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FORTRESS AMERICA OR FORTRESS NORTH AMERICA?

*John Noble**

OVERVIEW

DEBATES as to whether or not there should be a North American perimeter appear increasingly sterile and miss the point that a perimeter has existed for many years in the defence field. That perimeter is steadily being strengthened in other fields in light of the changing nature of the security threats to North America. This paper argues for a continued level of cooperation in many areas of the police, intelligence and immigration sectors, which is resulting in the strengthening of the existing perimeter. How far the perimeter should go; whether it should provide for both physical and economic security and for the full mobility of labour; whether it could be constructed all at once as part of a "strategic bargain," or through "aggressive incrementalism," or at an even slower pace are also issues discussed. Whether the perimeter or aspects of it should also include Mexico is another fundamental issue on which there is no clear answer except at the level of principle. The European model of "two-speeds" would appear to be the best one for North America at this time.

NAFTA and the CUSFTA created a kind of low level economic perimeter around the three countries, providing for free trade between the three countries with each country maintaining its own level of protection vis-à-vis third countries. The increasing level of economic integration of the Canadian and Mexican economies with the U.S. economy since the entry into force of CUSFTA and NAFTA highlights the challenges faced by those two countries vis-à-vis their major trading partner that believes that security trumps trade. Several Canadian individuals and business organizations have proposed devising a strategy to respond to this new U.S.

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paradigm shift by offering concessions to meet U.S. concerns on physical security and to obtain greater certainty from the United States with respect to more assured access to U.S. markets. I find that there are several disconnects to such proposals: threats to Canadian security should be dealt with for Canadian reasons and not to placate the United States; work on the physical security dimension is being addressed without any linkage to greater economic security; and to the extent that the window of opportunity ever existed for such a trade-off, it is now closed.

I also support those who believe that the level of economic integration with the United States has reached the point where a new agreement with the United States is required. The current uncertainties of our border are not only creating potential havoc for cross-border trade but have had a negative impact on investment decisions from outside North America. I argue the need for a Royal Commission on Canada's economic prospects. Proposals for increased labour mobility between Canada and the United States will go nowhere unless and until there is a new agreement governing economic integration.

Proposals for various sorts of a North American security perimeter have been around for some time, and can be traced back to 1823 and President Monroe's unilateral declaration that "the American continents, . . . are henceforth not to be considered as subjects for future colonization by any European powers."¹ In 1904, President Theodore Roosevelt stated that the United States was justified in exercising "international police power" to put an end to chronic unrest or wrongdoing in the Western Hemisphere. This so-called Roosevelt Corollary to the Monroe Doctrine contained a great irony: whereas the Monroe Doctrine sought to prevent European intervention in the Western Hemisphere, the Roosevelt Corollary justified American intervention throughout the Western Hemisphere.² One could argue, therefore, that those aspects of President George W. Bush's National Security Strategy of September 2002 which deal with pre-emptive action and unilateralism merely modify the Roosevelt Corollary by expanding it from the Western Hemisphere to the entire world, i.e., the new Bush Corollary to the Monroe Doctrine.³

While the main thrust of the Monroe Doctrine had been towards the territories south of the United States, it also covered what was then British North America. Many years later, another form of perimeter was contained in President Franklin Roosevelt's assurance to Prime Minister Mackenzie King at Queen's University in August 1938 that an attack

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1. The Monroe Doctrine, Address to Congress, Dec. 2, 1823, *available at* <http://usinfo.state.gov/usa/infousa/facts/democrac/50.htm>.
 2. The Roosevelt Corollary to the Monroe Doctrine, *available at* <http://www.uiowa.edu/~c030162/Common/Handouts/POTUS/TRoos.html>.
 3. Subsequent to writing this article, I discovered that a similar argument has been made by David FRUM & RICHARD PERLE, *AN END TO EVIL: HOW TO WIN THE WAR ON TERROR* 119-120 (Random House of Canada Ltd. 2003) ("[i]f possible [the Roosevelt Corollary] possesses more relevance today than it did on the day Roosevelt propounded it").

against Canada would be considered an attack against the United States. The same concept was embodied in article V of the Washington (or North Atlantic) Treaty which gave birth to NATO in 1949: that an attack against one member is considered an attack against all members of the Alliance. The North American Air (and later Aerospace) Defence (NORAD) agreement between the United States and Canada in 1958 created a common perimeter around the two countries against the threat of attacks by Soviet bombers or missiles. A similar perimeter exists around the two countries for purposes of controlling exports of sensitive technologies outside the perimeter.

The interception of Ahmed Ressam on the Canada-U.S. border in 1999 and his cargo of explosives intended for the Los Angeles airport, brought to the fore some American concerns about the lax administration of Canada's refugee policies. Partly as a response to the Ressam case and the perceived increased threat of terrorist activities, former U.S. Ambassador to Canada, Gordon Giffin, proposed a North American security perimeter in October 2000 as a means of stemming the flow of terrorism and cross-border crime.⁴ That same year, Mexico's President Fox presented his ideas for a North American Community, which were further elaborated by Robert Pastor in 2001.⁵

The terrorist attacks of September 11, 2001 temporarily shut down the Canada-U.S. and Mexico-U.S. borders and plants on either side of the borders that are dependent on the smooth flow of just-in-time parts across the border. From a Canadian perspective, this has given added impetus to the idea of deepening the NORAD security perimeter into a much more comprehensive security perimeter, one that would enhance physical security and also economic security. The question of whether Mexico, which does not have a history of defence or police cooperation with the United States, should be included in this security perimeter has given rise to some disagreement among Canadian proponents of the concept who do not want to be held up by trying to reach a trilateral agreement rather than a bilateral one. But if and when Mexico decides it wants to be involved in such a perimeter concept, few Canadian proponents would oppose this, though there may be many Americans who would.

In late November 2001, a group of Canadian and American business people and academics issued a call for a North American "Zone of Confi-

4. Gordon Giffin, "Rethinking the Line: The Canada U.S. Border." Conference Report, Oct. 22-25, 2000. POLICY RESEARCH INITIATIVE, HORIZONS, 5 Special Issue Vol. 3, Mar. 2001, *available at* http://policyresearch.gc.ca/doclib/Final_v3_sunset_E.pdf.

5. Robert A. Pastor, "Towards a North American Community Lessons from the Old World for the New," Aug. 2001, *available at* http://bookstore.iie.com/merchant.mvc?Screen=PROD&Product_Code=331. *See also* Robert A. Pastor, "North America's Second Decade," *Foreign Affairs*, Jan./Feb.2004, at 124-35, which is a refinement on his earlier proposals.

dence" in a joint letter to President Bush and Prime Minister Chrétien.⁶ The Smart Border Declaration and thirty-point Smart Border Action Plan of December 6, 2001 between the two countries echoed this earlier call for the establishment of a "Zone of Confidence" and have resulted in a considerable degree of increased cooperation in the fight against terrorism, not only at the Canada-U.S. border, but also at many points far removed from it.⁷ Certainly there are many elements of a perimeter approach in the Smart Border process, but it has not been equated with a true perimeter approach by either government. Proponents and opponents of the security perimeter approach appear to agree that we may be embarking on a Fortress North America model in installments. Mexico and the United States also reached their own bilateral "Smart Border" agreement in late March 2002.⁸

The Canadian House of Commons Committee on Foreign Affairs and International Trade recommended that the government study the implications of establishing a security perimeter around North America in its December 2002 report.⁹ The Government's reply to this recommendation was ambivalent and ducked addressing the recommendation when it said it was "committed to examining any options for improving operation while providing appropriate security at the border."¹⁰

Among the changes announced by Prime Minister Paul Martin the day he assumed office, were the creation of a new Cabinet Committee on Canada-U.S., chaired by the Prime Minister, to ensure an integrated, government-wide approach to Canada-U.S. relations and to be supported by a Canada-U.S. Secretariat in the Privy Council Office; and the appointment of a Parliamentary Secretary to the Prime Minister for Canada-U.S. relations, Scott Brison.¹¹ The Prime Minister also announced the creation of a new Minister of Public Safety and Emergency Preparedness, to integrate into a single portfolio the core activities of the existing Solicitor General portfolio that secure the safety of Canadians and other activities

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6. "Leaders from Canada and the United States Call for a Zone of Confidence Between the Two Countries," available at <http://newsroom.msu.edu/site/indexer/856/content.htm>. See also CCEO Web-site, http://64.26.159.96/en/view/?document_id=42&type_id=1.
 7. Available at <http://canadianembassy.org/border/declaration-en.asp> and at <http://canadianembassy.org/border/actionplan-en.asp>.
 8. U.S. Department of State Fact Sheet: *Smart Border: 22 Point Agreement – U.S. - Mexico Border Partnership Action Plan*, Mar. 21, 2002, available at <http://www.state.gov/p/wha/rls/fs/8909.htm>.
 9. Report of the Standing Committee on Foreign Affairs and International Trade, December 2002, *Partners in North America: Advancing Canada's Relations with the United States and Mexico*, Recommendation 28, at 287. See also *id.* at 87-98, 171-72, available at <http://www.parl.gc.ca/InfoComDoc/37/2/FAIT/Studies/Reports/fairp03/fairp03-e.pdf>.
 10. *Government Response to the Report of the Standing Committee on Foreign Affairs and International Trade: Partners in North America: Advancing Canada's relations with the United States and Mexico*, at 32, available at <http://www.dfait-maeci.gc.ca/tna-nac/documents/GovtResponse-en.pdf>.
 11. Office of the Prime Minister, *Changes to Government Structure*, Dec. 12, 2003, available at http://www.pm.gc.ca/eng/chgs_to_gov.asp.

required to protect against and respond to natural disasters and security emergencies; the creation of a Canada Border Services Agency to build on the Smart Border Initiative and the important progress that has been made in expediting trade and travel while enhancing security with respect to high risk arrivals; and reforms to the refugee determination process to create a more predictable and streamlined system, including a reformed appointment process to ensure the quality and effectiveness of the Immigration and Refugee Board.¹²

Also announced on December 12, 2003 was the creation of a new position of National Security Advisor to the Prime Minister in the Privy Council Office, to be responsible for intelligence and threat assessment integration and interagency cooperation, and to assist the Minister of Public Safety and Emergency Preparedness in the development and overall implementation of an integrated policy for national security and emergencies.¹³ This appears to involve a much more limited approach to the concept of national security than found in the National Security Strategy of the United States, which is global in scope and application, and it appears to be more in keeping with the U.S. concept contained in its National Strategy for Homeland Security.¹⁴

The new Martin government promised to improve relations with the United States, and the Prime Minister met with President Bush at the Monterrey Summit of the Americas in January. In the February 4, 2004 Speech from the Throne, the only specific aspects of Canada-U.S. relations to be dealt with specifically were a general commitment for “a new, more sophisticated approach to this unique [Canada-U.S.] relationship” and a specific commitment

to ensure a border that is open and effective in handling the volumes of people, goods, and services flowing to and from our economies, the security concerns of both sides must be respected. Building on the success of the Smart Borders initiative, the Government will engage with the United States to further strengthen North American security while facilitating the flow of commerce and travellers. It will also work toward infrastructure investments at key trade corridors to ensure that we can facilitate the expanding trade between our

12. *Id.*

13. *Id.*

14. The Speech from the Throne said: “[g]iven the responsibility to address new threats, such as non-state terrorism, and to ensure effective emergency management, the Government will develop, with its domestic partners, Canada’s first national security policy. This will publicly set forth the principles that will guide the Government’s actions and serve as a blueprint for effectively securing Canada in a way that strengthens the open nature of our society.” Available at <http://www.pm.gc.ca/eng/sft-ddt.asp>. The U.S. strategies are: (1) *The National Security Strategy of the United States*, Sept. 18, 2002, available at <http://www.whitehouse.gov/nsc/nss.html>; and (2) *The National Strategy for Homeland Security: Office of Homeland Security*, July 16, 2002, available at <http://www.whitehouse.gov/homeland/book/index.html>. The Martin government’s use of security policy also differs from that used by the CIIA, as outlined in *Behind the Headlines: Canada’s Security Policies*, Vol. 60, No. 2, Jan. 2004, which focuses exclusively on defence related issues.

countries.¹⁵

From one perspective, the closing of the border by the United States after 9/11 was likened to the equivalent of the United States declaring a trade embargo on itself. Another perspective suggested that it was clear that for the United States security trumps trade. From another viewpoint, trade and security are inextricably linked—there can be no economic security without physical security; one cannot exist without the other. Canadian nationalists have raised concerns that a meaningful security perimeter would inevitably mean a loss of Canadian sovereignty and a harmonization of Canadian immigration and refugee policies to those of the United States.

This paper tries to examine the various elements involved in the concept of a security perimeter or perimeters for the United States and its two other North American partners, with particular emphasis on the Canada-U.S. relationship. It also examines the identifiable gaps in the security of all three countries, particularly in Canada and the United States; the increased state of cooperation resulting from the bilateral “smart border” agreements between Canada, the United States, and Mexico as a result of 9/11; and suggestions for future measures. It will also look at links between security and trade, and what this could mean for a perimeter approach.

BACKGROUND FEARS OF MANIFEST DESTINY OVERCOME BY CANADA-U.S. DEFENCE COOPERATION

Historically, Canada and Mexico have been worried that the American tendency towards “Manifest Destiny” was an attempt to swallow them up. Mexico lost a lot of its territory to a bellicose United States in 1848 and uninvited U.S. troops were in the country in the early 20th century. Canada lost the Alaskan panhandle in 1911 through arbitration and in the first three decades of the 20th century was more preoccupied with establishing its own identity and independence from the United Kingdom than anything else. Prime Minister Laurier was defeated in 1911 over the free trade deal he had negotiated with the United States. In August 1938, on the eve of World War II, President Franklin Roosevelt’s acceptance speech for an honorary Doctorate at Queen’s University in Kingston, Ontario included the following commitment: “The Dominion of Canada is part of the sisterhood of the British Empire. I give to you assurance that the people of the United States will not stand idly by if domination of Canadian soil is threatened by any other Empire.”¹⁶ Prime Minister William Lyon Mackenzie King, in response to President Roosevelt’s pledge to protect Canada, said “we too have obligations as a good and friendly

15. Speech from the Throne, Feb. 4, 2004, *available at* <http://www.pm.gc.ca/eng/sft-ddt.asp>.

16. Franklin Delano Roosevelt, Address at Queen’s University, Aug. 18, 1938, *available at* <http://www.ibiblio.org/pha/7-2-188/188-09.html>.

neighbour and that enemy forces should not be able to pursue their way either by land, sea or air to the United States cross Canadian territory.”¹⁷ Canada-U.S. defence cooperation from that time on has been intensive and involved the creation of the Permanent Joint Board of Defence in 1940, which still exists today.¹⁸

Roosevelt’s pledge was not interpreted as a new twist on “Manifest Destiny,” but rather a commitment to defend Canada’s territorial integrity from attack. In effect it established a security perimeter around the two countries. Since then, the defence of the United States has meant the defending of the North American continent. When America became an atomic superpower in the postwar era, it extended its nuclear shield to its northern neighbour. Canada’s security is in the national interest of the United States, and this has earned Canada a guarantee of automatic protection, a commitment that stands as the basis of Canadian defence policy today.¹⁹

NATO

Following World War II Canada became a charter member of both the United Nations (UN) and the North Atlantic Treaty Organization (NATO). While the UN was supposed to be a global security organization, in effect, Canada and the other members of NATO relied on NATO as the primary guarantor of their security throughout the period of the Cold War. Article V of NATO provides that an attack against any member is considered an attack against all. This established a security perimeter around all of NATO against outsiders, which was guaranteed by the American nuclear deterrent. Article V was most recently invoked following the 9/11 terrorist attacks in the United States on 9/11.

NORAD

In the 1950s the primary threat to North America was manned Soviet bombers. To counter this threat, Canada and the United States set up the North American Air Defence system, with a series of command posts across North America and the building of three strings of radar lines across Canada’s northern territory, mainly by the U.S. Air Force.²⁰ These lines were replaced progressively by the North Warning System in 1993.

17. *About Canada: Defending Canada*, available at <http://www.mta.ca/faculty/arts/canadianstudies/english/about/defending/#Protectorate>.

18. The author sat on the PJBD as the External Affairs member from 1988 to 1990, including the 50th anniversary celebrations in August 1990. At the time of the Cuban missile crisis, the Canadian co-chair of the PJBD had written instructions approved by Prime Minister Diefenbaker as to what he should say. In the interests of maintaining friendly relations, he decided to relegate that responsibility to the External Affairs member of his delegation.

19. *About Canada: Defending Canada: A Great Power Protectorate*, http://www.mta.ca/faculty/arts/canadian_studies/english/about/defending/#Protectorate.

20. The Distant Early Warning (DEW) Line, the Mid-Canada Line, and the Pine Tree Line, available at http://www.rcf.com/1946_1968_coldwar/stations/home/postwar_canada_radar_pinetree.htm.

NORAD has a joint command structure and established a North American perimeter defence against intrusions from air and space. The Commander in Chief is always an American and the Deputy Commander is always a Canadian (a three star Air Force general).

After the fall of the Berlin Wall, NORAD's role was more involved in tracking potential drug smugglers using light aircraft from the Caribbean and Latin America. NORAD also has a tracking capacity to identify almost immediately the precise origin of any missile launched from almost anywhere. One of NORAD's current responsibilities is surveillance of North American skies for terrorist activities. It is no longer dealing only with intrusions into the North American aerospace perimeter, but also with terrorist activities in the air inside North America. At the time of the 9/11 terrorist attacks, a Canadian general was in charge at NORAD headquarters in Cheyenne Mountain, Colorado.

Following the 9/11 attacks the United States established Northern Command (NORTHCOM), which is responsible for homeland defence and civil support. While this is a purely national command, the Commander of NORTHCOM is also the Commander of NORAD (i.e., he is twin-hatted). In the late 1980s and early 1990s, the Commander of NORAD was also Commander of U.S. Space Command, which is now a separate command. Canada was not invited to join NORTHCOM, but a joint planning unit located in NORAD Headquarters was established in December 2002 to "enhance bi-national military planning, surveillance, and to support civil authorities."²¹ Its creation is an important step in the post-September 11th evolution of Canada-U.S. security cooperation. The Planning Group is tasked with preparing contingency plans, acting to prevent and mitigate attacks, designing exercises, and conducting joint training programs. Its aim is to prevent future terrorist attacks on Canada or the United States. It is also a forum to carry out a cooperative and well-coordinated response to national requests for military assistance in relation to "terrorist attacks, natural disasters, or other major emergencies in Canada or the United States."²² The Planning Group is based at NORAD Headquarters, and the head of the Planning Group is the Deputy Commander of NORAD, with an assigned deputy from the other country.²³ The head of the Planning Group operates under the authority of the Commander of NORAD.

NATIONAL MISSILE DEFENCE

Over the past twenty years, American proposals to build a sort of "shield" or perimeter against attacks from ballistic missiles have proven

21. Department of National Defence (DND), Background: *Canada-United States Defence Relations*.

22. DND, News Release, Canada and the U.S. Enhance Security Cooperation, Dec. 9, 2002, available at www.dnd.ca/site/newsroom/view_news_e.asp?id=508.

