

**ROUND TABLE ON EU-CANADA COOPERATION
ON ANTI-TERRORISM AND HUMAN RIGHTS**

September 22, 2008

**Institute for Research on Public Policy, Centre for European Policy Studies
and University of Toronto**

**Rapporteuse: Karine Côté-Boucher
December 2008**

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Preamble

The conference, which took place on Monday, September 22, was opened by Mel Cappe, president and CEO of the Institute for Research on Public Policy (IRPP) who welcomed all participants (see program and list of participants in Annex). A presentation by Audrey Macklin, a professor in the Faculty of Law, University of Toronto, followed. She presented the wider scope of the EU-Canada research project “The Changing Landscape of Justice and Security in Canada: The European Union and EU-Canada Relations,” a partnership between the CEPS and the University of Toronto. While the agenda of the conference focused on the information-sharing dimensions of security and issues of accountability, this project looks at how the EU and Canada manage their relationship in these matters as well as their relationships with third parties, especially the United States.

Session I: Report Card: What Has Been Done, What Are the Obstacles and What Is the Way Forward?

Susie Alegre (Barrister, Centre for European Policy Studies)

Susie Alegre presented issues of accountability in the context of the EU, based on her report, “EU’s External Cooperation in Criminal Justice and Counter-terrorism: An Assessment of the Human Rights Implications, with a Particular Focus on Cooperation with Canada.” The EU’s complex institutional structures create problems of accountability in human rights abuses that occur in the course of international cooperation on counter-terrorism. This is a particularly acute issue in the current juridical context where the European Convention of Human Rights and Fundamental Freedoms (ECHR) is not yet binding because Ireland did not ratify the Treaty of Lisbon, of which it is a part.

Alegre reviewed three cases that exemplify the transformations affecting accountability in anti-terrorism cases in the EU. The first case, the House of Lords’ decision that evidence extracted under torture in Uzbekistan could not be received in UK courts, highlighted the difficulties in exchanging information with non-EU member states in anti-terrorism procedures. The second involves the application now in front of German courts to compel the German government to demand the extradition of the CIA officials accused of the abduction in Macedonia of a German citizen, Khalid El-Masri, who was extraordinarily rendered to United States officials and flown to an interrogation centre in Afghanistan. Finally, in the case of Abu Omar, who was abducted in the streets of Milan by CIA agents, the trial of 26 Italian officials is underway. This trial will clarify for EU agencies and member states the criminal law implications of cooperating with third countries over extraditions that might result in ill-treatment. According to Alegre, the important issue to follow in the next few years will be the effect on jurisprudence of the notion of collusion in torture, especially as criminal courts are taking up human rights cases in instances where human rights courts are failing to do so.

This effect can be seen in a number of cases in which the ECHR has imposed important limits to the extraterritorial effect of human rights conventions where third parties are involved. In the case of the NATO bombing of Bankovic, Serbia, the ECHR had no extraterritorial application. Similarly, in Canada the Federal Court has ruled that the Charter does not apply to Afghan detainees. But in Britain the House of Lords ruled differently on extraterritoriality in the case of Iraqi civilians allegedly killed by UK troops. It found that where it could be proved that the UK had sufficient control over an area, the UK’s *Human Rights Act* and the ECHR applied.

Alegre also commented on the right to an effective remedy when human rights abuses are involved. Intelligence cooperation is usually devoid of remedy mechanisms because of its secretive nature. Nevertheless, the case of the financial compensation offered by Canada to Maher Arar for his extraordinary rendition by the US to Syrian authorities may have implications in other EU cases of information-sharing with third countries that have resulted in human rights abuses.

Giovanni Di Girolamo (Counsellor and Head of the Political and Public Affairs Section, Delegation of the European Commission to Canada)

Giovanni Di Girolamo first stressed that there are historical and institutional aspects of these topics that are specific to Europe. He invited the participants to keep in mind the EU's institutional complexities and layers of jurisdiction, and he recalled Europe's long history of confronting terrorism. He argued that it is necessary to look beyond the present in order to understand the EU's anti-terrorism strategy. This strategy responds to four basic principles. First, even if terrorists target the essence of democratic systems, conflicts should nevertheless be resolved by peaceful means. Second, terrorism represents a threat to human rights. Third, it is a long-term problem that has many facets, and the fight against it therefore requires a multifaceted approach. Finally, terrorism is a global threat and requires international cooperation. At all times, anti-terrorism efforts must be conducted within the framework of the rule of law.

