the action plan is vague, especially when compared to the verbiage used in the U.S.-Canada plan.[117] Where the word "harmonization" is used, it refers to the standardization of infrastructure, such as compatible databases, or to synchronizing operations at

[117] Deborah Waller Meyers, "Does 'Smarter' Lead to Safer? An Assessment of the Border Accords with Canada and Mexico," *Insight* (Washington, DC: Migration Policy Institute, June 2003), p. 9.

ports of entry.[118] It makes no attempt to suggest that migration *policies* would be harmonized. Where policy issues are identified, such as visa policy, "harmonization" is intended to refer establishing "enhanced cooperation" in screening third country nationals by facilitating information sharing. Along many of the areas specified in the agreement, particularly those dealing with migration, participants are bound only to "explore methods" or "continue consultations"—suggesting both an extremely limited degree of integration and a palpable uncertainly about the prospects for such integration in the future. The agreement clearly emphasizes those dimensions border issues where there is a high degree of common interest, including facilitating trade flows, facilitating the movement of "low risk" travelers, and protecting human rights. DHS Secretary Tom Ridge and Interior Minister Santiago Creel point to several developments as evidence of "tremendous progress" over the past year. These include expanding the SENTRI program, expanding the Border Safety Program (to reduce deaths of migrants trying to cross the border), and expanding FAST lanes at ports of entry.[119]

Security issues receive much less emphasis and/or specificity. The limited gains achieved through the U.S.-Mexican accord were evident in recent statements by Ridge and Creel. In February 2004, Ridge and Creel touted two developments as evidence of progress in bilateral cooperation: 1) a tentative agreement that affirms U.S. policy to deport illegal immigrants to their home regions, not just across the border, and 2) the establishment of a secure telephone line between Ridge and Creel.[120] There has also been progress in terms of the Advanced Passenger

[118] In terms of synchronizing operations, the action plan specifies "harmonizing" hours of operation, infrastructure improvements, and traffic flow management at adjoining port of entry on both sides of the border.
[119] U.S. Embassy in Mexico City, "Prepared Remarks by Secretary Ridge at Press Availability with Secretary Creel on the Border Betweeen the United States and Mexico," Press Release (April 24, 2003), available at http://www. usembassy-mexico.gov/releases/ep030424remarks_ridge.htm.
[120] Ricardo Alsonso-Zaldivar, "War on Terrorism Draws U.S. and Mexico Closer," *Los Angeles Times* (February 29, 2004), p. A14.

Information System, as well as expressed desires to implement the NEXUS program as has been done between the U.S. and Canada.

In terms of security, the most significant development in terms of the possibility for an integrated U.S.-Mexican approach for migration control is the change in the tenor of the discussions. By reframing their arguments in terms that emphasize security benefits gained through "safe, orderly, and secure" migration, Mexican policy makers have helped to restart discussions that were essentially dead in the water after 9/11. Santiago Creel points out that, "Without a doubt, security is an area that has allowed us to draw closer."[121] Mexican authorities hope that giving security a favorable ear will provide the necessary political leverage to pressure U.S. lawmakers to pass an amnesty bill through Congress and establish a new guest worker program for Mexican laborers. However, it is not likely that we will see this new dialogue or the Smart Border Agreement produce a comprehensive, integrated approach to migration control in the near future. U.S. policy makers face considerable obstacles to fulfilling Mexican desires for such a comprehensive plan, especially the issue of amnesty—a politically unpopular policy for a vast majority of the American public. Instead, the Americans have shown a preference for a much more limited type of cooperation. Roger Noreiga, the U.S. Assistant Secretary of State for Western hemispheric affairs, clarified the U.S. position: "I think (small steps) will allow us to continue to consult with and gauge the interest from our Congress. But decisions on [a comprehensive U.S.-Mexican migration accord] have to come from the very top, and at this point we're not in position to go forward on the bigger agenda, the broader, more comprehensive approach."[122] Colin Powell, who suggested that a migration accord is "going to take us a lot

[121] Quoted in Ricardo Alsonso-Zaldivar, "War on Terrorism Draws U.S. and Mexico Closer," *Los Angeles Times* (February 29, 2004), p. A14.
[122] Quoted in Alfredo Corchado, "Possibility of Migration Accord with Mexico Revisited," *The Dallas Morning News* (November 12, 2003).

more time and a lot more effort", echoed this sentiment. He added that immigration involves "extremely complex and difficult issues" that involve a lot of "political interests."[123]

V. The Road Ahead

Policy makers in each of the NAFTA member states have expressed a desire for some form of multilateral action concerning migration control. Americans have put forward the notion of a "security perimeter," Canadians have referred to the establishment of a "zone of confidence," and the Mexicans have suggested that only a comprehensive approach is acceptable—"It's the whole enchilada or nothing."[124] The empirical evidence presented here suggests, however, that the unequal distribution of power among NAFTA states, disparate interests, and ideational factors make the establishment of a comprehensive, harmonized regime governing migration and border policy in North America highly unlikely. Peter Andreas notes, "To 'Schengenize' North America's borders…would require a level of formal institutionalization and policy harmonization that is difficult to imagine in the present context…."[125]