23. Canadian Embassy in Washington D.C., Canada-U.S. Security Cooperation Agreement, Dec. 9, 2002, available at <http://www.canadianembassy.org/defence/text-en.asp>.

to be hot potatoes in Canada. When Canada was asked to participate in the Strategic Defense Initiative (Star Wars) in 1984, the Mulroney Government said "no," but was prepared to see Canadian companies participate. At the time the Cold War was still on, and Canada did not want to see the unraveling of the Anti-Ballistic Missile (ABM) Treaty between the two superpowers. The Bush Administration has announced that it will deploy a system of national missile defence for the United States to protect it against possible attacks by rogue states by the end of 2004, and the United States has withdrawn from the ABM Treaty without much reaction from the Russians.

The two Governments have also announced their intention to negotiate an interim amendment to the current NORAD agreement to give Canadian NORAD personnel access to critical Ballistic Missile Defence (BMD) planning information until the system's deployment in October 2004.²⁴ While some Canadians and Americans may regard such a system as a high-tech Maginot Line, particularly in light of the terrorist attacks of 9/11, the system is being built. Some American generals have suggested that if Canada did not agree to participate in the system, Canada would not be protected by it. It is difficult to imagine a system, however, that could protect Buffalo, New York without also protecting Toronto, Detroit without also protecting south western Ontario, or Seattle without also protecting Vancouver. The 80 percent of the Canadian population that lives within 150 kilometers of the American border would appear to be covered in any event.

The issue for Canada is, therefore, how to react to a *fait accompli*: either participate and know what is going on, or stay out, be kept in the dark, and perhaps see NORAD wither away. Such a system only makes sense for Canada in a North American perimeter context, and while thirty members of the Liberal caucus recently supported a Bloc Quebecois motion to withdraw from talks on National Missile Defence (NMD) with the United States, the government appears headed for eventual Canadian participation of some sort. In this case, the North American perimeter will clearly be established by the United States, whether or not Canada is involved in the program. The DFAIT Web site has extensive information on NMD and says: "[i]t is in Canada's strategic and national interest to be involved in decisions concerning the security and defence of North America."²⁵ The 1994 Defence White Paper provided for regular consultations on BMD with the United States and other allies.²⁶

24. Department of Foreign Affairs and International Trade, Canada and Ballistic Missile Defence, Jan. 15, 2004, available at <http://www.dfait-maeci.gc.ca/departement/focus/bmd-en.asp>.

25. *Id.*

26. DND, Canada-United States Relations, 1994 White Paper on National Defense, ch. 5.

EXPORT CONTROL PERIMETER

During the Cold War most OECD countries tried to deny the transfer of sensitive technologies to countries of the East Bloc or other communist regimes through a system called the Coordinating Committee for Multilateral Export Controls (COCOM).²⁷ In addition, the Canada-U.S. Defence Production Sharing Arrangement of 1956 and the Defence Development Sharing Agreement of 1963 have allowed Canadian firms to compete on an equal footing with their American counterparts in the U.S. market and access sensitive technologies without export controls between the two countries.²⁸ Export controls still apply to exports to third countries.²⁹

These arrangements also allow Canadian firms to stay in touch with developing technologies and help Canada generate and sustain high-technology jobs in the defence and civilian sectors. This is another form of a North American security perimeter for a specific purpose. Tightening of U.S. export controls in 1999 under the International Traffic in Arms Regulations (ITARs) required negotiations with Canada to restore the previous exemptions. Canada had to amend its export controls list to coincide with the U.S. list and implement the Controlled Goods Registration Program (CGRP).³⁰ Richard Perle and David Frum note in their recent book that, "the United States has had a defence free trade agreement with Canada since 1958, and no important secrets seem to have been lost as a result."³¹

The NATO, NORAD, and export control examples demonstrate that the concept of perimeter security against certain specified threats has been practiced between Canada and the United States for over half a century.

CIVILIAN COOPERATION: THE CROSS BORDER
CRIME FORUM

A similar pattern of extensive cooperation among civilian police agencies exists in other areas and predates the tragic events of 9/11. For example, the Cross Border Crime Forum (CBCF) was created in 1997 as a bilateral consultative mechanism to address cross-border crime issues. It has met every year since. The forum was originally created to tackle smuggling across the eastern regions of both countries, but based on its success in 1998 it was expanded to include the entire border and the par-

27. Michael Lipson, *The Reincarnation of COCOM: Explaining Post-Cold War Export Controls*, NONPROLIFERATION REV., Winter 1999, at 33, available at <http://cns.milis.edu/pubs/npr/vol06/62/lipson62.pdf>.

28. Text dated July 27, 1956, available at <http://www.dfait-maeci.gc.ca/sell2USgov/DPSA-e.pdf>. Text dated Nov. 21, 1963, available at <http://www.dfait-maeci.gc.ca/sell2USgov/DDSA-e.pdf>.

29. DND Policy Group, 1994 White Paper on National Defence, ch. 5, available at http://www.forces.gc.ca/admpol/eng/doc/5117_e.htm.

30. Available at <http://www.dfait-maeci.gc.ca/sell2USgov/exportcontrols-en.asp>.

31. FRUM & PERLE, *supra* note 3, at 252.

ticipation of officials from across the border. The CBCF brings together over 150 senior law enforcement, intelligence, and justice officials from Canada and the United States. It has become a key action item of the Smart Border Declaration. Officials meet over two days to share information on best practices, report on progress, and discuss bi-national law enforcement strategies and priorities. The work of the Forum, through its subgroups on intelligence, cooperation, organized crime, prosecutions, and mass marketing fraud, is ongoing throughout the year.

PROJECT NORTH STAR

Canada and the United States also agreed to reinvigorate Project North Star, and it has been aligned with the CBCF since 2001. Project North Star was initially created in 1989 as a voluntary means of coordinating Canada-U.S. law enforcement efforts, with primary emphasis on counter-drug activities along the Canada-U.S. border. It continues to provide an orderly method for local, state/provincial, and federal law enforcement agencies and associations to voluntarily coordinate efforts so as to expand and enhance multi-agency operations and avoid duplication and accidental interference between independent operations. The aim is to promote and improve local, regional, and coast-to-coast cross-border networking, intelligence, targeting, prosecution, training, and coordinated planning. This cooperation will also facilitate the exchange of “best practices” and effective utilization of assets and resources.

INTEGRATED BORDER ENFORCEMENT TEAMS (IBETS)

Canadian and U.S. law enforcement and intelligence cooperate on a daily basis through the Integrated Border Enforcement Teams (IBET). The IBET is a multi-agency law enforcement team that emphasizes a harmonized approach to Canadian and U.S. efforts to target cross-border criminal activity. There are six core partner agencies involved with the IBET: RCMP, Canada Customs and Revenue Agency, Citizenship and Immigration Canada, U.S. Border Patrol, U.S. Customs Service, and U.S. Coast Guard. Additional partners are municipal and provincial governments and law enforcement agencies.

The IBETs were originally developed in 1996 as an innovative method to address cross-border crimes along international land and marine borders between British Columbia and the U.S. state of Washington. They have since evolved into a major enforcement success. The IBETs have effectively disrupted smuggling rings, confiscated illegal drugs, weapons, liquor, tobacco, and vehicles, and made numerous arrests. The IBET in British Columbia alone has averaged \$1 million a month in seizures. IBETs have also intercepted criminal networks attempting to smuggle illegal migrants across the border.

IBETs were identified as a key point in the thirty-point Action Plan of the Smart Border Declaration, and more IBETs were established. Currently, IBETs cover every strategic location across the entire Canada-

U.S. border. IBETs are already operating in the following border areas: Pacific, Okanogan, Rocky Mountain, Prairie, Red River, Superior, Detroit/Windsor, Niagara, Thousand Islands, St-Lawrence Valley Central, Valleyfield, Champlain, Eastern, and Atlantic.³²

THE CANADA-UNITED STATES PARTNERSHIP (CUSP) OF 1999

In October 1999, Prime Minister Chrétien and President Clinton confirmed guiding principles for Canada-U.S. border cooperation, which included the need to streamline and harmonize border policies and management; expand cooperation to increase efficiencies in customs, immigration, law enforcement, and environmental protection at and beyond the border; and to collaborate on common threats from outside Canada and the United States. CUSP was intended to "serve as a forum to promote an integrated, binational approach to border management and foster public dialogue and research on the border of the future."³³ Much of the content of the Smart Border Declaration and Action Plan stemmed from the work of the CUSP and other pre-9/11 cooperation.

JOINT CANADA-UNITED STATES EFFORTS AT COMBATING TERRORISM

The Smart Border Declaration outlined several ways that Canadian and U.S. law enforcement officials and intelligence could cooperate on preventing terrorist attacks.³⁴ These include the coordinated removal of deportees, counter-terrorism legislation including measures for the designation of terrorist organizations, information sharing and advance information on designated individuals and organizations if assets are frozen. The Smart Border Declaration also provided for joint training and exercises in order to increase the dialogue and commitment needed to implement the joint response to terrorism guidelines. Joint counter-terrorism training and exercises are essential to building and sustaining effective efforts to combat terrorism and to build public confidence. The creation of the Binational Planning Group (see page 9 below) has enabled the two countries to implement a framework for dealing with possible terrorist attacks.³⁵

In 2001, the Canadian Aeronautics Act was amended to allow air carriers to provide basic passenger and crew data to foreign governments.

32. For the most recent update on the status of the Smart Border Plan, see Press Release, Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on The Smart Border Action Plan, Oct. 3, 2003, available at <http://canadianembassy.org/border/status-en.asp>.

33. Available at <http://www.cic.gc.ca/english/pub/border2000/border2000.html>.

34. Available at <http://canadianembassy.org/border/declaration-en.asp>.

35. The most concise overview of Canada-U.S. cooperation can be found on the DFAIT United States Relations Web site: *Canada's Actions Since the September 11 Attacks*, available at <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=10&did=1684>. See also Gerald D. Chipeur and Dale Wm. Fedorchuk, *U.S.-Canadian Cooperation Against Terrorism: At the Border and Around the World*, (Sept. 4, 2002), <http://www.chipewur.com>.

This has enhanced the ability of Canadian air carriers to work with their international partners, particularly the United States, to take steps towards further deterring and detecting terrorists.

The RCMP has also launched its Integrated National Security Enforcement Teams (INSETs). These are multi-agency law enforcement teams located in Vancouver, Toronto, Montreal, and Ottawa. Through shared federal, provincial, and municipal resources, the INSET members will be better able to track and put a stop to the criminal activities (major or minor offences) of terrorist groups or individuals who pose a threat to Canada's national security. This type of increased capacity will enable INSET members to work with their partners nationally and internationally towards the common goal of detection and disruption of potential terrorist threats.

The INSETs will allow the RCMP to work more closely with their national and international partners in the collection and sharing of vital intelligence at an earlier stage. These highly specialized teams will also work to ensure that all the information collected is analyzed in a timely and accurate manner and acted upon effectively.

RECENT PROPOSALS FOR A NORTH AMERICAN SECURITY PERIMETER

In October 2000, the Policy Research Initiative of the Privy Council Office and the Universities of British Columbia and Washington held a major conference in Vancouver on "Rethinking the Line: the Canada-U.S. Border." During the opening discussions, the then American Ambassador to Canada, Gordon Giffin, noted that border management policies were not being updated with the necessary speed to match trade growth. He underlined the need for visionary steps to make the most of the prosperity that free trade has initiated. But as the volume of cross-border traffic increases, there was a concomitant need to take steps to stem the flow of terrorism and cross-border crime. Giffin suggested considering a perimeter approach to border management, which would require Canada and the United States to harmonize many of their standards and policies in an effort to create a continental border around the two countries. The perimeter approach could be more efficient at providing public safety. Other visionary steps, he noted, include constructing common border facilities, introducing the common training of border officials, and standardizing the way in which Canada and the United States collect and share data and process travelers and goods.³⁶

During discussion at the conference, Marc-Yves Bertin, Policy Analyst at the Privy Council Office noted that:

36. Gordon Giffin, *Opening Plenary, Planning for the Future*, HORIZONS: RETHINKING THE LINE: THE CANADA-US BORDER, Special Issue Vol. 3, at 5 (Mar. 2001), available at http://policyresearch.gc.ca/doclib/Final_v3_sunset_E.pdf.

the perimeter concept has captured the most media attention. It is not entirely clear what a perimeter would mean: does the perimeter approach suggest increased coordination and harmonization of North American immigration and customs processes along North America's internal and continental borders or does it refer to deeper economic integration? Does a perimeter refer, as some journalists have suggested, to a customs union?³⁷

A perimeter approach also raises the question of membership. While Mexico is a signatory to NAFTA, it is not a partner in the Canada-U.S. security relationship as shaped by NATO and NORAD, the Shared Border Accord and Canada-U.S. Cross-Border Crime Forum. Would a perimeter approach include Mexico?³⁸ Bertin also asked "should we promote the idea of an International Joint Commission for the Canada-U.S. border to help us prevent and resolve border disputes?"³⁹ Collaboration on common threats from outside North America was a principle which Bertin saw already enshrined in the Canada-U.S. Partnership (CUSP) of October 1999.

Greg Goatbe, Director General of Canada Customs and Revenue Agency, told the conference:

Canadians and Americans share certain standards and there is generally less risk associated with the entry of travelers and goods from the United States across the Canada-US border as compared with traffic coming from outside the North American perimeter. By focusing our efforts first on the perimeter borders, we should be able to reduce the risk associated with travel and commerce flowing across the Canada-U.S. border and in turn be able to explore even more streamlined processes.

To achieve this goal, we need an agreement from our U.S. counterparts that there is a will to work towards common approaches at the perimeter and harmonized processes at the Canada-U.S. border. If customs processes at the Canada-U.S. border continue to lack harmony, low-risk importers and exporters and frequent travelers will experience delays and costs in applying for and using the different processes that exist on either side of the border.⁴⁰

Demetrios Papademetriou of the Carnegie Endowment for International Peace, "advanced a new vision of North America in which NAFTA countries' international boundaries gradually, and perhaps unevenly, become irrelevant, particularly with respect to the current security and revenue collection objectives." He argued that this vision can and should be attained

37. Marc-Yves Bertin, *Seamless but Sovereign*, HORIZONS: RETHINKING THE LINE: THE CANADA-US BORDER, Special Issue Vol. 3, at 11 (Mar. 2001), available at http://policyresearch.gc.ca/doclib/Final_v3_sunset_E.pdf.

38. *Id.*

39. *Id.*

40. Greg Goatbe, *The Canada-US Border Initiative: A Retrospect*, HORIZONS: RETHINKING THE LINE: THE CANADA-US BORDER, Special Issue Vol. 3, at 21, (Mar. 2001), available at http://policyresearch.gc.ca/doclib/Final_v3_sunset_E.pdf.

with no loss of sovereignty for any partner, while ensuring that democratic processes are not only protected but also enhanced. Such a vision could be approached from two distinct and ultimately converging tracks. The first track is the continuance of building a multiplicity of contacts, the deepening of bilateral relationships and the focus on pragmatic problem solving. The second would focus on the kind of North America that citizens of the three countries have the right to expect in the not too distant future and how to achieve it. This includes their protection from unwanted activities, practices and products as well as the advancement of citizen interests for prosperity, protection of rights, adherence to rules and humanitarianism.⁴¹

FROM SECURITY PERIMETER TOWARD A NORTH AMERICAN COMMUNITY?

Early in 2001, Mexican President Vincente Fox invited newly elected President Bush to his ranch to discuss his ideas for a North American Community, which included a common market for the free flow of goods, services, capital, and people. Bush undertook to study the issue. In August 2001 American scholar Robert Pastor took the Fox idea and tried to flesh out the proposals in his book *Towards A North American Community: Lessons from the Old World for the New*.⁴² Pastor outlined a blueprint for the integration of a developing country, Mexico, into North America, noting that Fox's common market proposal "could not be implemented anytime soon."⁴³

As a first step, Pastor proposed the creation of several trilateral institutions to help facilitate the transition towards a North American Community: a North American Commission to set the agenda for the political leaders, a North American Parliamentary Group, a Permanent North American Court on Trade and Investment, and meetings of cabinet ministers with the agenda set by the North American Commission.⁴⁴ He also suggested the development of a North American Plan for Transportation and Infrastructure⁴⁵ and the creation of a common external tariff and a customs union between the three countries.⁴⁶

Pastor looked at the problems of customs, enforcement and immigration, the border, and the perimeter, and suggested the creation of a North American Customs and Immigration Force to be used on the perimeter of

41. *Canada-US Border Issues*, HORIZONS: RETHINKING THE LINE: THE CANADA-US BORDER, Special Issue Vol. 3, at 23, (Mar. 2001), available at http://policyresearch.gc.ca/doclib/Final_v3_sunset_E.pdf (summary of speaker Demetrios Papademetriou's session at the conference *Rethinking the Line: The Canada-US Border*).

42. Robert A. Pastor, *Towards a North American Community Lessons from the Old World for the New* (Aug. 2001), available at http://bookstore.iie.com/merchant.mvc?Screen=PROD&Product_Code=331.

43. *Id.* at 98.

44. *Id.* at 100-03.

45. *Id.* at 104-08.

46. *Id.* at 108-11.

North America where illegal goods and drugs are most likely to enter.⁴⁷

Pastor also had some ideas about expanding the NAFTA visa program and turning it into a North American passport for professionals and business people who travel often in North America.⁴⁸ He also believed that a North American energy policy and a North American Development Bank to help Mexico catch up to its two developed North American partners are required to build a North American community. Pastor noted that the creation of a customs union between the three countries would not be easy and the next step after that, the creation of a common market with the free flow of labour, would even be more difficult.⁴⁹ He cited a *Time* magazine poll, which shows that Americans are not ready to tear down the fences: “[i]ndeed they seem to be sitting on the fence on the issue of Mexico.”⁵⁰ Pastor also admitted that the trilateral approach which he espouses for a North American community faces two major problems: an American penchant for unilateralism; and the Canadian and Mexican preference for bilateralism.⁵¹ Pastor noted, “[the] concept of sovereignty is one of the most widely used, abused and least understood terms in the diplomatic lexicon.”⁵²

FROM PERIMETER TO SMART BORDER

In November 2001 the Public Policy Forum organized a major conference in Toronto to discuss “Canada’s Policy Choices: Managing Our Border with the United States.”⁵³ The issue of a security and/or economic perimeter was discussed at this conference by several participants. Deputy Prime Minister John Manley asked, “[w]orking together is it not possible to identify security risks before they come to the continent? If so, this would mean working towards a greater convergence of policies and procedures.”⁵⁴

Joan Atkinson, Assistant Deputy Minister of Policy in Citizenship and Immigration Canada, described her department’s concept of “multiple security borders” or concentric rings from airline check-in (point of origin), point of initial embarkation, transit, point of final embarkation, international seaports/airports (point of arrival), and at the centre, the Canada-U.S. border.⁵⁵

A slight variation on this conception was offered by George Haynal, Assistant Deputy Minister of Foreign Affairs, who suggested creating a “North American Area of Mutual Confidence” based on five concentric

47. *Id.* at 120-22.

48. Pastor, *supra* note 42, at 123, 132-33.

49. *Id.* at 143-44.

50. *Id.* at 144.

51. *Id.* at 150.