The European Security Strategy, the basic legal document in matters of anti-terrorism adopted by the European Security Council in December 2003, identifies terrorism as a key threat to the EU. Therefore, the action plan produced in 2005 stressed the importance of bringing the fight against terrorism to the global stage, while respecting justice principles and the human rights of citizens. The strategy has four basic tenets: prevent, protect, pursue and respond. "Prevent" means preventing individuals from turning to terrorism by identifying the sources of political radicalization, including a historical perspective. "Protect" refers to the safeguarding of citizens and infrastructures. The third element, "pursue," means tracking down, judging and condemning those guilty of terrorist acts. Finally, there is a need to develop immediate response strategies, enhance capabilities of emergency preparedness and deal with the immediate aftermath of terrorist attacks.

In order to implement this strategy, the EU has worked on improving the national capabilities of different member states. This was achieved by exchanging experiences and best practices, creating mechanisms to coordinate the police and judicial authorities of different member states, and promoting international partnerships –for instance, with Canada, with whom the EU shares common values, such as an interest in combatting terrorism while respecting human rights. The EU also cooperates with the UN through the Counter-Terrorism Committee and the Counter-Terrorism Executive Directorate, as well as by providing technical assistance to 83 third countries (countries that are not part of the EU) in various capabilities: financial law, customs, immigration, enforcement work, deportations, organized crime and weakened infrastructure. Anti-terrorism measures can succeed only if they are collective efforts. Nevertheless, the non-ratification of the Lisbon treaty will make these efforts more complicated within the EU.

Discussion

The discussion focused mainly on effective remedies and on promoting accountability in the search for a balance between counter-terrorism initiatives and the protection of human rights and civil liberties.

Public inquiries

One of the avenues participants discussed was the public inquiry model provided by the Arar Commission in Canada. Some participants argued that establishing a public inquiry requires a political decision that might be affected by such factors as a change of government. In addition, inquiries require important financial and human resources, and are time consuming.

Nevertheless, given their inquisitorial form, inquiries can point to structural deficiencies through their recommendations. The case of the EU inquiry regarding Poland's involvement in the US rendition program was also mentioned as having shed light on the ineffectiveness of public inquiries in transforming intelligence structures. While this inquiry has had a political impact at the level of the EU, it has failed to raise issues of accountability within Poland which suggests that national-level inquiries may provide better results. The need for measures to deal immediately with human rights abuses during counter-terrorism activities, and not after wrongdoing has occurred, was underscored.

Participants also commented on the public impact of inquiries. Public criticism in the aftermath of the Arar Commission focused on the lack of consequences for the organizations and individuals that were deemed responsible in this affair. No organization or person faced disciplinary proceedings, which in the public eye shows that intelligence and law enforcement agencies remain immune to liability. Some participants said that more political work is needed to restore public confidence in security agencies after inquiries. The participants also questioned the potential impact of the large sum (\$10 million) received by Maher Arar in compensation for his ordeal, in that it raises concern about the type of compensation that the three men who are the subjects of the Iacobucci inquiry, and the family members of the Air India bombing, may expect.

Accountability mechanisms: structural or individual?

The need to canvas ideas on fostering cooperation among government, judicial and police bodies in order to promote individual and structural accountability with regard to counter-terrorism efforts was expressed by participants. The Arar Commission recommended that the government put in place deterrents to wrongdoing that would also bring about changes to the mechanisms of communications between intelligence agencies and other departments. It also recommended that adequate accountability mechanisms be established. However, participants noted that there were institutional as well as political impediments to the implementation of these recommendations. They suggested that an internal culture of self-justification allowed security agencies to regard their work as occurring outside the rule of law. Furthermore, the integrated mechanisms suggested by the Arar Commission emphasized the need for a review of intelligence cooperation agencies, as well as an appraisal of bodies in charge of border security and transports, but these recommendations were never addressed by Parliament. Participants pointed out that there seems to be antipathy among political actors and intelligence agencies toward oversight mechanisms for intelligence and security agencies. Nevertheless, participants considered that internal monitoring mechanisms like the Security Intelligence Review Committee (SIRC) could improve accountability.