Reflecting disparate interests, policy makers in each state have a different notion of what a "North American security perimeter" would consist of. The Americans stress increasing security through screening, while the Mexicans have always favored an EU-style "open borders" regime. The Canadians fall somewhere in-between. Each has an interest in increasing protection against terrorism, but for markedly different reasons. Clearly, given its power the leadership role it has assumed in the global "war on terrorism," Americans are most acutely threatened by the

[123] Quoted in Eric Green, "Powell Says U.S. Wants Movement on Immigration Issues with Mexico," Usinfo.State.Gov (June 2, 2003), available at http://www.usinfo.state.gov/gi/Archive/2003/Jun/04-808468.html.
[124] Jorge Castañeda quoted in Tom Zoellner, "Mexico Says Legalize Crossers or No Deal," *The Arizona Republic* (June 22, 2001).
[125] Peter Andreas, "A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9-11," *Working Paper No. 77* (La Jolla, CA: Center for Comparative Immigration Studies, May 2003), p. 12.

proliferation of international terrorism and have placed the most emphasis on security regarding migration and border policy. The Canadian and Mexican governments appear more concerned that terrorism directed against the United States may use their countries in transit to their target and that such terrorist acts would deteriorate bilateral relations. This, in turn, would complicate their desire for more open borders. However, neither Canada nor Mexico seems ready (or able, in the Mexican case) to acquiesce to U.S. security interests, nor are their interests necessarily convergent. Moreover, each remains committed to sovereignty over policy decisions, as are American policy makers.

Power, interest, and ideational variables identified by regime theorists all suggest that a comprehensive North American migration regime is unlikely. This is certainly supported by the available empirical evidence. NAFTA has always forwarded a process of *shallow* rather than *deep* integration, as is the case with the European Union, and has been focused primarily on the issue of trade liberalization. With the exception of the Fox administration in Mexico, there has been little support for deepening North American integration. Rather, political support has been directed toward expanding the *scope* of existing integration to include countries in Central and South America—the creation of a Free Trade Area of the Americas. Although the post-9/11 security dilemma may have increased interests for increased integration that includes migration control, there is little to suggest that this "dilemma of common aversion" will result in a comprehensive, formal regime. Instead, the "security perimeter" will likely consist of myriad points of *bilateral* rather than *multilateral* coordination, and will also maintain state sovereignty with regards to migration policy.

Given these political realities, what are the available options? Where do we go from here? At this point it is not at all clear that we actually need a comprehensive, formal, and

multilateral regime. Instead, we are most likely to see a continuation of the somewhat fragmented approach taken to date. A U.S. State Department official recently suggested that, "a piece-by-piece approach represents the best strategy for achieving a migration pact that's vital to both the United States security and its economy."[126] Instead of a multilateral security perimeter regime, the short-term focus needs to be placed on establishing a working security system and increasing ad-hoc coordination among NAFTA countries.

Increased openness is in the economic interests of each NAFTA member country, yet American policy makers have made it clear that such openness cannot be achieved at the expense of homeland security. Because homeland security issues are now a necessary condition to forward liberalization, policy makers must focus on those elements most crucial to any security regime. These include gathering and organizing intelligence, creating effective infrastructure to disseminate this information, and ensuring that access to this system is secure and controlled. At this point, American efforts in this regard remain very much a work in progress. The creation of the Terrorist Threat Integration Center represents a tremendous first step in building our intelligence base, and the new Terrorist Screening Center offers potential for expedited access to this information that is crucial if we are to increase security without creating back-logs at consulate abroad and ports-of-entry. It is important to include Canadian and Mexican officials in terror assessment and to promote the establishment of similar security infrastructure in those countries so that intelligence information can be effectively shared among them. Key issues that need to be addressed include, 1) what information will be made available to foreign security officials, 2) what process will be used to vet foreign officials for access to the American intelligence system, and 3) how can security be maintained in terms of access to the system?

[126] Roger Noriega, Assitant Secretary of State for Western Hemispheric Affairs, paraphrased by Alfredo Corchado, "Possibility of Migration Accord with Mexico Revisited," *The Dallas Morning News* (November 12, 2003).

Multilateral consultations must also address the logistical demands that such international cooperation may make on the computer systems that process such information. If U.S. makes TSC information available to Canadian and Mexican immigration officials, what affect would this have on the computer hardware system? Are current facilities adequate to process information requests?

Including Canadian and Mexican officials in threat assessment and providing access to anti-terrorist intelligence also provides an incentive for their governments to increase screening procedures for those entering their countries. Increasing the probability that potential terrorists can be effectively identified prior to entry or detained if they've already entered the country is in everyone's best interests. What will be imperative then, is making sure that access to this information is facilitated. Clearly, much work needs to be done regarding the role of information technology in providing access to intelligence information and facilitating screening processes. Promoting "harmonization" among NAFTA countries regarding information infrastructure and controlled access to this system will likely form the basis of movement toward a North American security perimeter in the short run. Once these necessary security conditions are in place, talks on regime formation can one again focus on the common interest: facilitating cross-border movement in North America to promote economic gains.