52. *Id.* at 152.

53. Public Policy Forum (PPF), *Canada’s Policy Choices: Managing Our Border with the United States*, Nov. 27-28, 2001, available at http://www.ppforum.com/ow/ow_p_11_2001A_frep.pdf.

54. *Id.* at 8.

55. *Id.* at 13.

rings of cooperation: national security measure, cross-border cooperation, cooperation at the actual border; offshore cooperation to prevent the movement of potentially threatening individuals, and addressing the global problems of migration.⁵⁶

Hugh Segal, president of the Institute for Research on Public Policy, mentioned an integrated pre-clearance system and a continental point of entry (CPE) as two possible solutions to avoid another crisis. "A CPE agreement with regular review and renewal procedures that engaged the standards and concerns both Canadians and Americans share would produce operational interoperability without compromising Canadian sovereignty and serve as a serious step ahead."⁵⁷

Perrin Beatty, president & CEO, Canadian Manufacturers and Exporters, argued that Canada can agree on common goals for stopping terrorism and promoting trade with the United States without compromising its sovereignty.⁵⁸ Beatty also suggested that Canada should put forward a concrete proposal outlining a Canadian plan that will secure North America physically and economically.⁵⁹

Former American Ambassador to Canada, Gordon Giffin picked up on his earlier idea of a security perimeter and pointed out that this debate should take place within a continental context among the United States, Canada, and Mexico. He indicated that public perception in the United States is such that Americans are now just as concerned with the Canada-U.S. border as they are about their border with Mexico.⁶⁰

Jim Stanford, economist with the Canadian Auto Workers, said that the common security perimeter and harmonization of immigration and security policies would undermine the extent to which the "Canadian way" can be sustained. "Clearly, free trade can continue without the drastic step of harmonizing immigration and security policies and therefore, no substantial changes to current Canadian policies are required."⁶¹

John Simpson, president of the American Association of Exporters and Importers and former head of the U.S. Customs Service, noted, "[a]s long as the traditional character of the border, specifically its revenue and regulatory function is unchanged, you in Canada who depend on trade with the U.S. will be living on the edge of a volcano."⁶² He suggested that creating a common external tariff (Customs Union) would create a free trade zone, eliminating the administrative burden on traders and facilitating the flow of goods between Canada and the United States. He further suggested that Canada and the United States should move their scarce immigration control resources off the land border and re-locate them at the relatively limited number of airports and seaports that serve as points

56. *Id.* at 50.

57. *Id.* at 17.

58. *Id.* at 16.

59. PPF, *supra* note 53, at 22.

60. *Id.* at 30.

61. *Id.* at 32-33.

62. *Id.* at 38.

of entry into North America. Border immigration inspectors would probably have more success in locating terrorists at points of entry, and police and immigration agents would probably be more successful in locating terrorists already in North America.⁶³

The Commissioner of the RCMP, Giuliano Zaccardelli, suggested that to secure Canada and the United States, both countries must think in continental terms and work together in their common security interests.⁶⁴ Peter Harder, the then Deputy Minister of the Department of Industry and currently Deputy Minister of Foreign Affairs, noted that former Ambassador Giffin "had proposed the development of 'perimeter policies' allowing 'more efficiency, yet enhanced security at the 49th parallel' at one of their conferences in 2000," and Harder "stressed that if Canada does not move to deal with the security issues that are now facing North America, it will not be able to move on to the economic problems at the border that existed prior to September 11."⁶⁵ Harder then "pointed out that as the common economic space shared by Canada and the United States continues to evolve, policy-makers in Canada will have to address some of the issues that former Ambassador Giffin called the 'post-NAFTA challenge.'"⁶⁶

Harder suggested that the forum participants read Michael Hart and Bill Dymond's paper from the Centre for Trade Policy and Law at Carleton University entitled, "Common Borders, Shared Destinies: Canada, the United States and Deepening Integration." He noted one of their main conclusions was that "we have a perimeter with the U.S., defined by geography, economics, shared values and common challenges – the issue is not whether it exists but whether it is strong or weak."⁶⁷

The Canadian business community called for the creation of a continental security perimeter to exclude potential terrorists. "We have to make North America secure from the outside," said the president of Canadian Pacific Ltd, "we're going to lose increasingly our sovereignty, but necessarily so."⁶⁸ The Coalition for Secure and Trade-Efficient Borders, consisting of forty business groups from the manufacturing, transportation, and resource sectors, lent its support to the security perimeter idea, as did the Canadian Chamber of Commerce.⁶⁹

63. *Id.* at 39.

64. *Id.* at 45.

65. PPF, *supra* note 53, at 53.

66. *Id.*

67. *Id.* at 53-54. The Hart/Dymond paper is available at <http://www.carleton.ca/ctpl>. See also Bill Dymond & Michael Hart, *The Potemkin Village of Canadian Foreign Policy, Policy Options*, Dec. 2003/Jan. 2004, at 43, available at <http://www.irpp.org> ("Reduced to its fundamentals, Canada is an integral part of the U.S. security and economic perimeter").

68. Murray Campbell & Lily Nguyen, "Security Perimeter Backed," *GLOBE AND MAIL*, Sept. 15, 2001, at A9.

69. Nancy Hughes Anthony, "US Border-Fears Vital for Canadian Business," *CALGARY HERALD*, Oct. 15, 2001, at A10; Heather Scoffield, "Business Coalition Pushes for Common Border Rules," *GLOBE AND MAIL*, Dec. 3, 2001, at B5.

In November 2001, the Standing Committee on Foreign Affairs and International Trade issued the report "Toward a Secure and Trade Efficient Border," which included as a recommendation "that the Government of Canada, following consultation with U.S. authorities, outline to Canadians its plans for co-operating with its North American partners to improve continental security."⁷⁰

U.S. OBJECTIVES FOR A SECURITY PERIMETER

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, section 110 of which required all foreigners to register when entering or leaving the United States. The provision was aimed at Mexico, but Canada was included reportedly because legislators feared protests from Hispanic-Americans if stronger action were taken against Mexico than Canada. Concerned that the system would lead to gridlock at the Canada-U.S. border, U.S. businesses, border state legislators, and Canadian authorities mounted a sustained lobbying effort to overturn the provision. The lobby was successful but the incident brought Canadian refugee policy under scrutiny. Canadian officials floated the idea of a perimeter security system that would see the two countries harmonize visa requirements and share intelligence information.

As mentioned previously, the idea of a North American security perimeter was quickly picked up by American diplomats, notably Ambassador Gordon Giffin and his successor Ambassador Paul Celluci, both before and after 9/11. As elaborated by Celluci, the goal of a continental perimeter was to reduce the vulnerability of the North American continent from asymmetric threats, cross-border crime, illegal immigration, cyber crime, and particularly terrorism. Following the 9/11 attacks, Ambassador Celluci championed the perimeter plan: "We need to do a better job at the perimeter in both countries—the documentation, the identity, the screening."⁷¹ He said the sovereignty of the countries does not have to be compromised, and the plan would not require harmonizing immigration laws.⁷²

The U.S. Commissioner of Customs and Border Protection, Robert Bonner, told a Center for Security and International Studies (CSIS) Conference in July 2003 that urgent consideration should be given to what is called "reverse inspections," a proposal that has stirred controversy in the past. The proposal is very much in line with post-9/11 thinking in that goods would be inspected before they crossed the border. The proposal's main problems were national sovereignty issues and the need to give full

70. Thirteenth Report of the Standing Committee of Foreign Affairs and International Trade, *Towards a Secure and Trade-Efficient Border*, Nov. 2001, available at <http://www.parl.gc.ca/InfoComDoc/37/1/FAIT/Studies/Reports/sinrp05/07-for-e.htm>.

71. CBC Online, *Celluci Sees Automated Border with Secure perimeter*, Oct. 3, 2001, available at <http://www.cbc.ca/story/canada/national/2001/10/03/cellucci011003.html>.

72. *Id.*

legal authority to officials acting on the other side of their national boundary. He noted that the United Kingdom and France have successfully implemented such measures on either side of the Channel Tunnel. He expressed frustration that this proposal appears to be languishing, surmising that in the event of such an attack, the two governments would implement reverse inspections in a second. Bonner also said there could be the possibility of a secure perimeter and minimal checks on flows within that perimeter.⁷³

CANADIAN PREMIERS SUPPORT PERIMETER APPROACH

Several premiers came out in favour of a continental perimeter as proposed by Ambassador Celluci. Ontario's Mike Harris, Bernard Lord of New Brunswick, and British Columbia's Gordon Campbell all said they would rather see the Canada-U.S. border remain as open as possible for trade. Such a policy might require harmonizing customs and immigration policies between the two countries, creating a common perimeter around North America. Campbell even recruited Quebec Premier Bernard Landry as an ally in his campaign for a shared secure North American perimeter. During meetings with the British Columbian premier in Quebec City, Landry offered his unqualified support for Campbell's call for a continental security plan to ensure no interruption in business traffic.⁷⁴

PERIMETER CONCEPT REPLACED BY ZONE OF CONFIDENCE

Deputy Prime Minister John Manley called the concept of a perimeter "simplistic" on October 4, 2001. Manley rejected the security perimeter approach, saying that he preferred to deal with "specific areas of concern" rather than integrate Canada's policies with those of the United States. "Working closely with the United States does not mean turning over to them the keys to Canadian sovereignty," he said.⁷⁵ Manley added, "Perimeter implies NAFTA . . . I think it makes the problems, whatever they are, much more complex if you try and do two borders at once."⁷⁶ Following this statement, the use of the term "perimeter" by Canadian and American officials went into hibernation, being replaced by terms such as a "Zone of Confidence," "North American Community," or even "security bubble." One commentator, Stéphane Roussel, suggested that the idea of creating a North American security perimeter put the Chrétien government in some difficulty since it would be doing in the security field what its predecessor had done in the economic field and

73. Center for Strategic and International Studies (CSIS), Americas Program Conference Report, *Safety and Security in North American Trade*, July 2003, at 10, available at http://csis.org/americas/canada/030716_Bonner.pdf.

74. CBC Online, *Quebec Supports Campbell Security Plan*, Oct. 19, 2001, available at <http://www.cbc.ca>.

75. Paul Wells, *We Don't Pull Our Weight: Manley*, NATIONAL POST, Oct. 5, 2001, at A6, available at <http://www.csis.org/americas/pubs/pp0311barry.pdf>.

76. *Id.*

result in more formal integration with the United States.⁷⁷ Roussel suggested that the agreements Canada was reaching with the United States were indeed going in the direction of a perimeter without using that name. He believed that we must use the term perimeter since that is the only way to ensure that a debate occurs on exactly what form the security perimeter should take.

The Conference Board of Canada published a document on the border and security in October 2001 which identified three options: (1) to enhance border efficiency by exploiting more intelligent methods of processing border examinations; (2) to rethink the traditional border management (Canada and U.S. law enforcement agencies would work more closely together away from the Canada–U.S. border to mitigate the need for intensive inspections at the border itself); and (3) for the two governments to closely coordinate or perhaps even harmonize security and related policies, and to potentially eliminate border inspections altogether. He noted that, “[t]he situation requires clarity on the federal government’s position on security and trade flow matters, recognizing their interrelationships.”⁷⁸

THE SMART BORDER DECLARATION AND THIRTY POINT ACTION PLAN

On December 12, 2001, Canada and the United States signed the Smart Border Declaration: “Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence,” and the “Thirty Point Smart Border Action Plan,” which contain many elements of perimeter security even if it is not formally a full perimeter security plan. The declaration noted that “public security and economic security are mutually reinforcing . . . and that by working together to develop a zone of confidence against terrorist activity; we create a unique opportunity to build a smart border for the 21st century.”⁷⁹

The most recent update of the Smart Border Action Plan, issued on October 3, 2003, included an announcement by the U.S. government that Canadian and American citizens

would not be subject to the U.S.-VISIT program (entry-exit forms) under current U.S. policy; and that the two countries have committed to working together to identify a way to implement the program

77. Stéphane Roussel, *Le Canada et le Périmètre de Sécurité Nord-Américain: Sécurité, Souveraineté ou Prospérité*, POLICY OPTIONS POLITIQUES, Apr. 2002, available at <http://www.irpp.org>.

78. Andrew Shea, *Border Choices: Balancing the Need for Security and Trade*, Conference Board of Canada, Oct. 2001, available at <http://www.conferenceboard.ca/boardwiseii/LayoutAbstract.asp?DID=61>.

79. *The Smart Border Declaration: Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence*, Ottawa, Dec. 12, 2001, available at <http://canadianembassy.org/border/declaration-en.asp>; *Action Plan for Creating A Secure and Smart Border*, Ottawa Dec. 12, 2001, available at <http://canadianembassy.org/border/actionplan-en.asp>.

that minimizes the impact on border flows and the need for exit infrastructure at the Canada-U.S. land border.

The then Homeland Security Secretary Ridge stated that

[A]s we continue to develop our U.S.-VISIT program, we need to ensure that it will enhance our national security while not impeding legitimate flows of trade and travel across our land border. Once again, we are showing what can be accomplished through cooperation and collaboration between our countries. By working together we can better reach our common goals of ensuring the security and prosperity of our citizens.⁸⁰

This appears to indicate that the level of official U.S. concern about holes in Canadian security posing a threat to the United States may be somewhat less than some of the sources cited below suggest, and that the level of confidence developed in the period since signature of the Smart Border Action Plan in December 2001 has increased markedly. It may also reflect the immense difficulties the United States would have in implementing such an entry-exit system over the Canada-U.S. border.

A similar development with respect to short term visitors from Mexico recently took place: President Bush and President Fox came to an agreement on March 6, 2004 that Mexicans will not have to be photographed or fingerprinted at the border for short visits to the United States.⁸¹ Administration officials said that after security details are worked out, Mexicans on seventy-two-hour visas will be exempted from the requirement that anyone entering the country be photographed and fingerprinted. One possible substitute security measure would be issuing the short-term visitors a radio-frequency transponder similar to the EZPass toll-road device.⁸² President Bush's proposal to deal with illegal Mexican immigrants has yet to be approved by Congress, and the President did not make any predictions to President Fox or to reporters on the likely outcome.

CONTINUING SUGGESTIONS FOR A PERIMETER

In December 2001, Fred McMahon of the Fraser Institute supported the perimeter idea and noted:

Canada's nationalist, anti-globalist left is up in arms about establishing a North American perimeter. It's an affront to Canadian sovereignty, they say. But sovereignty does not belong to government. Sovereignty belongs to individuals who entrust some aspects of it to their government. The central sovereign duty a government owes its

80. PRESS RELEASE, *Governor Ridge and Deputy Prime Minister Manley Issue One-Year Status Report on the Smart Border Action Plan*, Oct. 3, 2003, available at <http://canadianembassy.org/border/status-en.asp>.

81. The White House, *Press Conference of President Bush and Mexican President Fox*, Crawford Texas, Mar. 6, 2004, available at <http://www.whitehouse.gov/news/releases/2004/03/20040306-3.html>.

82. Mike Allen, *Bush, Fox Settle Short Term Visa Spat*, WASHINGTON POST, Mar. 7, 2004, at A09, available at <http://www.washingtonpost.com/wo-dyn/articles/A36776-2004Mar6.html>.

citizens is sound security and economic policy. Our left wants the Canadian government to neglect its key sovereign duty to Canadian citizens for economic and physical security, apparently because this will somehow protect our sovereignty. If long-term enemies like France and Germany can establish a common perimeter around Europe, surely long-term friends like Canada and the United States can establish one in North America.⁸³

In February 2002, the Watson Institute for International Studies at Brown University held a seminar on "The Re-bordering of North America: Integration or Exclusion after September 11?," which discussed the idea of a security perimeter or a Fortress America with very closed borders on the north and south. Security was a new kind of trade barrier. 9/11 created a new politics of cross-border relations between the United States and Canada and the United States and Mexico. Mexico was worried it would be on the outside of a security perimeter and Canadians were worried by a Mexicanization of Canada-U.S. relations. Borders were not disappearing, eroding, or being retired, but were being expanded outward, reinvented, re-designed, and re-configured.⁸⁴

In 2002, Stéphane Roussel presented four scenarios for a North American security perimeter at a CISS Conference on "Fortress North America: What 'Continental' Security Means for Canada":

- 1) Formal Security Perimeter: a comprehensive treaty that defines the long-term goals and guarantees the decision-making process between the members of the security agreement. The advantage is that it is a long-term guarantee to all parties. The problem is that no one in Canada wants to talk about this, and there is a reluctance to create new bureaucracies. Models: Schengen, Permanent Joint Board of Defence and International Joint Commission.
- 2) Informal/Limited Security Perimeter: a sectoral memorandum of understanding (MOU) between agencies (no formal treaty or organization). This is the most likely scenario because it is the least troublesome and is the way in which most Canada-U.S. relations are conducted. The problem with this scenario is that dealing with terrorism requires a comprehensive approach since there are a lot of organizations involved and a coordination mechanism is needed. Model: December 12th Smart Border Declaration and Action Plan.
- 3) Multilateral Security Perimeter: this is a wider agreement that is either formal or informal. But according to Roussel it will not work because there are no historical examples of success. Models: UN Conventions, NATO, G7/8.

83. Fred McMahon, Fraser Institute, *Perimeter Puzzle*, Dec. 2001, available at http://oldfraser.lexi.net/publications/forum/2001/12/section_13.html.

84. The Watson Institute for International Studies, Transcript, *The Re-Bordering of North America: Integration or Exclusion After September 11?*, available at http://www.watsoninstitute.org/news_detail.cfm?ID=38.

- 4) Unilateral “made-in-Canada” Security Perimeter: more coherent and coordinated national policies that are enough to reassure the United States. Models: bill C- 32 and C-42.⁸⁵

Roussel believed that the most likely scenario was the second, since it is the easiest to implement. But he considered the first scenario as the most efficient and useful for Canadians.

Bob Keyes of the Canadian Chamber of Commerce outlined the ideas of the Coalition for a Secure and Trade Efficient Border with respect to perimeter security. The Coalition envisions the North American “space” as three concentric circles: (1) the largest circle, where offshore North American goods and people enter our economic system; (2) the middle circle, the first point of entry into North America; and (3) the innermost circle, the actual Canada-U.S. border. Keyes argues for increased information sharing and cooperation. He wants to move the “border away from the border,” without eliminating the Canada-U.S. border. He also believes that addressing the border issues means tackling larger questions. In the short term, he sees perimeter cooperation on a bilateral basis with the United States and not trilateral with Mexico.⁸⁶

Doug Lewis stated that harmonizing our immigration and refugee policies is an affirmation of our sovereignty since, “we go to the table and make decisions for ourselves.”⁸⁷

DOUBTS ABOUT A SECURITY PERIMETER

In February 2002, Stephen Clarkson, a participant in the Watson Institute seminar, wrote that like in the Cold War, Canada finds itself sitting directly on its superpower neighbour’s defence perimeter. He noted that the United States needs to be “confident Canada is doing all that it can and that Canadian procedures need to be seen as effective as possible.” So what was Canada to do? One extreme, which he opposed, was the complete harmonization of all policies. An intermediate position he presented was the harmonization of select sectors, such as vetting applications for immigration. But according to Clarkson, “Canadian procedures seem to be more effective at screening out terrorists than American ones.”⁸⁸ He also feared the talk of merging personnel such as immigration or intelligence because of job loss. He claimed that Congress can be

85. Stéphane Roussel, *The Blueprint of Fortress North America*, in *FORTRESS NORTH AMERICA: WHAT ‘CONTINENTAL SECURITY’ MEANS FOR CANADA* 16-17 (David Rudd & Nicholas Fumeaux, eds. 2002).