Further discussion tackled the potential liability of officials engaged in information sharing, especially in cases of torture and ill-treatment by a third party. The Canadian Parliament considered a private member's bill (C-551) to this effect before the 2008 election. Participants debated a proposal by the European Liberty and Security (ELISE) project regarding the promotion of deterrents to wrongful information sharing inside the intelligence community. One person suggested that the concern of these agencies about their reputation within the intelligence community could be used to promote their accountability. Another proposed that a

system of yellow and red cards be instituted. After having shared information without basis on three occasions, the individuals responsible could be excluded from the network of intelligence cooperation. A participant also suggested that intelligence agencies could see their budgets reduced if they were found responsible for human rights abuses on the basis of poor information sharing. Both solutions were suggested with the view of improving the transparency and quality of information. While most participants agreed with imposing consequences upon agencies in cases of wrongdoing, they also suggested that budget cuts would undermine security. Furthermore, while these solutions focus on individual responsibility, they do not address technical problems or difficulties related to “tunnel vision.” Errors are often made under stress when officials are ill-prepared or lack the proper resources. Nevertheless, participants found that holding individuals accountable could contribute to the promotion of systemic protections.

Intelligence agencies and the disclosure of evidence

The handling of evidence by intelligence agencies has recently been examined in a few legal decisions in Canada. This may suggest a tendency toward an expansion of the disclosure obligation in national security cases, as instantiated by the judgment on the destruction of evidence by CSIS in the *Charkaoui* case. Intelligence agencies may therefore face difficulties in independently drawing the line on the secrecy of documents. Nevertheless, the Canadian government retains the right to the protection offered by nondisclosure under the *Canada Evidence Act*.

Balancing governmental and judiciary responsibility

The discussion also touched upon the responsibilities of governments in contrast to the role of the judiciary in setting the limits to counter-terrorism activities. Although some place the weight of ensuring accountability of intelligence agencies regarding information sharing on the judiciary, participants argued that legislatures also have responsibility. Since justices are interpreters of the law, their interventions have limitations that lawmakers do not share. Furthermore, the accountability of governments should be discussed, especially as governments interact and cooperate in counter-terrorism. Participants nevertheless felt that the judiciary remains important in setting legal restrictions on governmental excesses in national security matters. On many occasions, the judiciary has forced EU governments to review laws or withdraw bills that went against human rights. In this debate, putting an unwarranted emphasis on either political or legal institutions may result in disappointment. As a participant suggested, the courts can justify human rights abuses under national security. Most individuals affected by national security measures are unable to legally challenge their cases, which paradoxically can result in their designation as security risks being reinforced.

Cooperation on data protection and human rights

Cooperation by intelligence agencies in anti-terrorism cases is usually not accompanied by cooperation in data protection and human rights; EU human rights agencies have limited competencies in the security and justice field. Priority may therefore be given to the promotion of existing legal frameworks rather than to advocating the implementation of new standards.

Participants also emphasized the importance of context and international cooperation with transitional countries, i.e., those that are in the process of becoming democracies. Juridical cultures differ regarding information sharing and data protection. European internal police scrutiny of identity cards would be seen in North America as an infringement on the right to privacy. Furthermore, many countries have passed anti-terrorism legislation that justifies their abuse of human rights, which points to the importance of working closely with countries

confronted with institutional weaknesses in counter-terrorism, prevention of organized crime and human rights issues. Participants pointed out that this cooperation should be accompanied by accountability mechanisms to ensure a follow-up assessment of the progress made. These mechanisms do not currently exist.

Session 2: Securitizing the Movement of Goods and People: EU-Canada Cooperation on Gathering, Using and Protecting Information

Part 1

Didier Bigo (Professor, Institut d'études politiques de Paris)

This presentation focused on the consequences of transnational collaboration upon the forms of socialization characterizing the intelligence community. What is at stake for professionals in the field of transnational intelligence, who have until recently adhered to a patriotic ethic when they are required to collaborate in global efforts against such threats as terrorism? What types of relations are being established between the different agencies involved in information sharing? How does information circulate between them? What information goes into databases, and what is considered irrelevant? Which relationships are formally recognized in the intelligence community and which are not? All these questions arise from the transnationalization of intelligence agencies, and require investigation.