86. Bob Keyes, *Perimeter Security and Trade Issues for Canadian Businesses*, in *FORTRESS NORTH AMERICA: WHAT ‘CONTINENTAL SECURITY’ MEANS FOR CANADA* 36 (David Rudd & Nicholas Fumeaux, eds., 2002).

87. Doug Lewis, *What Perimeter Security Means for Canada*, in *FORTRESS NORTH AMERICA: WHAT ‘CONTINENTAL SECURITY’ MEANS FOR CANADA* 36 (David Rudd & Nicholas Fumeaux, eds., 2002).

88. Stephen Clarkson, *Lockstep in the Continental Ranks: Redrawing the American Perimeter After September 11*, at 11, Canadian Centre for Policy Alternatives, Feb. 2002, available at http://www.policyalternatives.ca/documents/National_Office_Pubs/clarkson.pdf

expected to generate continual turbulence of the state of the U.S. security perimeter. Clarkson wrote that, "if Fortress North America surrounds U.S. borders and there was a return to isolationism, Canada and Mexico will be in trouble." After 9/11, we were seeing a double dialogue between Canada-U.S. and Mexico-U.S. NAFTA, according to Clarkson, has little to offer to further political integration.⁸⁹

If from the ashes of Ground Zero a new Fortress America were to be constructed, the issue for both Canada and Mexico becomes where its ramparts will be located. If these customs and immigration fortifications are to be a new Hadrian's Wall along the United States' territorial boundaries, then the St. Lawrence River, the Great Lakes and the Rio Grande will become the moats across which the two peripheral states look in tortured frustration at their once-promised markets.⁹⁰

Clarkson concluded:

for North America, we cannot tell whether its integration will be deepened by a trilateral consensus on securing the continent against terrorism, or whether the United States' borders will be raised so high that its two neighbouring states will find themselves outside the fortress, with their NAFTA-accelerated vulnerability turned to their devastating disadvantage, or—more likely— whether the continent will be managed as two separate U.S. controlled relationships.⁹¹

In September 2002, Dr. David Charters told a conference of the Canadian Defence and Foreign Affairs Institute that it was essential to alleviate American concerns about the supposedly "porous" border and Canada's allegedly "lax" immigration/refugee policies because of the economic repercussions for Canada. He noted it was hardly surprising that border security was featured more prominently than defence in the budget and in initiatives that followed.⁹² He did not, however, advocate a security perimeter. While it might make sense from a practical standpoint, "the sovereignty 'optics' are unsellable, even if they are overstated."⁹³ Joint border patrols and information-sharing are now accepted practice, but that was a long way from posting American customs and immigration officers alongside their Canadian counter-parts, "looking over their shoulders and vetting all arrivals."⁹⁴ According to Charters, "the most the US can expect—indeed, what it has the *right* to expect—is that Canada will exercise 'due diligence' within its own territory and jurisdictions to ensure that its border controls, refugee, immigration, and

89. *Id.*

90. *Id.* at 14.

91. *Id.* at 16.

92. Dr. David A. Charters, *Terrorism and Response: The Impact of the War on Terrorism on the Canadian-American Security Relationship*, CANADIAN DEFENCE AND THE CANADA-US STRATEGIC PARTNERSHIP 5-6 (Sept. 2002); Canadian Defence and Foreign Affairs Institute, at 13, available at <http://www.cdfai.org>.

93. *Id.* at 16.

94. *Id.*

other policies and procedures limit as much as is reasonably possible the ability of terrorists to infiltrate Canada and to use it as a base for attacks against the United States.”⁹⁵

WENDY DOBSON'S STRATEGIC BARGAIN

In April 2002, Wendy Dobson published her framework for “Shaping the Future of North American Economic Space,” the first of a series of Border Papers published by the CD Howe Institute which suggested that Canada should initiate a joint strategy for achieving a common goal of North American physical and economic security.⁹⁶ Dobson argued that Canada needed a proactive security agenda to deal with the post-9/11 challenges at the Canada-U.S. border, which also dealt with the issues of immigration/refugee policy and anti-terrorism and defence policy. She suggested the need for a “Big Idea” to seize the attention of the U.S. government and offered three options: (1) a customs union, (2) a common market, or (3) a “strategic bargain” of a pragmatic mix of customs-union-like and common-market-like proposals plus Canadian initiatives in areas of particular interest to the Americans (security, including refugee administration and visitor visa administration, and defence). She did not use the terminology of North American security perimeter, but all of her proposals would certainly establish a perimeter for both physical and economic security purposes.

ALLAN GOTLIEB'S NORTH AMERICAN COMMUNITY OF LAW

Allan Gotlieb, former Canadian Ambassador to the United States, came out in support of Dobson on September 11, 2002, with an article in the *National Post* entitled “Why Not a Grand Bargain with the United States.” He developed this further in a proposal for a North American Community of Law, in which he said the time is right to consider striking a grand bargain in which issues of economic security and homeland security are brought together in such a way as to elicit broad political support in both countries.⁹⁷ Gotlieb suggested that:

it is possible to envisage the negotiation of a comprehensive agreement establishing a common set of binding rules favouring the movement of people, services and goods within a joint Canada-U.S. space. It could also establish a common perimeter surrounding the space, with common criteria for entering and moving within it. There could be a common external tariff for the two countries with regard to a substantial body of goods entering the space. Common standards, or

95. *Id.*

96. Wendy Dobson, *Shaping the Future of North American Economic Space*, CD Howe Commentary No. 162, Apr. 2002, available at http://www.cdhowe.org/pdf/commentary_162.pdf.

97. Allan Gotlieb, *A North American Community of Law*, at 7, available at <http://www.alanalexandroff.com/gotlieb2.pdf>.

reciprocal recognition of each other's, could be adopted to avoid regulatory harassment and hidden barriers to trade.⁹⁸

Gotlieb noted that:

a common security fence would require tight cohesion in all areas related to enforcement and intelligence. But it would not restrict our sovereign ability to determine the basic rules of immigration policy: i.e., how many immigrants we would take annually, where they come from, what would be the size of the independent class, what qualifications were needed, what people would be included in the family class and who excluded. As for refugees, both countries acknowledge and accept the same basic international definitions and legal obligations. As to contributing far more to the joint defence of our perimeter and playing an effective role, this again could hardly contribute to the diminution of our sovereignty. We have long participated in joint arrangements with the [United States] for our common defence in North America and elsewhere. If we do significantly more, we increase our voice and influence. If we do less, we diminish our sovereignty – a strange position for Canadian nationalists to advocate.⁹⁹

Hugh Segal, President of the IRPP, supported Dobson's call for a strategic bargain in a *National Post* article on November 18, 2002, entitled "Toward a Treaty of North America." In December 2002, at a Conference in Washington, D.C. to commemorate the tenth anniversary of the signing of NAFTA, former Prime Minister Brian Mulroney supported the concept of a security perimeter when he said "our internal borders will only be smart if our external perimeter is secure."¹⁰⁰ Mulroney also called for action to heighten vigilance and direct concrete action which gives all of North America more certainty against the unprecedented threat of terrorism.¹⁰¹

MEXICO AND THE PERIMETER

A Mexican perspective on perimeter security was published in 2002 by Mauricio Ibarra, Embassy of Mexico in Canada. He wrote that "when President Fox visited the [U.S.], he proposed the establishment of a security policy for the entire NAFTA region. It is the logical next step after NAFTA and would be focused on drug trafficking, organized crime and terrorism and not joint military action."¹⁰²

98. *Id.*

99. *Id.*

100. Canadian Press, *Mulroney Calls on PM to Back Perimeter Security*, Dec. 10, 2002, available at http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1039481322310_82?s_name=&no_ads=.

101. *NAFTA at 10: Progress Potential and Precedents*, Woodrow Wilson Centre, Washington, D.C., Dec. 9-10, 2002, available at http://wwics.si.edu/index.cfm?fuseaction=events.event_summary&event_id=12418 and http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1039481322310_82?s_name=&no_ads=.

102. Mauricio Ibarra, Embassy of Mexico in Canada, *Perimeter Security: A Mexican Perspective*, FORTRESS NORTH AMERICA: WHAT 'CONTINENTAL SECURITY'

THE CCCE'S NORTH AMERICAN SECURITY AND PROSPERITY INITIATIVE (NASPI)

In January 2003, the Canadian Council of Chief Executives (CCCE) published its North American Security and Prosperity Initiative (NASPI),¹⁰³ which linked physical and economic security and called on the three countries of North America "to create a zone of cooperation encompassing the continent rather than focusing security efforts on the line that separates us. We must emphasize protection of the approaches to North America while eliminating regulatory, procedural and infrastructure barriers at our internal border."¹⁰⁴

The CCCE suggested the need to transform the internal border into a shared checkpoint within the Canada-U.S. economic space. The objective should be twofold: to shift the burden of protecting our countries against global threats away from the internal border to the approaches to North America; and to eliminate unnecessary regulatory, procedural and infrastructure barriers at our internal border."¹⁰⁵ To achieve this objective, the CCCE advocated:

- A shared system for commercial processing, shared infrastructure, shared policing and even a voluntary shared North American identification document all could help to ease flows of people and goods across the border further without threatening the security or sovereignty of either country. . . . Similarly, a shared approach to protecting legitimate visitors to North America could serve as the model for multilateral cooperation while maintaining sovereignty and the distinctiveness of policies related to receiving immigrants who are vital to our societies and of refugees to whose protection we are equally committed. Building on the more than forty-year record of cooperation through NORAD, our countries should strive to create a North American defence community of sovereign nations. The new partnership would expand our commitment to include:
- Defence of the continent's airspace, including participation in a continental ballistic missile defence system;
 - Shared protection of the maritime approaches to North America;
 - Protection of critical infrastructure such as pipelines, electronic networks, railways, bridges and transmission lines; and
 - Cooperative reaction to natural and man-made disasters on both sides of the border.¹⁰⁶

MEANS FOR CANADA 36 (David Rudd & Nicholas Fumeaux, eds., 2002). See also Stephen Clarkson & Maria Banda, *Congruence, Conflict, and Continental Governance: Canada's and Mexico's Responses to Paradigm Shift in the United States*, 2003, available at <http://www.alanalexandroff.com/canmex.pdf>.

103. CCEO, North American Security and Prosperity Initiative (NASPI), available at <http://64.26.159.96/en/north/north.php>.

104. CCEO, *NASPI Proposals for Reinventing the Border*, available at <http://64.26.159.96/en/north/reinventing.php>.

105. *Id.*

106. *Id.*

OTHER DEVELOPMENTS IN 2003

In February 2003, the Conference Board of Canada presented a seven-point plan for renewing Canada-U.S. relations.¹⁰⁷ It argued against “big ideas” for the Canada-U.S. relationship. Instead, it urged that issues be addressed in an incremental and pragmatic manner. They thought that initiatives such as the Smart Border Declaration should be expanded, and they encouraged security cooperation. Police and security forces in both countries must be encouraged to cooperate more closely to deal with common security risks. Canada should also seek to remove the border as a barrier to the free movement of people between countries and explore opportunities for a common external tariff on manufactured goods that will reduce costs for both business and government.

In March 2003, Simon Fraser University Professor Alexander Moens wrote that pressure will build on Ottawa to develop a comprehensive North American Security and Defence Agreement (NASDA). He argued that it was in Canada’s interest to create a comprehensive, rules-based relationship in security and defence that pre-empts disputes or unilateral action by the United States.¹⁰⁸ Moens predicted it was “probable that Canada will ultimately recognize that its future is in North America, and will begin to fit more comfortably inside a North American economic, political, and military context. Canada as a sovereign nation will survive this latest hurdle as it has the previous ones. In terms of security and prosperity, the Canadian people will come out ahead.”¹⁰⁹

In the April 2003 edition of *Policy Options*, IRPP’s Daniel Schwanen published an article skeptical about any kind of “grand bargain,” entitled “Let’s Not Cut Corners Unbundling the Canada-U.S. Relationship.”¹¹⁰ He suggested focusing on addressing the security issue without linking it directly to economic security: “The current security-related crisis in the United States must be addressed head-on and in a positive way, helping to solve not only any objective U.S. problems with security risks, but also dealing pro-actively with any perception of problematic Canadian trustworthiness as a security partner.”¹¹¹ Schwanen said there was “no need for Canadians and Americans to adopt each others laws—or foreign policy—for the sake of harmonization. Rather the issue is making sure that any negative impact on a neighbouring country is taken into account and, more than incidentally, that the North American security burden is

107. Charles A. Barrett & Hugh Williams, *Renewing the Relationship: Canada and the United States in the 21st Century*, Conference Board Briefing, Feb. 2003, available at <http://www.conferenceboard.ca/boardwiseii/LayoutAbstract.asp?DID=512>.

108. Alexander Moens, *The Coming North America Security and Defence Agreement*, Fraser Forum, Mar. 2003, at 18, available at <http://www.fraserinstitute.org/admin/books/chapterfiles/The%20Coming%20North%20American%20Security%20&%20Defence%20Agreement-pp16-18.pdf#>.

109. *Id.*

110. Daniel Schwanen, *Let’s Not Cut Corners in Unbundling the Canada-US Relationship*, POLICY OPTIONS, Apr. 2003, available at <http://www.irpp.org/po/index.htm>.

111. *Id.* at 19.

shared appropriately.¹¹² Schwanen suggested that one possibility to be examined would be a North American equivalent to the European Schengen Agreement (Schengen came after the European Union transformed itself from a customs union to a common market and then an economic union).

In October 2003, Stephen Clarkson and Maria Banda published an assessment of Canadian and Mexican reactions to the paradigm shift in U.S. attitudes resulting from 9/11.¹¹³ They also published a very similar paper assessing the impact of the Bush doctrine on Canada.¹¹⁴ They point out that Canada and Mexico are the only two countries in the world engaged in an "intermestic" relationship with the United States and that despite all the pressures to converge after 9/11, "the two peripheries retained their respective paradigms to varying degrees and at different junctures."¹¹⁵

THE CIIA'S RECOMMENDATIONS FOR PAUL MARTIN'S FOREIGN POLICY

In the fall of 2003, the Canadian Institute of International Affairs (CIIA) held a conference in Ottawa on foreign policy issues for the new prime minister. The results of the conference were published in the Autumn 2003 issue of the CIIA's *International Journal* (circulated in February 2004), in an article entitled "Foreign Policy for Paul Martin." Denis Stairs suggests that 9/11 made it politically possible for the political and economic mandarin in Ottawa to proceed more expeditiously with "seamless border" initiatives. "A newly conceived and broadly negotiated framework within which to stabilize and govern the Canada-U.S. relationship – a framework coupled to the idea of some sort of common defence perimeter – promises a tempting dose of relief."¹¹⁶ Stairs doesn't believe that a Liberal government would want to "embark on so bruising an initiative, given the upheaval that would certainly result."¹¹⁷

William Watson's contribution to the same issue of *International Journal* favours the "aggressive incrementalism" approach to the border es-

112. *Id.* See also Schwanen's earlier article, *After Sept. 11: Interoperability with the U.S., Not Convergence*, POLICY OPTIONS, Nov. 2001, available at <http://www.irpp.org/po/index.htm>.

113. Stephen Clarkson & Maria Banda, *Congruence, Conflict, and Continental Governance: Canada's and Mexico's Responses to Paradigm Shift in the United States*, AMERICAN REVIEW OF CANADIAN STUDIES 2003, available at <http://www.alanalexandroff.com/canmex.pdf>.

114. Stephen Clarkson & Maria Banda, *Paradigm Shift or Paradigm Twist? The Impact of the Bush Doctrine on Canada*, Centre for Research on Latin America and the Caribbean, Oct. 2003, available at http://www.yorku.ca/ceclac/deep_papers/Clarkson-Banda.PDF.

115. Clarkson & Banda, *Congruence, Conflict, and Continental Governance: Canada's and Mexico's Responses to Paradigm Shift in the United States*, at 23.

116. Dennis Stairs, *Challenges and Opportunities for Canadian Foreign Policy in the Paul Martin Era*, INTERNATIONAL JOURNAL, Vol. LVIII No. 4, Autumn 2003, at 495.

117. *Id.* at 496.

poused by Robert Wolfe.¹¹⁸ Watson further elaborates by suggesting that “working diligently with the U.S. border bureaucracy on the mundane agenda of permanent regulatory reform probably holds greater promise of success than trying to attract the attention of the U.S. Congress with a Big Idea that, in its negotiation, might well be altered beyond recognition.”¹¹⁹

Douglas A. Ross in the same issue of the *International Journal* looks at Canada’s security policy options through very critical eyes. He rails the foreign policy review process as “having become an exercise that systematically deflects attention away from policy substance towards the essentially superfluous domain of image, status, and self-congratulation. It is not ‘easing a democratic deficit’ or ‘enhancing mass participation’ in the framing of effective foreign policy. Denis Stairs fairly summed up the current “values” oriented approach of DFAIT that publicizes the “Canadian way” by noting that “in foreign policy, as in some other dimensions of life, an ostentatious claim to superior virtue can be the last refuge of the impotent.”¹²⁰ Among the suggestions Ross makes for a new security policy includes the following: “[t]he security threats posed by chaotic immigration and refugee policies must be corrected immediately, and vastly improved perimeter security measures should be implemented immediately.”¹²¹

Stéphane Roussel’s contribution to the special edition of the *International Journal* analyzes what Paul Martin has said and done so far on relations with the United States. He concludes that Martin has embraced the need for a Canadian counterpart to “Homeland Defence” without employing the word, and that Martin’s strategy of rapprochement “consists of a vast exchange of good procedures: make concessions on security matters to obtain gains (or at least, maintain the status quo) in the economic field.”¹²² Roussel believes this later strategy could hold the greatest risks: (1) Americans seem satisfied with the measures adopted by the Canadian government since 9/11, and you do not gain a neighbour’s gratitude by solving a problem he does not consider urgent; (2) a strategy of linking security and trade is not in Canada’s interests, and Canada “cannot win at this game;” (3) the gains that Canada could make by allowing concessions on security could be cancelled by a slowdown in the economy; (4) creating a national security strategy for Canada constitutes an immense Pandora’s box; and (5) the initiative appears conceived not as a means to ensure Canada’s security (which should be their primary out-

118. William Watson, *International Economic Policy for a New Liberal Government*, INTERNATIONAL JOURNAL, Vol. LVIII No. 4, Autumn 2003, at 530-31.

119. *Id.* at 531.

120. Douglas A. Ross, *Canada’s International Security Policy in an Era of American Hyperpower and Continental Vulnerability*, INTERNATIONAL JOURNAL, Vol. LVIII No. 4, Autumn 2003, at 550.

121. *Id.* at 569.