Research shows that four main trends characterize the transnational intelligence community. First, the expanding exchange of information on security matters is dependent upon the replacement of paper travel and identity documents by electronic data. This process has important repercussions at the level of international relations. While formerly states trusted each other to provide individuals with secure documents, they are currently engaged in taking charge of the identification of travellers, citizens and foreigners through the use of databases. This tendency is giving rise to asymmetric sovereignties in border control, as more powerful states set the conditions of data gathering, while less influential countries become dependent on the capacities of others to obtain and store information. Second, the security industry's monopoly on technology means that the private sector is increasingly involved in managing sovereign prerogatives, creating a dependency by states on the private sector for their security needs. Third, current trends in data sharing generate fundamental questions about privacy rights, questions that reach beyond the technical aspect of data protection. Information technologies used in intelligence work, such as biometrics, databases and the checking of identity via data doubles, compromise the individual's ability to screen his or her private life from the state, an ability that has been a mainstay of liberal democracies.

Finally, many social forces are at work in these transformations. Bigo is of the opinion that it is important to question prior assumptions. Among the assumptions that should be re-examined are the insistence that global threats require global responses and the affirmation that the convergence of technical systems necessarily involves the massive sharing of information. These assumptions are destabilizing borders and sovereignties. For instance, intelligence and military actors increasingly insist on working both inside their borders and abroad, thus merging internal and external forms of security. Furthermore, in the competition to produce information about security threats, parliaments and governance institutions are made to depend on intelligence agencies' assessments. In part, this is the result of the importance placed on massive information sharing at the expense of alternative approaches to security. Yet, challenges to massive information sharing are beginning to be heard from within the intelligence community. On the one hand, some doubt the efficiency of security technologies over human

intelligence. On the other hand, massive information gathering is not seen to equate with better security. Rather, there is a need for intelligence agencies to gather better information and to share it.

Alexandra Gheciu (Associate Professor, University of Ottawa)

This presentation focused on the cooperation between Canada and the EU through the Organization for Security and Co-operation in Europe (OSCE). This multilateral organization is seen as an important forum through which countries can cooperate on counter-terrorism issues and which diffuses human rights norms and respect for the rule of law. The topics of OSCE projects funded by the European Commission include technical assistance, while Canada – one of the largest donors to the OSCE – has funded several projects on geostrategic and human security.

Positive contributions generated by this EU-Canada collaboration include promoting the knowledge and practice of human rights among nondemocratic or transitional states in their counter-terrorism efforts. This collaboration includes educational activities about best practices, as well as monitoring and assistance for the drafting of new legislation and institutional arrangements. All counter-terrorism initiatives must be conducted in full compliance with principles of human rights protection. OSCE partners work together to ensure that the vision of security articulated in official documents takes into account this concern. In this effort, Canada and the EU have promoted a view of comprehensive security that combines a variety of measures and promotes best practices in counter-terrorism.

Less encouraging practices include the securitization of the movement of goods and people across borders, which at times have undermined human rights. Gheciu nevertheless mentioned that the OSCE has worked to diffuse best practices through capacity-building activities that promote security features on travel documents, in an effort to reduce fraudulent documentation. But the OSCE's promotion of security measures in nondemocratic countries may result in increased limitations on the human rights of the citizens of these countries. Initiatives such as public-private partnerships that request individuals to report suspicious activities may be seen as a useful way to mobilize civilians to protect the state. However, in practice, countries with weak democratic records may impose these surveillance duties, as is currently the case in some Central Asian republics. In these authoritarian countries, only NGOs that comply with such partnerships are allowed to operate, which transforms these NGOs into extensions of government rather than civil society institutions.

Projects under the auspices of the OSCE include training police forces in the exchange of data, with a focus on the rights of victims of trafficking. However, this may actually undermine the protection of victims of trafficking, as they are often treated as unlawful aliens who may be able to provide information about criminal networks in criminal prosecutions. Nevertheless, the new Council of Europe Convention on Action against Trafficking in Human Beings presents hope for the future. In summary, cooperation on anti-terrorism under the auspices of the OSCE is most promising, but runs the danger of further legitimizing the abuse of vulnerable individuals' human rights.