122. Stéphane Roussel, *Honey Are You Still Mad at Me? I’ve Changed, You Know. . . : Canada-U.S. relations in a Post-Saddam/Post Chrétien Era*, INTERNATIONAL JOURNAL, Vol. LVIII No 4, Autumn 2003, at 571-90.

come), but as a way of attracting the favour of Washington.¹²³

CANADA-U.S. RELATIONS IN 2003

2003 was a tumultuous year with the tensions of the Iraq war spilling into public differences between Canada and the United States, and tensions inside Canada between the Government and those who thought it had lost its bearings on relations with the United States. The transition in Ottawa was much longer than normal as Prime Minister Chrétien promised to stay until February 2004. But progress on the Smart Border Declaration and Action Plan continued unabated and Canadians arriving in the United States by air or sea from abroad were not required to fill out the new second form which all other nationalities are required to complete.

The leadership change happened sooner than Chrétien promised and some of the first changes announced by Prime Minister Martin on the day he was sworn in related to:

creating a Canada Border Services Agency to build on the Smart Border Initiative and the important progress that has been made in expediting trade and travel while enhancing security with respect to high risk arrivals, and continue to work in close collaboration with business, labour, immigrant and refugee groups, and other important stakeholders in pursuing these changes; and reforming the refugee determination process to create a more predictable and streamlined system, including a reformed appointment process to ensure the quality and effectiveness of the Immigration and Refugee Board.¹²⁴

He also announced creating a new position of National Security Advisor to the Prime Minister in the Privy Council Office to be responsible for intelligence and threat assessment integration and interagency cooperation and to assist the Minister of Public Safety and Emergency Preparedness in the development and overall implementation of an integrated policy for national security and emergencies.¹²⁵

SECURITY IN THE SPEECH FROM THE THRONE FEBRUARY 2004

The new Martin government's Speech from the Throne in February 2004, said that:

to ensure a border that is open and effective in handling the volumes of people, goods, and services flowing to and from our economies, the security concerns of both sides must be respected. Building on the success of the Smart Borders initiative, the Government will engage with the United States to further strengthen North American security while facilitating the flow of commerce and travellers. It will

123. *Id.* at 586-88.

124. Office of the Prime Minister, *Changes to Government*, Dec.12, 2003, available at http://www.pm.gc.ca/eng/chgs_to_gov.asp.

125. *Id.*

also work toward infrastructure investments at key trade corridors to ensure that we can facilitate the expanding trade between our countries.¹²⁶

CRITICS OF THE PERIMETER CONCEPT

Many Canadian and some American observers have criticized the security perimeter concept, particularly when it is linked to a “big idea” or “strategic bargain.” Some of those criticisms have been mentioned above. Canadian nationalists fear that it would mean a loss of sovereignty and a need to adopt of U.S. policies many areas including immigration and refugee policy. They believe that Canada would lose its ability to conduct economic relations with third parties and that Canada-U.S. free trade can continue without the establishment of a security perimeter.¹²⁷

Other critics believe that while a security perimeter might prove beneficial in the very long run, it will be unpalatable to many Canadians in the short run. The creation of a security perimeter would involve a major set of trade offs “that could have unintended and harmful consequences for Canadians long after the American-led ‘war on terror’ has been won.”¹²⁸ It is interesting to note that one of the authors of that statement, Jack Granatstein, said only ten days earlier in a major speech to the CD Howe Institute that:

a security perimeter around North America—with Canada inside the tent—will likely become essential if terrorism is not smashed soon. Those who argue the ‘Big Idea,’ a major and comprehensive economic and security package with the United States make precisely this point and push it even further. Canada faces hard choices, and the decisions must be based on Canada’s interests.¹²⁹

Lloyd Axworthy, former Canadian Minister of Foreign Affairs, worries that increased defence cooperation of Canadian land and sea forces with the United States will have “major consequences for our own territorial integrity.”¹³⁰ He also believes that Canadian adherence to National Mis-

126. Speech from the Throne, Feb. 2, 2004, available at <http://www.pm.gc.ca/eng/sft-ddt.asp>.

127. See Murray Dobbin, *Zip Locking North America: Can Canada Survive Continental Integration*, Council of Canadians, available at <http://www.canadians.org/documents/ZipLockingNA.pdf>; Maude Barlow, *The Canada We Want: A Citizen's Alternative to Deep Integration*, Council of Canadians, available at http://www.canadians.org/documents/TCWW_eng.pdf.

128. Denis Stairs, et al., *In the National Interest: Canadian Foreign Policy in an Insecure World*, Canadian Defence and Foreign Affairs Institute, Oct. 30, 2003, at 17, available at <http://www.cdfai.org/PDF/In%20The%20National%20Interest%20English.pdf>.

129. Jack Granatstein, *The Importance of Being Less Earnest: Promoting Canada's National Interests through Tighter Ties with the U.S.*, Benefactors Lecture 2003, CD Howe Institute, Oct. 21, 2003, available at http://www.cdhowe.org/pdf/benefactors_lecture_2003.pdf.

130. LLOYD AXWORTHY, *NAVIGATING A NEW WORLD: CANADA'S GLOBAL FUTURE* 92 (Knopf Canada, 2003).

sile Defence would “fundamentally alter our position as a leading nation on the control and elimination of nuclear, chemical and biological weapons and constitute a retreat from protecting people against the threat of mass destruction.”¹³¹ He worries that “if the undefended border is now to be subsumed into a North American security fortress dominated by the imperatives of homeland defence, then a very different model appears, with sobering lessons for all those countries who are struggling to construct political space for themselves in proximity to bigger, stronger nations.”¹³² He suggests that Canada should define the border security issue “in the mode of a community, not a fortress,”¹³³ “. . . a community that would encourage the retention of each country’s individuality through structures with set rules and rights.”¹³⁴

James Laxer, longstanding nationalist and member of the NDP “Waffle Group,” says that 9/11 has forced a fundamental choice on Canadians: whether to be inside the perimeter of the security fortress being constructed by the United States; or to maintain our border, to choose to sustain a sovereign Canada, separate from the United States.¹³⁵ Laxer claims that in its pre-9/11 version, the idea of Fortress North America was a business agenda to eliminate the borders within the continent and to allow full mobility of persons in North America. After 9/11, the idea became both a business and a security agenda.¹³⁶ Laxer faults the proponents of a security perimeter for not recognizing that an open border with the United States “would raise serious security concerns for Canada,” including importing “the American gun culture into Canada, something most Canadians strongly oppose.”¹³⁷ Laxer believes that while the Chrétien government refused the concept of Fortress North America and of a more integrated military, in fact the two countries “are proceeding toward Fortress North America, but on the instalment plan.”¹³⁸ Laxer says that:

Canadians are united around the goal of preventing terrorists from gaining access to Canada, either for purposes of launching attacks against domestic targets or to use this country as a launch pad for cross border attacks against U.S. targets. It is entirely in our interest to ensure that terrorists cannot operate on Canadian soil and to share information with U.S. law enforcement agencies.

Laxer concludes, however, that Canada should reject the Fortress North America concept because it “risks an unacceptable loss of Canadian sovereignty and brings with it no guarantee that the [United States]

131. *Id.* at 99.

132. *Id.* at 91.

133. *Id.* at 105.

134. *Id.* at 107.

135. JAMES LAXER, *THE BORDER: CANADA, THE US AND DISPATCHES FROM THE 49TH PARALLEL* 18-19 (Doubleday Canada, 2003).

136. *Id.* at 248.

137. *Id.* at 262, 318-19.

138. *Id.* at 272.

will ease the security it now plans at the border.”¹³⁹

Donald Barry argues that the erosion of international conditions sustaining the approach, the proliferation of issues and actors in Canadian-U.S. relations, and institutional changes on both sides of the border limit the application of the Big Idea concept, and that incrementalism, exemplified in the Smart Border Declaration, provides a sounder basis for the management of the relationship.¹⁴⁰ Barry also suggests that “it is highly unlikely that a grand bargain could be achieved or that it would be in Canada’s interest. As the Conference Board of Canada observes, the sheer size and complexity of the Canada-U.S. relationship ‘would make one sweeping “grand bargain” extremely difficult to negotiate.’”¹⁴¹ It is far from certain what actions Ottawa could take to increase border security that would cause Washington to forego its own measures.¹⁴² Robert Wolfe uses similar arguments in recent papers he has written for the IRPP.¹⁴³

Mel Hurtig, well known for his fear mongering and inaccurate predictions, told the 2003 Couchiching Conference (see below) that, “essentially, the basis for both ‘the big idea’ and ‘the grand bargain’ is for Canada to make a whole package of major concessions to the United States in order to get greater access to the U.S. market.” He also said, “there’s about as much chance of that happening as there is of an anti-gun, atheist, pro-choice Canadian liberal woman being elected president of the United States.”¹⁴⁴

Andrew Jackson of the Canadian Labour Congress argued against the creation of a customs union within a North American security perimeter as the means to ensure the flow of trade while assuaging U.S. security concerns.¹⁴⁵ Tony Clark of the Polaris Institute wrote that a North American security perimeter will seriously limit national sovereignty and civil liberties in Canada. Soon, Canada’s policies on immigration, refugees, and border customs, let alone police powers of search and seizure, will suddenly be very similar to those of the United States. “A continental ‘security perimeter’ is not the answer. It would likely unleash new na-

139. *Id.* at 318-17.

140. Donald Barry, *Managing Canada-U.S. Relations in the Post 9/11 Era, Do We Need a Big Idea?*, CSIS Policy Paper on the Americas, Vol. XIV Study 11, Nov. 2003, at 2, available at <http://www.csis.org/media/csis/pubs/pp0311barry%5B1%5D.pdf>.

141. *Id.* at 17.

142. *Id.*

143. Robert Wolfe, *See you in Washington? A Pluralist Perspective on North American Institutions*, CHOICES, Vol. 9 No. 4, Apr. 2003, available at <http://www.irpp.org/fast-trak/index.htm>. Wolfe developed this position further for the IRPP Conference at Montebello in October 2003, the results of which have not yet been published.

144. Mel Hurtig, *The ‘Big Idea,’ The ‘Grand Bargain,’ Our Next PM and the Vanishing Country*, Speech to the 72nd Annual Couchiching Conference, Orillia, Ontario, Aug. 8, 2002, available at <http://www.canadiandimension.mb.ca/extra/d0912mh.htm>.

145. Andrew Jackson, *Why the ‘Big Idea’ is a Bad Idea*, POLICY OPTIONS, Apr. 2003, available at <http://www.irpp.org>.

tional insecurities with long-term consequences.”¹⁴⁶

ARE CANADA AND MEXICO STILL HOSPITABLE TO TERRORISTS?

In March 2003, Bill Robson and Danielle Goldfarb of the C.D. Howe Institute wrote, “[t]he border will only remain open if [U.S.] leaders know that Canada treats the security of Americans no less seriously than it treats the security of Canadians.”¹⁴⁷ In another of the Border Papers Goldfarb also wrote that Canada needs to develop a long-term security policy and should do this before discussing any institutional changes with the United States. Canada also needs seamless cooperation within Canada. According to Goldfarb, the solution would involve an unprecedented level of cooperation and coordination among all three levels of government and outside agencies: “Canada needs seamless cooperation and intelligence exchanges among agencies such as CSIS, the RCMP, CCRA (Customs and Revenue), Immigration, airport and port authorities.”¹⁴⁸ In November 2003, Reid Morden, former Director of CSIS, wrote in a commentary about Canadian intelligence after 9/11 that “Canada is not ‘a Club Med for terrorists,’ but there is a very serious job of rebuilding trust and confidence with the American administration, the American Congress and American public opinion.”¹⁴⁹

In mid-February 2004, the Canadian media cited an October 2003 report by the Federal Research Division of the U.S. Library of Congress, entitled “Nations Hospitable to Organized Crime and Terrorism.” The report was cited as showing continuing U.S. concerns about lax Canadian practices.¹⁵⁰ An earlier report by the same body, “Asian Organized Crime and Terrorist Activity in Canada, 1999 to 2002,”¹⁵¹ concluded that no amount of funding or staffing could make the Canada-U.S. border really secure, and therefore “Canadian authorities should emphasize port security and immigration policy as a means of ensuring that Asian organ-

146. Tony Clark, *Developing Common Security through Fair Trade*, Polaris Institute, Oct. 2001, available at http://www.polarisinstitute.org/pubs/pubs_pdfs/better_world_possible.pdf.

147. Danielle Goldfarb and William B.P. Robson, *Risky Business: U.S. Border Security and the Threat to Canadian Exports*, CD Howe Institute Commentary No. 177, Mar. 2003, available at http://www.cdhowe.org/pdf/commentary_177.pdf.

148. Danielle Goldfarb, *Thinking the Unthinkable: Security Threats, Cross-Border Implications, and Canada's Long-Term Strategies*, *The Border Papers*, BACKGROUNDER No. 77, C.D. Howe Institute, Jan. 2004, available at http://www.cdhowe.org/pdf/backgrounder_77.pdf.

149. Reid Morden, *Spies, Not Soothsayers: Canadian Intelligence After 9/11*, Commentary No. 85, Canadian Security and Intelligence Service, Nov. 26, 2003, available at http://www.csis-scrs.gc.ca/eng/comment/com85_e.html.

150. *Nations Hospitable to Organized Crime & Terrorism*, Library of Congress- Federal Research Division, Oct. 2003, available at http://www.loc.gov/rr/frd/pdf-files/Nats_Hospitable.pdf.

151. *Asian Organized Crime and Terrorist Activity in Canada, 1999 to 2002*, Library of Congress, Federal Research Division, July 2003, available at http://www.loc.gov/rr/frd/pdf-files/AsianOrgCrime_Canada.pdf.

ized crime and terrorist groups cannot enter Canada in the first place.”¹⁵²

The portion of the October 2003 report which dealt with Canada begins with a quote from a 2001 report of the U.S. State Department: “[o]verall anti-terrorism cooperation with Canada is excellent, and stands as a model of how the United States and other nations can work together on terrorism issues.”¹⁵³ However, the conclusions of the report with respect to Canada says that: “[f]or terrorist groups, Canada has been a safe haven, transit point, and place to raise funds; for criminal groups Canada has provided a route for the trafficking of humans and various illegal commodities, many of which reach the United States.”¹⁵⁴ The report also concludes:

Canada’s new legislative initiatives have the potential to reduce the country’s appeal to terrorist organization, international organized crime groups and alien smugglers, as well as their ability to operate. However, the economic necessity of expedient movement of persons and goods across the Canada-U.S. border and Canada’s liberal democratic identity may continue to limit the adoption of security measures necessary to completely halt the operations of these groups.¹⁵⁵

Mexico is also dealt with in the same report which starts off by saying that:

Mexico’s suitability as a safe haven for transnational criminal and terrorist groups is determined by a variety of factors. Those conditions include geographic proximity and ease of access to the United States; the presence of extra-regional immigrant communities; the volume and sophistication of domestic commercial activity; the volume and ease of trans-border movements of goods, persons and cash; the presence of an established criminal infrastructure; the regulatory environment, transparency, and corruptibility of Mexican institutions; and the capabilities of local law enforcement agencies. From the specific perspective of terrorist organizations, the most important factors are opportunities for the clandestine movement of persons; fundraising and money laundering opportunities; and the existence, vulnerability, and perceived value of potential targets in Mexico.¹⁵⁶

The report refers to the interception of two groups of Middle East nationals by U.S. Customs in 2001 and 2002 at the Mexican border. But the report’s conclusions with respect to Mexico do not explicitly mention the potential for terrorists to enter the United States via Mexico.¹⁵⁷

On March 1, 2004, the front page of the *National Post* cited an October 2003 CSIS report that: “the world’s ‘most notorious’ terrorist groups continue to operate in Canada, says a classified intelligence report written

152. *Id.* at 38.

153. *Id.* at 144.

154. *Id.* at 153.

155. *Id.* at 153-54.

156. *Id.* at 163.

157. *Id.* at 172.

two years after Parliament gave police new powers and money to dismantle the country's deadly terror networks."¹⁵⁸ The *National Post* article also noted that:

the CSIS report is similar to a recent U.S. Library of Congress study that said Canada's welfare system, immigration laws, infrequent prosecutions and light sentences had turned the country into a favoured destination for terrorists . . . While the [U.S.] report was denounced by critics and refugee lobbyists in Canada, the CSIS report comes to many of the same conclusions. It notes that Canada's "open and tolerant multicultural society, which includes large, identifiable ethno-religious communities from the Middle East, North Africa and South Asia, *inter alia*, makes this country distinctly vulnerable to infiltration by international terrorists."¹⁵⁹

On March 12, 2004, the *National Post* ran an article by Stewart Bell based on a recent Nixon Center report which described Canada as "a preferred jihad route to America." The report found that of 212 terrorists examined, twenty-five had used Canada as a base – more than any other Western country, with the exception of the United States. The report also notes comments by Homeland Security Secretary Ridge that he was more concerned about the Mexican border than the Canadian border because "the infrastructure is better on the Canadian side." The report added:

that other Homeland Security officials offered a different answer suggesting that Canada was of more concern because of ease of entry and hospitable surroundings. . . . The Canadian border is more attractive to Muslims because of the large Canadian Muslim presence, the support networks created by indulgent asylum and other immigration policies in Canada.¹⁶⁰

The underlying thesis of the Nixon Center report was that:

September 11 served notice how obsolete the Cold War delimitation of zones of stability (North America and Western Europe) and an 'arc of conflict' (from North Africa to South Asia) had become. The conflicts of the 'Third World' have come home to roost in a way unparalleled in previous periods of colonialism and cold war, of nationalism and communism. Western governments now must take into account the export of violence via migration. Al Qaeda and its affiliates depend on immigration to gain entry to the West in order to carry out terrorist plots. The transnational and asymmetric character of these new conflicts demands coordination of national and home-

158. Stewart Bell, *Canada is Terrorist Haven CSIS: A Place to Hide, Raise Cash*, NATIONAL POST, Mar. 1, 2004, at 1.

159. *Id.*

160. Stewart Bell, *Canada's Border A "Jihad Route" Think-Tank Says*, NATIONAL POST, Mar. 12, 2004, at A2. Mr. Bell provided me with an advance copy of the report, *Bearers of Global Jihad? Immigration and National Security After 9/11*, by Robert Leiken, available at http://www.nixoncenter.org/publications/monographs/Leiken_Bearers_of_Global_Jihad.pdf.

land security with immigration and foreign policies.¹⁶¹

The cover of the March 15, 2004, Canadian edition of *Time* magazine is entitled "Canada's Blind Eye to Terror," and the issue features an article based on a new book by Stewart Bell, *Cold Terror: How Canada Nurtures and Exports Terrorism Around the World*.¹⁶² Bell claims that "during the past two decades Canada has become the best country in the world for terrorists to make their home." Bell also claims that by failing to take action early on, Canada opened the door to the world's major security threat, al-Qaeda. He says that extremists have seized control of Canadian refugee communities, that Canadian based terror creates risks for Canadians who travel, and that Canada's approach to counter-terrorism undermines Canadian foreign policy.¹⁶³ The *Time* article highlights the 1998 testimony by Ward Elcock, Director of the Canadian Security Intelligence Service (CSIS) that "with perhaps the single exception of the United States, there are more international terrorist groups active here than in any other country."¹⁶⁴

THE ADMINISTRATION OF CANADA'S REFUGEE POLICY

The key issue with respect to Canadian security policies and practices as they related to terrorism is the American perception that the administration of Canada's refugee policy is done in a very lax manner. This poses a threat not just to Canada, but to the United States since it allows the possibility of entry into the United States from Canada as demonstrated in the Ressam case. Several Canadians have written extensively and critically about the administration of the refugee policy and the potential threat that it poses to the security of Canada and to the United States. Most well-known is James Bissett, former Executive Director of the Canadian Immigration Service, who is extremely critical of the administration of Canada's refugee policy, which he believes represents the "weakest link":

In November 2001, two months *after* the terrorist attacks, the Canadian Parliament passed new legislation that makes it easier for asylum seekers to apply for refugee status and makes it more difficult for those found not to be genuine refugees to be sent home. Consequently, the security of both countries remains vulnerable to a Canadian asylum system that seems designed to openly welcome potential terrorists.¹⁶⁵

161. Robert Leiken, *Bearer of Global Jihad? Immigration and National Security After 9/11*, at vi.

162. Stewart Bell, *Cold Terror: How Canada Nurtures and Exports Terrorism Around the World*, John Wiley & Sons Canada Ltd., Mar. 2004.