Discussion

Different contexts: the US and the EU

Participants raised the question of whether the results of the US election will create a better balance between security concerns and the protection of human rights and whether they will

affect Canadian foreign policy in security matters. They also reiterated that it is important to avoid stereotypes by differentiating between counter-terrorism strategies. In the United States, the war on terror has transformed fighting terrorism into a military question, and has given rise to the Bush administration's strategy of using exceptional measures that go beyond the rule of law. The European case is different. While each country is different, overall Europe has chosen in its anti-terrorism strategy to focus on policing, with an emphasis on justice, which is the third pillar of the European Union. However, there is an opportunity for Canada and the EU to play a balancing role vis à vis the US.

Participants stressed that the US is not a monolithic actor, as demonstrated by the strong opposition within the country to abuses committed by the US administration. The importance of Canada's trade relations with the US suggest that we should be cautious and also appreciate Americans' feelings of vulnerability. Finally, participants pointed out that one should be careful when claiming the high moral ground. Canada and the EU also have deficient human rights records, a situation that inadvertently sustains poor human rights practices in vulnerable democracies and authoritarian countries.

Citizens' rights versus state interests

The hierarchization of citizens' and states' interests inspired the comment that in the past, it was difficult to rank the interests of another state above those of one's own citizens. But as the Arar inquiry has shown, the notion of states' global responsibility and the pressure coming from the US are inverting this relationship. Some foreign countries' interests are ranked above those of citizens. This trend imposes on governments the obligation to engage in a novel form of calibrating citizens' rights against foreign pressures.

Preventive intelligence as evidence

In a transnational context, it may be interesting to shift attention away from national differences to the professional structure of the intelligence world, i.e., its use of databases, software and profiling, and the ways in which artificial intelligence connects to human intelligence. Furthermore, intelligence, which is preventive, is different from information, which focuses on individuals. Information allows one to examine an individual's behaviour and make predictions about how this behaviour will unfold, in order to stop the individual before he or she can act. This process depersonalizes the person being investigated. It transforms traditional investigative policing by immediately putting individuals under suspicion.. This view of intelligence raises serious questions about the desire for total security. The view of intelligence as preventive is transforming the notion of the presumption of innocence.

A debate followed about the tendency to substitute intelligence for evidence, which significantly changes the modes of proof in the criminal justice system. Intelligence in the form of profiling is used as a basis for state action. Individuals are suspected and targeted as security threats on the basis of their opinions or of their association with certain types of persons, and not according to their actions. It was proposed that the current challenge in Canada is not so much the transformation of intelligence into evidence; rather, the problem concerns the ways in which intelligence agencies may be able to pass important information to law enforcers without compromising their ability to shelter this information from public knowledge. Lastly, conference participants expressed concern about governments using as intelligence evidence such as the false documents some refugees hold to cross borders.

Intelligence, privacy rights and home-grown terrorism

A participant raised the question of how intelligence can be gathered and shared in order to deal with home-grown terrorism, especially with regard to privacy rights. The answer provided was that it is essential to separate intelligence on individuals from intelligence linked with profiling. But even with this distinction, it has been argued that home-grown terrorism requires a political solution that involves citizens and communities, rather than coercion.

Differences between countries

A state may not trust another state's information, and different states may develop distinct hierarchies of data and use different filters and categories to analyze this data. Furthermore, some countries cannot afford to buy even basic items for their police forces, such as bicycles. Consequently, it is far-fetched to expect them to acquire expensive border surveillance equipment. Nevertheless, in some Central Asian countries, insurgent groups have been designated national security threats. This designation has led to these states being granted foreign military and border security aid, mainly from the US, in order to counter these groups.

Part 2

Peter Hobbing (Senior Associate Research Fellow, Centre for European Policy Studies)

Peter Hobbing's presentation was based on his paper "Tracing Terrorists: The EU-Canada Agreement in PNR Matters." The first airplane hijacking dates back to 1949, but passenger name records (PNR) were first developed in the 1970s by private companies. PNR data has been transformed from a commercial tool into an instrument for investigative purposes, which includes an interest in passengers' dietary preferences, which are considered indications of religious beliefs. Dietary preferences have been removed from EU-Canada PNR exchanges, but PNR remain a source of information in counter-terrorism efforts because they present a few advantages. PNR are available at no cost to states, and they contain abundant secret information, information that can be related to other data gathered by companies about their passengers. While on their own PNR are not enough to lead to the arrest of an individual, they serve to connect various data, hence their interest for investigators. Yet, even as a small piece in the counter-terrorism picture, PNR have become a bone of contention between governments and organizations monitoring civil liberties. Canada is an interesting case with respect to PNR, because of its early exposure to airline terrorism with the Air India bombing, its victims of wrongful data gathering such as Maher Arar, and the quality of its legal arrangements in terms of data protection.