163. *Blind to Terror*, TIME, Canadian edition, Mar.15, 2004, at 43-47.

164. *Id.* at 43-47.

165. James Bissett, *Canada's Asylum Policy: A Threat to American Security?*, Background Paper for the Center for Immigration Studies, Washington, D.C., May 2002, available at <http://www.cis.org/articles/2002/back402.html>.

More recently, in a paper which he presented to the Trilateral Commission, Bissett wrote:

there are a number of Canadian policy issues that are at the root of American concerns about Canada's approach to security issues following 9/11. One is the refusal or hesitancy of the Canadian Government to list as terrorist organizations groups that their own security agency has recommended to be so listed. Secondly, if Canada is to restore the confidence of the United States in the war against terrorism it will have to reform its overly generous asylum system. Canada's inability to keep track of individuals who have been ordered deported and our ineffective removal policies are also of concern to the Americans. None of these policy problem areas has major or serious implications. Most of them can be changed without legislation. The asylum problem may require adjustments to the Immigration Act but the others are primarily a matter of a change in attitude, a shifting of priorities, and possibly additional funding for the tracking and removal of illegal entrants. The question is whether there is the political will to do them. The consequences of not doing them will mean continued trouble along the border.¹⁶⁶

Other Canadians who have written critically on this issue include Martin Collacott, a former Canadian diplomat who is a Fellow at the Fraser Institute. In 2000 Collacott told the U.S. House of Representatives Committee on the Judiciary that

a major obstacle in the way of instituting fundamental reforms is the existence of a highly articulate and influential lobby, comprised in large part of refugee lawyers and advocacy groups whose funding is closely related to the continued arrival and settlement of significant numbers of refugee claimants in Canada. A similar situation exists in the United States.¹⁶⁷

In March 2003 Collacott wrote in the Fraser Forum:

we are doing little to assure the Americans that we are dealing adequately with the issue of terrorism in Canada, particularly when it comes to exercising effective control over whom we allow into Canada through the refugee determination system. Rather than dealing with the roots of the problem, our government has tried to avoid the issue by arguing that Canada has unjustly been accused of being soft on terrorism, and that a good public relations campaign is what is required to correct this situation.¹⁶⁸

166. James Bissett, *Troubled Borders, Canada, the United States and Mexico*, Paper Prepared for the Trilateral Commission, Nov. 2003 (provided to the author by James Bissett and quoted with his permission).

167. Martin Collacott, written statement to the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the US House of Representatives, Jan. 25, 2000, available at <http://www.house.gov/judiciary/coll0125.htm>. See also Martin Collacott, *Terrorism, Refugees and Homeland Security*, 2002 Distinguished Speakers Series in Political Geography, Royal Military College of Canada.

168. Martin Collacott, *Canada's Inadequate Border Controls*, Fraser Forum, Mar. 2003, at 14, available at <http://www.fraserinstitute.org/admin/books/chapterfiles/Canadas%20Inadequate%20Border%20Controls-pp12-14.pdf#>.

In May 2003, Collacott addressed the Center for Immigration Studies in Washington, D.C., where he criticized Canada's lax asylum policies and particularly their connection with the ease with which terrorists enter Canada and are able to remain in Canada.¹⁶⁹ Collacott said it was his view that, in recent decades, Canada's immigration and refugee policies have been driven largely by pressure from special interest groups, as well as by perceived political gains on the party in power—particularly when it comes to immigration policy, less so with refugee policy. And the government, therefore, does not want to see its policies in these areas affected by the events of September 11th if it can be avoided. What happened after September 11th was that Canada did its best to demonstrate that it was fully engaged in the fight against terrorism in terms of pledging troops in Afghanistan and strengthening anti-terrorism legislation before Parliament. Immigration and refugee legislation on the other hand, were described as “reflecting Canadian values and principles,” and hopefully would be immune from changes which might have to be made in response to 9/11.”¹⁷⁰

Collacott also noted:

those of us like myself who think we need major reforms in fact take the view that most of the things we should be doing, which would be satisfying to the American government on this issue, we should be doing anyway for our own welfare and for our own protection. And in fact one of the ironies is that by not controlling our border we're eroding our sovereignty to some extent, because one of the characteristics of a sovereign independent state is you've got control over your border. Right now virtually anyone who wants to enter Canada can do so by just saying they're a refugee claimant. If we tighten up on this system we not only reassert our sovereignty by giving better protection to our border but we also have the rather important spin-off that we satisfy the United States for some extent.¹⁷¹

Fred McMahon of the Fraser Institute has also criticized Canada's refugee policies: “Canada's border controls are a mess. Illegitimate refugees—or terrorists—can destroy their identification papers on a flight to Canada, arrive at customs without papers, claim refugee status, and be out on the streets a few hours later.”¹⁷²

Daniel Stoffman, in his June 2002 book *Who Gets In: What's Wrong with Canada's Immigration Program and How to Fix It*, takes aim at elements of both the immigration program and the refugee program.¹⁷³ Stoffman quotes many former senior Canadian mandarins who believe

169. Center for Immigration Studies, *U.S.-Canada Border Issues*, Panel Discussion Transcript, Apr. 17, 2003, available at <http://www.cis.org/articles/2003/canadaborderpanel.html>.

170. *Id.*

171. *Id.*

172. Fred McMahon, *Perimeter Puzzle*, Fraser Institute, Dec. 2001, available at http://oldfraser.lexi.net/publications/forum/2001/12/section_13.html.

173. DANIEL STOFFMAN, *WHO GETS IN: WHAT'S WRONG WITH CANADA'S IMMIGRATION PROGRAM-AND HOW TO FIX IT* (Macfarlane Walter & Ross, 2002).

the current system is in "shambles:" Tom Kent ("Canada's reputation of competent government is badly tarnished"); William Bauer, former Ambassador and IRB member (calls the current Canadian refugee system "massive corruption of the noble concept of political asylum"); and Jack Manion, former Deputy Minister of Immigration ("a shocking and scandalous mess").¹⁷⁴ Stoffman says the refugee determination system cannot distinguish between real refugees and fraudulent ones. There is no need, however, to make the Canadian system identical to the American one, which is far from perfect. "We need to rebuild our system in a manner which serves the collective interests of all Canadians, which will also restore the confidence of the Americans."¹⁷⁵

Stoffman says the major problem with the Immigration and Refugee Board (IRB) is that it allows people to circumvent the regular immigration program by awarding Geneva Convention refugee status to thousands of people who have no chance of obtaining it elsewhere. The IRB is staffed by "amateurs" and should be replaced by professional public servants.¹⁷⁶ Stoffman says that Canada's asylum system is an invitation to terrorists and criminals because Canada neither excludes nor detains undocumented arrivals and refugee claimants are not detained even if the IRB rules them inadmissible.¹⁷⁷ Stoffman quotes the 1998 testimony of Ward Elcock, Director of CSIS, mentioned above that "there are more international terrorist groups active in Canada than in any other country in the world, except the United States." Elcock identified transit of terrorists to and from the United States as an important activity of terrorist organizations in Canada in that same statement.

Stoffman also quotes Mark Krikorian, Executive Director of the Center for Immigration Studies in Washington: "terrorists from all over the world have been using Canada's asylum system. You can come in to Canada with no documents or fake documents and say you want asylum and they let you in."¹⁷⁸ Stoffman examines some of the issues related to a security perimeter around the United States and Canada and says there are two main problems: (1) the Canadian immigration and refugee systems are in such disarray that American security would be compromised if border controls were removed; and (2) the U.S. system was also in a mess, and Canadian security would be at risk if Canada stopped checking people entering from the south.¹⁷⁹ He notes with irony that notwithstanding the fact that far more people cross illegally into the United States from Mexico, and that millions who have entered the United States legally as visitors or students have stayed on illegally, it is Canada's "inept system" for dealing with refugees claimants that has captured the

174. *Id.* at 3.

175. *Id.* at 5, 7.

176. *Id.* at 12-13.

177. *Id.* at 22.

178. *Id.* at 59.

179. *Id.* at 48.

attention of the United States.¹⁸⁰

Stoffman suggests that the real reason why the Chrétien government did not like the North American security perimeter was that "it threatened their ability to run the immigration program for political gain."¹⁸¹ He notes, "there is no possibility the United States will remove barriers to entry at its borders with Canada if this means leaving American citizens at the mercy of criminals and undesirables unleashed on Canadian society by the IRB."¹⁸² Stoffman believes that even with the 1985 Supreme Court decision that all refugee claimants have the right to an oral hearing, the government could reduce the numbers of false refugee claimants by establishing a competent tribunal, detaining undocumented arrivals, reducing the layers of appeals, and swiftly deporting failed claimants.¹⁸³

Stephen Gallagher is another critic of Canada's refugee determination policy. In *Canada's Dysfunctional Refugee Determination System: Canadian Asylum Policy from a Comparative Perspective*, Gallagher makes many of the points made by Bissett, Collacott, and Stoffman, and concludes that:

the gulf between Canadian policy and practice, on the one hand, and international norms, on the other, is now so stark that control of illegal immigration cannot be seen as a priority of the Canadian government. In fact, if interdiction policies were set aside, the range of in-country policies examined here act more to attract than deter illegal immigration. Canada's reception conditions for illegally arriving asylum seekers is little different from that faced by legally arriving immigrants. The first-instance refugee determination and appeal processes are the most liberal in the world and routinely recognize as Convention Refugees more than half of those claimants that complete the process. Furthermore, there are numerous post-determination features to the system, including its removal policies that work to the advantage of those who would not have the slightest possibility of being recognized as Convention Refugees in any other country. Finally, Permanent Residence Status and citizenship come relatively smoothly and quickly to most and does not appear unattainable to many. Taken together, these policies provide an alternate and fairly reliable means of immigrating to Canada from a range of countries in the developing world. Although clearly not the intent of the policy, much of Canada's asylum system approximates a self-selected humanitarian immigration program.¹⁸⁴

180. *Id.*

181. *Id.* at 49.

182. *Id.* at 53.

183. *Id.* at 74-75, 171-72.

184. Stephen Gallagher, *Canada's Dysfunctional Refugee Determination System: Canadian Asylum Policy from a Comparative Perspective*, Fraser Institute, Occasional Paper No. 78, Dec. 2003, available at <http://www.fraserinstitute.ca/admin/books/files/ImmigrationPPS78.pdf>. See also Gallagher's comments to an Ottawa CIIA Conference on Canadian Immigration, May 2002, available at <http://www.ciia.org/proceedings/Immigration%20seminar.pdf>.

In March 2003, I testified before the Standing Committee on Foreign Affairs and International Trade, which was holding hearings on Canadian foreign policy, as an input into the foreign policy consultation which Foreign Minister Graham was having with Canadians without involving the Standing Committee. I noted that the U.S. Ambassador to Canada had stated recently that U.S. security concerns trump Canadian economic concerns. The challenge for Canadian policy makers was how to find a way to mesh these two objectives in a manner which both sides find acceptable. My testimony focused on two areas, one of which was whether we should seek a North American security perimeter or do we want the Canada-U.S. border to be the point where U.S. security concerns have to be satisfied. I noted the problems with our refugee determination system, welcomed the fact that Canada had negotiated a safe third country agreement with the United States, and suggested that refugee claimants arriving from Europe should be sent back there since they were certainly safe third countries.

I made clear that I was not advocating a reduction in the number of legitimate refugees that Canada takes in. However, we needed some fundamental adjustments to the administration of that policy, in our own interests and to satisfy American security concerns. It makes no sense to go to Windsor and proclaim the weaknesses in the American system to justify the weaknesses in the Canadian system. Canada does not need to adopt the American system, but it does need a system that can convince Americans that it is just as secure as their own. We do not have it now and until we do, this will be a major impediment to reducing the uncertainties of the bilateral border.¹⁸⁵

There was absolutely no reaction from any of the MPs present to that part of the presentation, which I do not interpret as agreement, but rather as a reluctance or fear to even broach the subject. A revised version of my testimony appeared in the May 2003 issue of *Policy Options*, "Canada-U.S. Relations in the Post-Iraq-War Era: Stop the Drift Towards Irrelevance." One of the revisions was to suggest that while most Canadians are adamantly opposed to a two-tier Medicare system, they seem oblivious to the two-tier immigration system that exists because of procedures adopted to administer Canadian refugee policy that permits queue jumping over the regular immigration process.¹⁸⁶

It is interesting to note that the CD Howe Border Paper, "U.S. and Canadian Immigration Policies: Marching Together to Different Tunes," did itemize problems with Canada's refugee determination system and U.S. criticism of it, but it suggested that entry as a visitor would offer a terrorist the path of least resistance. The paper notes that "the *modus*

185. John J. Noble, Statement to the Standing Committee on Foreign Affairs and International Trade on Canada's Foreign Policy Objectives, Mar. 27, 2003, available at <http://www.carleton.ca/ctpl/papers/scfainnoble.doc>.

186. John J. Noble, *Canada-U.S. Relations in the Post-Iraq-War Era: Stop the Drift Towards Irrelevance*, POLICY OPTIONS, May 2003, at 21, available at <http://www.irpp.org/po/index.htm>.

operandi of the 9/11 terrorists suggest that they understood that the weakest link in North American border security lay in the admission and monitoring of tourists, international students, business people and other temporary entrants," because there are no exit controls and no way of knowing whether those who were admitted temporarily ever leave.¹⁸⁷

DIFFERENT PERCEPTIONS OF THE BORDER

In April 2003, Glynn Custred published a paper for the Center for Immigration Studies entitled "North American Borders: Why They Matter," in which he quotes Roger Gibbons' statement that the Canada-U.S. border "'penetrates the Canadian consciousness, identity, economy, and polity to a degree unknown and unimaginable in the United States.'" Because 80 percent of Canadians live within 150 kilometres of the border, Gibbons says, Canada is a "borderland society" in contrast to the United States, where the northern border plays almost no role at all in forming the national consciousness.¹⁸⁸

Custred notes:

to many Americans, the longest undefended border in the world now looks like a 4000 mile-long portal for terrorists due, in part, to different political cultures making the kind of 'harmonization' of policies necessary for a North American security zone impossible. Although no terrorists involved in the September 11 attacks entered via Canada, terrorists in the past, like Ahmed Ressam, have taken advantage of lax border security.¹⁸⁹

He goes on to conclude that:

what the United States sees today when it looks at its northern flank is a neighbour that disregards document fraud, maintains lax visa practices, and has the most generous asylum policy in the world. Few asylum seekers are rejected, violators of immigration laws are not vigorously pursued, no one is tracked once inside the country, terrorist groups have the freedom to raise money, criminal enterprises (people smugglers) are establishing a secure territorial base and endless litigation negates the law and favours criminals. There is little prospect of changing any of this in a serious way, for as Canadians bluntly tell Americans, decisions of that kind are made in Ottawa not Washington.¹⁹⁰

187. Peter Reikai, *US and Canadian Immigration Policies: Marching Together to Different Tunes*, *The Border Papers*, CD How Institute Commentary, No. 171, Nov. 2002, at 15, available at <http://www.cdhowe.org/pdf/Reikai.pdf>.

188. Glynn Custred *North American Borders: Why They Matter*, Center for Immigration Studies, Apr. 2003 at 2, available at <http://www.cis.org/articles/2003/back803.html>.

189. *Id.* at 3.

190. *Id.* at 4.

MORE BORDER COOPERATION REQUIRED: DELAY IN IMPLEMENTING SAFE THIRD

One of the problems in the Canadian refugee process relates to the fact that between one-third and one-half of those who make refugee claims in Canada have a valid visa for travel to the United States in their passport. Thousands of Costa Ricans and Mexicans with valid visas for travel to the United States have then made refugee claims in Canada. Presumably they would not have been issued visas by U.S. officials if their true motives had been known.¹⁹¹

Another problem for Canada in stemming the flow of refugee claimants arriving across the U.S. border, which former Deputy Prime Minister John Manley said amounted to 70 percent of those making refugee claims in Canada, is the U.S. delay in bringing into force the safe third country agreement negotiated between the two countries in 2002.¹⁹² This agreement would mean that people crossing the Canada-U.S. land border and claiming refugee/asylum status in the other country would be sent back to the country from which they exited to have their claim adjudicated. This agreement is far more important to Canada than to the United States, since the number of people entering the United States from Canada and claiming asylum is very small, while the flow in the other direction is considerable.

To date, Canada has pre-published its draft implementing regulations in October 2002 and responded to a parliamentary committee report in March 2003. The Canadian side is ready to move forward to finalize the regulations as soon as it knows how the United States plans to regulate. The United States published its draft regulations on March 8, 2004. There will now be a sixty-day public comment period following this which could result in revisions to the regulations before they are finally approved and the agreement implemented.¹⁹³

The Martin government's mention in the Speech from the Throne of engaging with the United States to further strengthen North American security beyond the Smart Border Plan and to reform the refugee determination process to create a more predictable and streamlined system, including a reformed appointment process to ensure the quality and ef-

191. According to a senior public servant in the Canadian government.

192. Canadian statistics can be confusing. Refugee claims can be made either on arrival at a port of entry (air, land, or land border), or inland. In 2003 there were 32,000 claims. In 2001 the figure was 43,000. For most of the 1990s the average was 25,000. Every year for the past decade between 30 and 35% of total refugee claims were made by persons arriving directly at land border ports of entry (i.e., from the United States). In 2003, 60% of claims were made inland. It is impossible to know for certain how inland claimants came to Canada since most destroy their documents. Once biometrics are included in passports and visas and the information sharing system with the United States is fully operational, there will be a much better idea of how many inland claimants come from the United States.

193. Marina Jimenez, *New Rule About to Come Into Effect That Could Reduce Refugee Claims*, THE GLOBE AND MAIL, Mar. 9, 2004, at A4, available at <http://globeandmail.com/servlet/ArticleNews/TPStory/LAC/20040309/BORDER09/>.

fectiveness of the Immigration and Refugee Board, appears to reply to some of the many criticisms and perceptions about Canada's lax refugee determination process, made by Canadians and Americans.

THE MEXICO-U.S. BORDER

The problem of illegal migration from Mexico is a multifaceted perennial problem that worries many Americans. In November 2000, Harvard professor Samuel Huntington wrote that, "Mexican immigration poses challenges to our policies and to our identity in a way nothing else has in the past."¹⁹⁴ Huntington concluded that Mexican immigration was a "unique, disturbing, and looming challenge to our cultural integrity, our national identity, and potentially to our future as a country."¹⁹⁵

A year later Steven Camarota produced another report entitled "Immigration from Mexico: Assessing the Impact on the United States." His main findings include: (1) Mexican immigration has added significantly to the size of the poor and uninsured populations, as well as to the welfare case load in the United States; and (2) the heavy concentration of Mexican immigrants at the bottom of the labour market is also likely to have a significant negative effect on the wages of the more than ten million unskilled natives who are in direct competition with unskilled immigrants.¹⁹⁶ Camarota noted, "[w]hereas the Mexican government has made clear its desire that more immigrants be allowed to come north, the available data suggest that the costs to the United States clearly outweigh the benefits."¹⁹⁷

Glynn Custred notes:

the level of trust and cooperation between American and Mexican authorities is quite different from that encountered on the [U.S.]-Canadian border. This disjunction is partly a reflection of the difference in institutional effectiveness on either side of the line and partly a result of Mexican national identity defined by opposition to the United States.

Custred also says that the U.S.-Mexico border is not only a boundary between two nations; it marks the zone where two culture areas of the Western Hemisphere meet, and the divide between the prosperity of the developed world and the relative poverty of the Third World.¹⁹⁸

Whereas Americans give little thought to the Canadian border, the Mexican border looms much larger in the collective American mind,

194. Samuel P. Huntington, *Reconsidering Immigration: Is Mexico a Special Case*, Center for Immigration Studies, Nov. 2000, available at <http://www.cis.org/articles/2000/back1100.html>.

195. *Id.* at 7.

196. Steven A. Camarota, *Immigration from Mexico: Assessing the Impact on the United States*, The Center for Immigration Studies, July 2001, at 10, available at <http://www.cis.org/articles/2001/mexico/mexico.pdf>.

197. *Id.* at 60.

198. Glynn Custred, *North American Borders: Why They Matter*, Center for Immigration Studies, Apr. 2003, at 5.

for it is connected with the vision of the frontier that plays such an important role in the self-definition of the American nation.¹⁹⁹

Just as Canadians and Americans imagine their common border in different ways, so too is there a difference between the way Mexicans and Americans view the boundary that separates their two countries. Americans overwhelmingly imagine their national community and its territorial integrity as defined by a strictly delineated boundary between their country and Mexico.²⁰⁰

In her March 4, 2004, testimony to the U.S. House of Representatives Committee on Government reforms, Jessica Vaughan of the Center for Immigration Studies noted, "the land border entry system, especially the southern border, is a loose sieve that is exploited by all kinds of illegal aliens, including terrorists." She also mentioned that that Mexicans represent the largest number of illegal aliens in the country (about 70 percent) and mentioned, "terrorists, such as Lebanese Hezbollah operative Mahmoud Youssef Kourani, indicted last year in Detroit, have been smuggled in from Mexico in the past, perhaps with the support of Mexican diplomats, such as the consul fired from her post in Lebanon last year."²⁰¹

James Bissett offers a Canadian perspective on the Mexico-U.S. border:

The southern border of the United States with Mexico presents a much different problem for the Americans than does its northern border with Canada. The issue with Mexico has less to do with 9/11 than it does with the long standing problem of the thousands of illegal Mexicans who cross the border illegally as "wet backs" searching for work and a higher standard of living in the USA. Related to this problem has been the pre-9/11 tendency for politicians in the United States to close their eyes to this illegal movement. Nothing demonstrates the ambivalence of [U.S.] policy towards enforcement of immigration laws, as does the issue of illegal immigration from Mexico.²⁰²

Bissett also says that Mexico's attitude toward their northern border contrasts sharply with their own policy on the southern border with Guatemala. There the border is militarized and every means is used to prevent illegal entrants into Mexico. Some Mexican officials have admitted that they do not want Central Americans competing with their own people in entering the United States illegally.

199. *Id.* at 9

200. *Id.*

201. Jessica M Vaughan, *America's New Welcome Mat: A Look at the Goals and Challenges of the US-VISIT Program*, Testimony before the U.S. House of Representatives Committee on Government Reform, Mar. 4, 2004, available at <http://www.cis.org/articles/2004/jessicatestimony030404.html>.

202. James Bissett, *Troubled Borders, Canada, the United States and Mexico*.

ADMINISTRATION OF U.S. IMMIGRATION AND
ASYLUM POLICIES

The United States does not have a much better record on the administration of its asylum (refugee) policy either before or after 9/11. In December 2003, the Center for Immigration Studies in Washington, D.C. issued a report, "Falling Behind on Security: Implementation of the Enhanced Border Security and Visa Entry Reform Act of 2002," which is both complimentary, but mainly highly critical of many shortfalls in implementing the Act. It concludes that "as we approach the second anniversary of the law's enactment, the Bush Administration is falling behind and has not carried out several of the legislation's key provisions. As a result, many of the loopholes that were exploited by the 9/11 terrorists are still open, leaving us vulnerable to future attacks."²⁰³ The Center for Immigration Studies has previously published a major report of the many weaknesses in the American system entitled "The Open Door: How Militant Islamic Terrorists Entered and remained in the United States, 1993-2001."²⁰⁴ That study found that the forty-eight terrorists studied had manipulated almost every possible means of admission to the United States: some had indeed come as students, tourists, and business travelers; others, however, had been Lawful Permanent Residents and naturalized U.S. citizens; while yet others had snuck across the border, arrived as stowaways on ships, used false passports, been granted amnesty, or been applicants for asylum.

James Bissett also criticized the administration of American policies as well as Canadian refugee policies:

In the United States before the September 11 attack there were 314,000 illegal aliens who had been ordered deported but who remained at large. Some 78,000 of these were people from terrorist producing countries. In Canada, the Auditor General reported that 36,000 arrest warrants for individuals in Canada who had evaded the removal process had not been acted upon. In both countries violation of immigration laws was common and of little consequence.²⁰⁵

Bissett also points out that "all of the 19 terrorists involved in the 9/11 attacks entered the United States on temporary visas and some of them

203. *Falling Behind on Security: Implementation of the Enhanced Border Security and Visa Entry Reform Act of 2002*, Center for Immigration Studies, Dec. 2003, available at <http://www.cis.org/articles/2003/back1903.html>.

204. Steven A. Camarota, *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001*, Center for Immigration Studies, Papers No. 21, available at <http://www.cis.org/articles/2002/terrorpr.html>.

205. James Bissett, *Troubled Borders, Canada, the United States and Mexico*. The most recent figures used by an American are that there are some 400,000 aliens living in the United States who have been ordered deported, and that 80,000 of them have serious criminal records. See Michael W. Cutler, *Funding for Immigration in the President's 2005 Budget*, Testimony Before the House Judiciary Committee Subcommittee on Immigration, Border Security and Claims, Mar. 11, 2004, available at <http://www.cis.org/articles/2004/cutlertestimony031104.html>.

received their visa without being seen by an American official.”²⁰⁶ Michael W. Cutler, Fellow at the Center for Immigration Studies, testified on March 11, 2004, that “half of the aliens in the United States did not succeed in entering the United States by running the border but rather entered through a port of entry and then, in one way or another, violated the terms of their admission.”²⁰⁷

Daniel Stoffman notes, “the major reason Canada should fear the United States is that the States is home to the greatest collection of unidentified illegal immigrants anywhere in the world.”²⁰⁸ He points out that bad guys are as likely to get into the United States from Mexico as from Canada, and that an increasing number of people arrested coming over the Mexican border are what U.S. Border Patrol agents call “OTMs,” or “other than Mexicans.”²⁰⁹ Stoffman notes, “Americans, for all their recent talk about the need for secure borders, are ambivalent about the subject.” The American agriculture industry and many American families employ the cheap labour that illegal immigration provides. He also notes problems with the U.S. system for keeping track of people ordered deported; at the time the United States could not account for 300,000 such persons, while the figure in Canada was 28,000. (The Canadian figure has since risen with the Auditor General saying it was at 36,000 last year, while the U.S. figure has reached over 400,000). Stoffman also points out that several of the 9/11 hijackers had driver’s licenses issued in Virginia, a service which was hastily ended on September 21, 2001.²¹⁰

COMPARING THE CANADIAN AND U.S. SYSTEMS OF REFUGEE/ASYLUM DETERMINATION

In comparing the two systems, the first thing to note is that Canadian officials claim they produce outcomes with similar results: Canada has a 41 percent acceptance rate; the United States a 37 percent acceptance rate. Stephen Gallagher points out that the UNHCR statistics are quite different, with Canada having an acceptance rate of 57.8 percent and the United States having a 34.9 percent acceptance rate. A former American Immigration official at the April 1-2 Conference pointed out that the U.S. rate is much higher: when the stage two acceptances are included, it is about 60 percent. In both countries an asylum claim trumps the normal entry requirements. The United States has put in place expedited removal, which takes undocumented arrivals out of the regular process. But the expedited removal process in the United States actually stops less

206. James Bissett, *Troubled Borders, Canada, the United States and Mexico*.

207. Michael W. Cutler, *Funding for Immigration in the President’s 2005 Budget*, Testimony Before the House Judiciary Committee Subcommittee on Immigration, Border Security and Claims, Mar. 11, 2004, available at <http://www.cis.org/articles/2004/cutlertestimony031104.html>.

208. Daniel Stoffman, *supra* note 163, at 66.

209. *Id.*

210. *Id.* at 71.

than one in ten of those undocumented arrivals out of the U.S. asylum system.

Where the two countries differ in a substantive way is in terms of law enforcement prosecutions and detention. The United States uses detention much more aggressively than Canada. Until recently that basically meant a willingness to spend more money (a lot more money), but since 9/11, there has also been a backing away from legal protections that still hold sway in Canada. Similarly, there is greater willingness to prosecute, a greater ability to convict, and harsher penalties imposed by the courts in the case of smugglers and traffickers than in Canada.

But does this mean that the U.S. system is better than the Canadian system in terms of entry control and removals? In terms of entry, if one looks at the number of asylum seekers coming to Canada via the United States, they do not appear to have had difficulty getting past U.S. entry controls. In terms of removals, Canadian officials maintain that except in a limited number of high profile security cases, again, the answer is no. They also suggest that if they did not have to deal with ten to fifteen thousand extra refugee claimants a year coming from the United States they would have considerably more resources to apply to enforcement, detention, and removals. That is why the safe third country agreement mentioned above is so important to Canada: it will both relieve some of the present burden and force to the United States take some responsibility for the present flows of refugee claimants into Canada.

THE TRILATERAL MIRAGE: THE TALE OF TWO NORTH AMERICAS

In May 2003 Jean Daudelin, Professor at Carleton University wrote:

Canada's eggs are in the Northern-North American basket and this is the basket whose governance we should be preoccupied with. Border management, migration, security, standards as well as currency are just too consequential to be tackled in a framework that brings to bear Mexico's own problems and preoccupations, as well as the complexities and scope of its bilateral relationship with the United States.

For Canada, the trilateral option should not be pursued beyond existing arrangements, essentially around NAFTA, except in an ad-hoc manner and avoiding any significant institution-building. Canada's bilateral relationship with the United States is vital and its management should not be cluttered by the massive complexity of Mexico-U.S. affairs.²¹¹

Daudelin was categorical "there is simply no sound rationale for trilateralism in North-America." He noted that:

211. Jean Daudelin, *The Trilateral Mirage: A Tale of Two North Americas*, Canadian Defence and Foreign Affairs Institute, May 2003, available at <http://www.cdfai.org/PDF/The%20Trilateral%20Mirage.pdf>.

the inability of NAFTA to produce greater trilateral interdependence is in fact recognized by the advocates of trilateralism themselves, such as Robert Pastor (2001) and Andres Rozental (2002), for instance, who call for the establishment of institutions not mainly to manage an already existing and problematic trilateral reality, but above all to further build and consolidate such a reality.²¹²

Daudelin also pointed out:

a striking illustration of the irrelevance of trilateralism was recently provided by Jorge Castañeda who, until recently, was Vicente Fox's Minister of Foreign Affairs and, at least in that function, a vocal proponent of North-American integration. In a piece just published by Foreign Affairs [Castañeda-2003] where he examines the U.S. relationship with 'the hemisphere,' Castañeda touches on immigration, Summits, free trade and the 'North-American Community,' and yet, the word Canada does not appear once in his article. As a neat instance of Canada-Mexico reciprocity, it is thus only fitting that in an article specifically devoted to 'North American Integration' from a Canadian viewpoint, Drew Fagan [2003] also forgets to mention Mexico at all. And in truth, both are dead right: Mexico's North-America does not include Canada, nor does Canada's North-America include Mexico.²¹³

(President Fox made several references to the need for cooperation with Canada in North America in his March 6, 2004, joint press conference with President Bush, when he talked about the "North American Initiative").²¹⁴

THE 2003 COUCHICHIING CONFERENCE: CONTINENTALISM

In the summer of 2003, the annual Couchiching Conference considered the issue "Continentalism: What's In It for Us," noting that it was taking place at a time of heightened concern over border issues and national security.²¹⁵ Stephen Handleman made the point that Y2K established in people's minds that there was a "North American space" that needed protection due to its technological advancement, and this concept has been reinforced over the years. Handleman supported the idea of a "Zone of Confidence" or "Continental Security Area" and illustrated how attacks on the United States are linked as attacks on Canada and Mexico due to the interconnected nature of our North American infrastructure.²¹⁶ He also suggested that while Deputy Prime Minister John

212. *Id.* at 8.

213. *Id.* at 9.

214. The White House, Press Release, *President Bush, Mexican President Fox Reconfirm Commitment to Security*, Mar. 6, 2004, Crawford, available at <http://www.whitehouse.gov/news/releases/2004/03/20040306-3.html>.

215. *Continentalism: What's In It for Us?*, The Couchiching Institute of Public Affairs, Summer Conference 2003, available at <http://www.couch.ca/history/index.html>.

216. *From Norad to Northcom: Who Takes Orders from Whom?*, The Couchiching Institute of Public Affairs, Summer Conference 2003, available at <http://www.couch.ca/history/2003/NoradSummary.html>.

Manley shied away from the "P-word" (as in "perimeter"), the long discussed American concept of "homeland defence" had clearly been subtly enlarged to include the perimeters of the continent.²¹⁷

Michael Wilson said that trade policy must be seen in the context of increased national security concerns. It was in Canada's interest to work with the United States on a number of issues, not just trade. Security institutions, including NATO, NORAD, and the G7 link between Canada and the United States, differentiate it from U.S.-Mexico bilateral relations. As the United States is more driven by security issues, Canada must engage it in broader security dialogue.²¹⁸ Maria de Lourdes Dieck-Assad, Under Secretary for International Economic Relations and International Cooperation in the Mexican Foreign Ministry, noted that Canada and Mexico have many similarities, sharing large borders with the United States and needing to ensure some form of smart border, and they should find ways to take advantage of their complementarity.²¹⁹

Renee St. Jacques, Chief Economist and Director General of Micro Economic Policy Analysis at Industry Canada, told the conference, "economic integration does not necessarily mean any loss in sovereignty nor in the ability of Canada to pursue separate and more generous social or labour programs."²²⁰

The Governor of the Bank of Canada, David Dodge, who kicked off the Couchiching Conference with reflections on economic integration in North America noted, "as we in Canada consider deeper economic integration, we also have to consider what measures we would take to actually build a common security perimeter around North America."²²¹

Canadian Foreign Minister Bill Graham gave the closing speech at the Couchiching Conference and was somewhat more candid about North American integration than many of his Cabinet colleagues. He admitted that those responsible for Canadian public policy have been wrestling with the question:

how can we best enjoy the benefits of an economic and security partnership with the United States. (and now Mexico) while retaining our capacity to pursue distinctively Canadian policies within our borders as well as differing relations with the wider world? It is important to start with the observation that the benefits we stand to gain

217. Stephen Handleman, *Whose Border Is it Anyway?*, INTERNATIONAL JOURNAL, Summer 2003, at 457.

218. *Is There a NAFTA Plus?*, Couchiching Institute of Public Affairs, Summer Conference of 2003, available at <http://www.couch.ca/2003/NaftaPlusSummary.html>. Full text available as *Whose Border is it Anyway?*, INTERNATIONAL JOURNAL, Summer 2003, at 455-64.

219. *Id.*

220. Renée St-Jacques, *Sovereignty or Standard of Living: Is There a Trade-Off?*, Couchiching Conference, Aug. 2003, available at <http://www.couch.ca/history/index.html>.

221. *Economic Integration in North America*, The Couchiching Institute of Public Affairs, Summer Conference 2003, available at <http://www.couch.ca/history/2003/DodgeSummary.html>. Full text in INTERNATIONAL JOURNAL, Summer 2003, at 419-32.

by integration do serve national priorities of the first order, namely economic prosperity and the security of our country and continent.²²²

In summarizing the conclusions of the conference, David McGowan, President of the Couchiching Institute on Public Affairs, made the following points: (1) no North American project, "grand bargain" or "big idea" is likely any time soon—from either a political or economic perspective; (2) closer economic integration cannot move forward without recognizing the importance of border security to the United States; (3) there is a range of potential sector agreements that could be delivered, either bilaterally or trilaterally, that would not raise sovereignty concerns in Canada and Mexico and would likely fly under the political radar screen of Washington; and (4) closer integration will lead to greater harmonization of the regulatory infrastructure in ways that will bring greater economic advantages to each of the North American partners.²²³

THE PUBLIC POLICY FORUM'S "RETHINKING NORTH AMERICAN INTEGRATION" CONFERENCE

At the end of October 2003, the Public Policy Forum held its "Rethinking North American Integration" Conference in Ottawa. A clear consensus emerged on several important themes throughout the two-day event which reflects an optimistic and realistic view of the future of North American integration. First, economic integration is a reality, with businesses as the key actors. While national governments have numerous contacts, sub-national actors—provinces/states and municipalities—are increasingly creating linkages. Second, deepening economic integration is possible while maintaining national political, social, and cultural autonomy. Third, environmental issues emerged as an area where consensus on the need for more cooperation and harmonization exists. Fourth, NAFTA is working. As a result, the most realistic and beneficial progress will come through deepening and broadening its framework through incremental steps, rather than "big bang" change. And finally, Canada and Mexico share important interests and branding problems vis-à-vis the United States, and should therefore work on strengthening their relationship.²²⁴ One of the panellists, Deborah Meyers of the Migration Policy Institute, who has done an analysis of the two Smart Border accords, said there was need for a more secure continental perimeter.²²⁵ She noted,

222. *Sovereignty, Interdependence and Integration*, Notes for an Address by the Hon. Bill Graham at the 72nd Annual Summer Conference of the Couchiching Institute of Public Affairs, at 2, available at http://w01.international.gc.ca/minpub/Publication.asp?publication_id=380274&Language=E.

223. David McGowan, *The Prospect of a North American Project: Couchiching Debates "The Big Idea,"* INTERNATIONAL JOURNAL, Vol. LVIII No. 3, Summer 2003, at 417.

224. *Rethinking North American Integration Conference Report*, Public Policy Forum, Oct. 29-30, 2003, available at http://www.ppforum.com/ow/NA_Outcomes_final.pdf.