Like Girolamo, Hobbing underlined the transatlantic divide regarding matters of privacy in relation to security. While border-related privacy intrusions are of more concern to Europeans, North Americans are troubled by calls for national ID cards and internal identification checks by law enforcement officers. Furthermore, because data protection is the focus of legal concern, there is a need to find appropriate evaluation criteria. These must follow the OECD's 1980 guidelines regarding the protection of privacy and the flow of personal data. Adding to the complexity of the matter, the confusion of terminology in data protection makes any evaluation of PNR a difficult task. Peter Hobbing gave an overview of a pragmatic way to weight PNR agreements against respect for privacy rights. A single and appropriate set of evaluation criteria must be founded on a few principles: the recognition of data protection as a fundamental right; the transitional character of adequacy findings (data must be subject to a "sunset" limitation); basic data protection standards or content principles (limitation, data quality and proportionality with objectives, transparency, security, right of access, rectification and opposition, and restrictions on onward transfers); and, finally, procedural enforcement mechanisms. The 2005 Canada-EU agreement was examined against this model and was found to be a balanced

instrument that respects data protection and privacy rights. A review of the Canada-EU PNR agreement is coming up, and the current climate tends toward the expansion of data exchange and away from data protection. This tendency is exemplified by the 2007 EU-US PNR agreement, which leans toward focusing on security objectives at the expense of civil liberties.

Mark Salter (Associate Professor, University of Ottawa)

Mark Salter's presentation began with observations about "breeder documents" being the weakest links in counter-terrorism efforts. The case of Ahmed Ressam, the "millennium bomber," illustrates this systemic flaw. Algerian-born Ressam used a University of Montreal student card and a fake baptismal certificate to obtain a Canadian passport. He later flew to Afghanistan under a fake name and trained in terrorist camps. In 1999 he tried to cross the Canada-US border, where he was arrested by US border enforcement agents who subsequently found bomb-making components in the trunk of his car. The circumstances leading to the arrest of Richard Reed, the "shoe bomber," is also a case in point. Plotting to bomb a plane, Reed travelled under a new passport he obtained two weeks after having conveniently lost one that displayed Pakistani border stamps.

Salter's presentation also addressed three types of logic at work within agencies of aviation security. First, a managerial or public administration logic, otherwise known as risk management, raises important epistemological problems; that is, problems regarding the knowledge that can be gathered about the possibility of further terrorist attacks. Whatever knowledge is obtained, he argues, no argument about the possibility of a terrorist event can be made on the basis of calculations of risk. This incalculability of aviation risks complicates the generation of risk scenarios. One strategy employed by aviation risk experts consists of picking favourite scenarios based on a mixture of expertise and pop culture.

Second, there is a continually expanding security logic around aviation, and any failure of the system represents a way to rework risk management techniques. But this logic has the effect of depoliticizing terrorism by removing it from discussion and reducing security to the construction of risk profiles.

Last, the aviation security system includes a human rights logic. States have a double commitment to national security and individual rights in a context of dispersion of sovereignty. Sovereign decisions are thus continually made inside and outside state territories. This dispersed sovereignty generates novel questions about the extent of the applicability of the human rights framework of states. Ultimately, risk management, security and the language of human rights are dependent upon the decisions of sovereign states. Often hidden from view, these decisions can rarely be challenged in courts.

Salter also commented on data-mining technologies developed by the security industry. The sharing and comparing of databases between organizations and scrutiny of the relationships of a suspected individual means that suspicion could be also shifted onto the people in that individual's entourage. Such data exchange practices can therefore result in undermining human rights.

Discussion

Technologies

Japan's ports of entry use facial recognition. Yet this technology is now considered unreliable, while iris recognition is gaining favour. Various tests on biometric analyses still show that

recognition and identification technologies based on unique bodily features are far from providing perfect results.

The remainder of the discussion concerned PNR agreements. Ensuring that the accuracy of PNR information is verifiable requires optimal bilateral agreements. Consequently, emphasis should be on reinforcing best practices and the prudent development of existing structures, integrating only strategies that have been fully explored. If used carefully and not in the interests of profiling, PNR data could be usefully employed as complementary information. Yet this advantage is often obscured by assumptions that security requires a complete knowledge of cross-border movements; this could not be further from the truth, especially along land borders where PNR do not apply. Consequently, the value of PNR is relative and its utility in law enforcement remains minimal. In fact, Italian research has demonstrated that the cases of those arrested under PNR information were deemed to be based only on allegations when they were brought to trial. In Europe, no one has yet been arrested and convicted of a terrorist offence based on PNR information; the arrests that have occurred have resulted from charges such as being in possession of false documents. Intelligence agencies' strategies tend to blur terrorism and criminality, as indicated by the "terrorism and related offences" designation. In fact, various databases such as CAPPS II in the US have not led to the arrest of persons with terrorist intent, but to arrests on criminally based charges.

Some participants questioned the applicability of the content principles developed by Peter Hobbing, but others argued that they could be useful when applied using common sense and some safeguards. Yet, according to one conference participant, the search for better safeguards and proportionality criteria are irrelevant to those who doubt the effectiveness of data exchange for national security purposes. Another participant suggested that focusing on proportionality detracts from the original purpose of PNR data, which is only one type of information in decision-making processes in matters such as immigration and national security. The way American security agencies use PNR data in risk scoring procedures, in particular their storing of risk profiles for future use, is another departure from the original purpose of PNR data.

Closing Remarks

Mel Cappe brought the conference to a close by thanking presenters and participants and said the day's discussions were valuable and constructive preparation for the EU-Canada summit (which was held in October 2008).



EU-Canada Cooperation on Anti-Terrorism and Human Rights

INSTITUTE FOR RESEARCH ON PUBLIC POLICY (IRPP)
CENTRE FOR EUROPEAN POLICY STUDIES (CEPS)
UNIVERSITY OF TORONTO

MONDAY, SEPTEMBER 22, 2008
SHERATON OTTAWA HOTEL (150 ALBERT STREET)

PROGRAM

Penthouse A/B Room

9:30 a.m. – 9:45 a.m. Registration and coffee

9:45 a.m. – 10:00 a.m. **Opening remarks:**
Mel Cappe (President, Institute for Research on Public Policy)

Presentation of the EU-Canada Project
Audrey Macklin (Associate Professor, University of Toronto)

10:00 a.m. – 12:00 p.m. Session I
Report Card: What Has Been Done, What Are the Obstacles and What Is the Way Forward?

Chair:
Sergio Carrera (Director, Centre for European Policy Studies)
Speakers:
Susie Alegre (Barrister, Centre for European Policy Studies)
Giovanni Di Girolamo (Counsellor and Head of the Political and Public Affairs section, Delegation of the European Commission to Canada)

O'Connor Room

12:00 p.m. – 1:15 p.m. Lunch

Penthouse A/B Room

1:15 p.m. – 2:45 p.m. Session II
Securitizing the Movement of Goods and People: EU-Canada Cooperation on Gathering, Using and Protecting Information

(Part 1)**Chair:**

Geneviève Bouchard (Research Director, Institute for Research on Public Policy)

Speakers:

Didier Bigo (Professor, Institut d'Études Politiques de Paris)

Alexandra Gheciu (Associate Professor, University of Ottawa)

2:45 p.m.– 3:00 p.m. Coffee break

3:00 p.m.– 4:30 p.m. Session II

(Part 2)**Chair:**

François Crépeau (Professor of International Law, Canada Research Chair in International Migration Law, and Scientific Director, Centre for International Studies [CÉRIUM], Université de Montréal)

Speakers:

Peter Hobbing (Senior Associate Research Fellow, Centre for European Policy Studies, and former principal administrator, European Commission)

Mark Salter (Associate Professor, University of Ottawa)

4:30 p.m.– 4:45 p.m. Closing remarks:

Mel Cappe

LIST OF PARTICIPANTS

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Rémy Beauregard	President, Rights & Democracy
Didier Bigo	Professor, Institut d'Études Politiques de Paris
Steve Bittle	Senior Advisor, Security Intelligence Review Committee Research Section
Geneviève Bouchard	Research Director, Institute for Research on Public Policy
Mel Cappe	President and CEO, Institute for Research on Public Policy
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