225. Deborah Meyers, *Does Smarter Lead to Safer: An Assessment of the Border Accords with Canada and Mexico*, Migration Policy Institute, June 2003, available at

however, that “it is important to remember that the war on terrorism cannot be won through the immigration system, but must be fought through increased information and intelligence capabilities.”²²⁶ Among the policy recommendations made by Brigham Young Professor Earl T. Fry was “some harmonization of security perimeter standards and immigration and refugee policies.”²²⁷

THE HUFBAUER/SCHOTT THESIS

In January 2004, Gary Hufbauer and Jeffrey Schott published their paper on deeper North American integration from an American perspective as part of the CD Howe Border Papers. They note that “the political imperative to work together has never been greater. But melding the political, security and economic objectives of the three countries is now more complex.”²²⁸ They also believe that NAFTA politics in the United States are thus far more sensitive to Mexico than to Canada and that a bilateral deal is less likely to garner the necessary support in Congress than a trilateral deal.²²⁹

Hufbauer and Schott note:

the impetus in 2003 for further cooperation comes from the doctrine of preemption. The NAFTA partners must work more closely together now, so that—in case there are additional terrorist attacks down the road—they will be less disposed to respond with knee-jerk actions that disrupt goods and people moving across borders and spawn enduring political acrimony.²³⁰

They also accept that “the balance of postwar trade history still leans heavily towards Dobson’s thesis of a Big Idea as the way to get noticed in Washington.”²³¹

They admit that border security has certainly attracted the attention of official Washington, but suggest that border security alone does not give Canada added leverage to negotiate reforms in U.S. policies long resistant to change:

Cooperation on security cuts both ways and the alternative for Canada to cooperating with the U.S. is less efficient and more intrusive border restrictions by the United States. Still, the border-security

<http://www.migrationpolicy.org/pubs/6-13-0%7E1.PDF> (noting “while September 11 forced a reassessment of land borders and their vulnerability, it simultaneously pointed to the security benefits of the US working ever more closely with its contiguous neighbors”).

226. *Id.* at 20.

227. Earl T. Fry, *The Future of North American Economic Integration: National and Sub-National Perspectives*, available at http://www.ppforum.ca/gs/Prof_Earl_Fry_pres.pdf.

228. Gary C. Hufbauer & Jeffrey J. Schott, *Deeper North American Economic Integration: A US Perspective*, C.D. Howe Institute Commentary No. 195, Jan. 2004, available at <http://www.ihc.com/publications/papers/hufbauer0104.pdf>.

229. *Id.* at 5.

230. *Id.* at 6.

231. *Id.* at 7.

issue establishes a higher priority for new negotiations on an agenda of complementary economic and security concerns. In this regard, Dobson's idea of a 'strategic bargain' makes sense, especially since the two countries already have extensive economic integration in autos, steel, and energy infrastructure.²³²

We believe that Ottawa, Washington and Mexico City can forge common visa standards for most non-NAFTA visitors and immigrants. This goal is highly significant from a security standpoint. For people arriving from outside the NAFTA region, the North American countries need a shared system for excluding non-NAFTA nationals who pose a security threat. . . .

Non-NAFTA visitors who threaten security can be better excluded if a few principal measures are adopted. The NAFTA partners should agree on visa-waiver country lists, length of stay, and watch lists for potentially troublesome visitors. Officials in each country should have electronic access to the immigration records of its partners. These suggestions seem obvious. However, U.S. security agencies, such as the FBI, CIA, Customs, and Alcohol, Tobacco and Firearms (ATF), have yet to agree on a common watch list for potentially troublesome visitors to the United States, so it will take political energy to forge a common North American approach.

As well, NAFTA partners should create a special force to handle all third-country immigration controls at the individual's first airport of entry into NAFTA space. Common document and biometric identification standards should be applied. Likewise, the partners should create a more efficient system for handling legitimate travelers among the three NAFTA countries. The Smart Border Accord negotiated between Canada and the United States contains useful elements: high-tech identity cards for permanent residents, using biometric identifiers, and pre-clearance programs for frequent travelers — known as INSPASS at airports and CANPASS, dedicated commuter lanes — at land borders. The same system should be extended to cover visitors arriving from Mexico.²³³

They also have suggestions with respect to handling the question of illegal Mexican immigrants in the United States, a topic that is outside the focus of this paper.

THE HUFBAUER/VEGA-CANOVAS COMMON FRONTIER

In 2002 Gary C. Hufbauer and Gustavo Vega-Canovas produced a chapter on "Whither NAFTA: A Common Frontier?" for a book, *The Rebordering of North America? Integration and Exclusion in a New Security Context*. Hufbauer and Vega proposed an agenda for action for the three North American countries to avoid a worst-case scenario and further the economic integration in North America.

232. *Id.*

233. *Id.* at 14.

We have termed this agenda for action a Common Frontier. The rationale for a Common Frontier is first to reduce the risk of security threats, and second to channel new policy measures in a cooperative direction if and when bad events occur. To have a chance of success, this agenda would need to accommodate the political realities of North America.²³⁴

Their agenda covered three topics: border management, defence alliance, and immigration.

They noted that under a worst-case scenario, with new terrorist acts in North America, it seems doubtful that the programs announced so far will preclude the erection of formidable new security fences within North America. Canada and Mexico should cooperate to achieve U.S. security goals, and in return the United States should commit to maintain open borders even in the aftermath of an attack. All three parties, meanwhile, advance the agenda of economic integration. In their view, the Common Frontier should be analogous to the 1980s concept of a European Economic Space—designed to link the European Economic Community (EEC) and the European Free Trade Area (EFTA).²³⁵

A Common Frontier project would have to be accompanied by a new defence alliance among the three NAFTA partners. The alliance would have two purposes. First, if North America is to have a Common Frontier—implying relatively free internal movement of people, goods, and capital, but a watchful eye on arrivals from abroad—the logical corollary is strong defence for all modes of entry into the perimeter. Harmful intruders will otherwise enter at the weakest point. The second purpose is to deal with threats arising within the Common Frontier—especially threats that are organized or launched from the territory of one partner into the territory of another. Hufbauer and Vegas-Canovas suggest several ingredients for a North American Defence Alliance: (1) intelligence sharing; (2) agreement on circumstances that justify electronic surveillance of suspects within the Common Frontier; (3) defining the circumstances in which a NAFTA arrest warrant may be issued to detain a suspect anywhere within the Common Frontier; (4) working closely and even interchangeably with the NAFTA coast guard services to intercept smugglers; and (5) new measures to speed the border crossing of business travelers.²³⁶

Hufbauer and Vega-Canovas admit that none of the measures they advocate would be easy. Indeed, most of the measures go beyond what the European Union has achieved after nearly fifty years of economic integration:

The measures we suggest may not even enter the realm of political possibility unless one NAFTA partner is visibly attacked by forces

234. Gary C. Hufbauer & Gustavo Vega-Canovas, *Whither NAFTA: A Common Frontier?*, available at <http://www.iie.com/publications/papers/hufbauer1202.pdf>.

235. *Id.* at 8.

236. *Id.* at 13-14.

that stage their operation in another NAFTA country. We contend, however, that until elements of what we have coined a Common Frontier are put in place, the risks of a worst-case scenario and the reversal of North American integration will loom on the horizon.²³⁷

A threshold obstacle for our Common Frontier proposal is the extent of Canadian and Mexican support for preemptive strikes. Will NAFTA partners prove to be steadfast military allies? [U.S.] leaders will not ask Canada or Mexico to contribute special forces; but they will expect intelligence tips, and they will react poorly to public criticism from NAFTA leaders. The Common Frontier project, in other words, will require robust support for the preemptive strike doctrine, not just as an abstract proposition, but especially when mistakes are made.²³⁸ . . . In short, for the United States the overriding obstacle to a Common Frontier project is the tentative and qualified cooperation from Canada and Mexico.²³⁹

If that is the case, the chances for the Common Frontier project appear minimal as neither the Canadian or Mexican governments has shown any enthusiasm for the preemptive strike doctrine outside of a UN Security Council mandate.

SIDNEY WEINTRAUB'S TAKE ON THE PERIMETER CONCEPT

In April 2003, Sidney Weintraub of the Center for Strategic and International Studies in Washington wrote:

the notion of perimeter screening to speed up the movement of goods and residents of the two countries is logical on the surface, but there are inherent problems that must be considered. Without any border screening, the two countries would need identical immigration laws to permit the free movement of people from one country to the other and a common tariff and other trade restrictions so that the transshipment of goods from one country to the other would not matter. These steps smack of sharing sovereignty rather than 'mutual respect for sovereignty,' which is an essential element of the CCCE proposal (see above and below).

Sharing sovereignty is not necessarily a bad idea, but is not what the CCCE advocates. A common security perimeter for Canada and the United States would omit Mexico, unless there was a common North American perimeter—something that would multiply ancillary complications many times over.²⁴⁰

Weintraub believes that having a common perimeter would be a much bigger idea than a customs union because, in his judgment:

this would necessarily require both a common tariff and free movement of people. A Canada-[U.S.] customs union would complicate

237. *Id.* at 20-21.

238. *Id.*

239. *Id.* at 23.

240. Sidney Weintraub, *Strains in the Canada-US Relationship*, ISSUES IN INTERNATIONAL POLITICAL ECONOMY, No. 40, Apr. 2003, Center for Strategic and International Studies, available at <http://www.csis.org/simonchair/issues200304.pdf>.

North American unity under NAFTA because the U.S.-Mexican relationship would continue to be one of free trade without a common tariff. Mexico would be reluctant to enter into a North American customs union because this would require terminating its free trade agreement with the European Union.²⁴¹

THE CCCE'S AGENDA FOR PROGRESS AND PROSPERITY, JANUARY 2004

In January 2004, the Canadian Council of Chief Executives published "A Canadian Agenda for Progress and Prosperity: Where Canada's Business Leaders Stand," a forty page document which included a chapter on "Striving for Advantage in North America."²⁴² The proposals follow those enunciated in its January 2003 "North American Security and Prosperity Initiative" and are based on a trilateral rather than a bilateral approach. However, several of the key elements related to perimeter security are conceived in a bilateral context:

i) our countries need to create a zone of cooperation encompassing the continent rather than focusing security efforts on the line that separates us. We must emphasize protection of the approaches to North America while eliminating regulatory, procedural and infrastructure barriers at our internal border; ii) we need to transform the internal border into a shared checkpoint within the Canada-United States economic space. The objective should be twofold: to shift the burden of protecting our countries against global threats away from the internal border to the approaches to North America; and to eliminate unnecessary regulatory, procedural and infrastructure barriers at our internal border; iii) A shared system for commercial processing, shared infrastructure, shared policing and even a voluntary shared North American identification document all could help to ease flows of people and goods across the border further without threatening the security or sovereignty of either country; iv) building on the more than forty-year record of cooperation through NORAD, our countries should strive to create a North American defence community of sovereign nations. The new partnership would expand our commitment to include: a) defence of the continent's airspace, including participation in a continental ballistic missile defence system; b) shared protection of the maritime approaches to North America; c) protection of critical infrastructure such as pipelines, electronic networks, railways, bridges and transmission lines; and d) cooperative reaction to natural and man-made disasters on both sides of the border.²⁴³

241. *Id.* at 2. The author made the latter point to Weintraub and others at the *NAFTA at 10* Conference in Washington in December 2002.

242. *A Canadian Agenda for Progress and Prosperity: Where Canada's Business Leaders Stand*, Canadian Council of Chief Executives, Jan. 2004, available at http://64.26.159.96/en/about/A_Canadian_Agenda_for_Progress_and_Prospersity_April_2004.pdf.

243. *Id.* at 28-29, 31-32.

OPTIONS FOR NORTH AMERICAN PHYSICAL SECURITY

In the context of the considerations enumerated above, I would suggest that there are at least eleven potential options for ensuring the security of North America:

1. Maintain the status quo in defence/security/immigration/refugee policies and in the level of cooperation, including the incrementalist approach built into the Smart Border plans;
2. Refuse to participate in BMD;
3. Participate in BMD with or without further cooperation with NORTHCOM;
4. Significantly increase the Canadian defence budget;
5. Amend the administration of Canadian refugee and visitor visa policies to reduce the security threat;
6. Agree on common policies for temporary visas and refugee/asylum policies;
7. Formally develop the concentric ring approach to North American security;
8. Adopt a Schengen type approach for free labour mobility within North America and common entry procedures for non-North Americans;
9. Support the American doctrine of unilateral pre-emption;
10. Adopt a perimeter approach for defence purposes only;
11. Adopt a perimeter approach for all kinds of threats;
12. Adopt a bilateral or trilateral approach.

The threat of a Fortress America mentality appears to have receded in light of cooperation along the two U.S. land frontiers since 9/11. The unknown is what would happen in the event of a second 9/11-type attack on the United States, particularly if any of the terrorists gained access to the United States through either Canada or Mexico. At a minimum, there would be the type of short-term interruptions which characterized the U.S. response to 9/11. A Fortress America mentality would rely on existing borders as the best place to maintain controls. It could entail increased delays to the flow of people and goods from north and south of the United States, and thereby threaten the economic security of the two largest trading partners of the United States and a lot of American investment in those countries.

A Fortress America is also very expensive and puts the emphasis of control in the wrong area. Control should be at the perimeter points of access to North America, which are not across the two land borders but at airports and ports. The United States has recognized that it needs to expand the perimeters of its security at least to the edges of North America, and in many cases beyond. Passengers destined for the United States and Canada from overseas countries—Europe, Asia, Latin America, and elsewhere—go through pre-clearance checks before they are allowed to get on the aircraft, which do more than verify their eligibil-

ity to enter the United States and/or Canada. Canada and the United States are cooperating in this effort in various European airports and elsewhere. Container traffic is being pre-cleared in ports outside North America.

Perimeter concepts for North America are not new and are best exemplified in the long standing Canada/United States defence partnership. Similar activities were happening in the civilian side prior to 9/11 and have since become codified in the Smart Border Declaration and Action Plan. While some Americans may see the northern border as posing as much of a threat as the southern border, many see differences between the two.

Various ideas have been put forward for concentric circles of perimeter security, and some of these are incorporated into the Smart Border plans. The concept of a security perimeter could be limited strictly to a military/defence one in the face of traditional threats. But the new threats to North American security do not come from state actors but non-state actors. The most appropriate means of defence against these threats lies outside the traditional military pattern and involves intelligence sharing, police cooperation, tighter administration of refugee/asylum policies, and visitor visas. Here again, the past experiences of Canada and the United States and Mexico and the United States are widely divergent. For Canada, defence cooperation with the United States has a long and on-going history. For Mexico, it might/would be a new and very controversial matter.

Canada and the United States are countries of immigration with processes in place to deal with the security threats posed by new immigrants, those claiming refugee or asylum status, and short term visitors or students. Some of the deficiencies in the existing systems in both countries have been identified. It is clear that both governments are working on them, in both cases, perhaps not as intensely as the other would wish, but progress is being made and a level of confidence established that has seen Canadian citizens exempted from the entry-exit provisions of post-9/11 U.S. law. Whether this is sustainable will depend on the continuing levels of cooperation. The focus on this issue by the new Martin government gives rise to some optimism in this respect.

A security perimeter around Canada and the United States exists for air and space (detection) purposes. The introduction of a U.S. BMD system at the end of 2004 will provide a perimeter for Canada and the United States and cities in northern Mexico, whether or not Canada and/or Mexico chose to participate. My bet is that, given the very changed geopolitical situation, Canada will become associated with BMD. But this system will not provide any defence against nuclear attacks on North America except from ballistic missiles. To the extent that there is a threat of nuclear attack from terrorist groups, which would not use missiles to deliver their weapons, this makes heightened cooperation on intelligence, immigration and policing operations all the more important.

There are major elements of increased cooperation between security and police services built into the two Smart Border accords. Some of the agreed elements between Canada and the United States, like the safe third country agreement, have yet to be implemented, but the general level of confidence appears to be such that exemptions from what were to be universal policies have been obtained for Canadians in most instances and for some Mexicans.

The Martin government has committed itself to improved cooperation with the United States to improve the security of North America (in a bilateral sense), and reforms to the administration of the refugee policy and the IRB. It has opened the door to possible participation of some sort in BMD and an amendment to the NORAD agreement. It has also made noises about increasing the defence budget. Whether the amount will be enough to impress the United States is an open question. The attempt to craft a national security strategy based on the U.S. concept of Homeland Security is another indication that the changes are more than cosmetic. These developments appear to rule out the status quo-type option and suggest that Canada and the United States are already moving towards increasing cooperation over several areas which will have the effect of strengthening the security perimeter of northern North America.

Many Canadians and a lot of Americans may want to pay lip service to the concept of trilateralism in North America, but do not want the many practical problems that this presents to impede progress on a bilateral level.

Proposals for increased labour mobility within North America are hostage to the new security climate. The CUSFTA and NAFTA introduced TN visas for certain categories of skilled professionals, with major differences in application between those issued by the United States for Mexicans and for Canadians.²⁴⁴ Full scale labour mobility between Mexico and the United States is seen as a major threat to the United States and an economic drag. Whether it might be possible to envisage a widening of the categories for NAFTA, TN visas is another matter. In any event, full labour mobility inside the European Union did not come until after it had gone from customs union, to common market and economic union. That would appear to be a pre-cursor to any Schengen type of agreement which governs admission from outside the borders of the EU and effectively abolished controls on the internal borders. Proposals to abolish all controls on the Canada-U.S. or Mexico-U.S. borders would run into strong opposition on both sides of the two borders for reasons mentioned in this paper.

The Dymond/Hart concept that Canada shares a perimeter with the United States, defined by geography, economics, shared values, and com-

244. Until September 30, 2003, there was a yearly ceiling of 5,500 TNs visas for Mexicans and no ceiling for Canadians. The ceiling on Mexican TN visas no longer exists. Mexicans have to apply for their TN visas at U.S. Consulates in Mexico. Canadians apply for their TN visas at the port of entry into the United States.

mon challenges, is persuasive in many respects. Since 9/11 many aspects of that perimeter have been tightened up as the Smart Border plans are put into operation. Many observers believe the perimeter concept is being applied, perhaps incrementally, but nonetheless applied. There still remains much to do by all three countries before any true perimeter can be established outside the area of defence.

OPTIONS FOR A NORTH AMERICAN PERIMETER FOR PHYSICAL AND ECONOMIC SECURITY

1. Maintain the status quo as provided in NAFTA.
2. Negotiate a common external tariff to eliminate rules of origin.
3. Negotiate a full customs union with a common trade policy.
4. Negotiate elements of a customs union and a common market (Dobson).
5. Negotiate a common market with full mobility of labour.
6. Negotiate a new agreement designed to deal with deeper integration with the necessary institutional backdrop to support them (Dymond-Hart/CCEO/Dobson/Gotlieb, etc.).

The issue of whether the perimeter should be for both physical and economic security resonates most among Canadians and Mexicans who are much more dependent on continued access to the U.S. market than the United States is to their markets. The collective wisdom of many is that there is no appetite in any of the capitals for the type of agreement which would bring physical and economic security together. That may well be the case, but in 1983-84, the prospects for a bilateral free trade agreement between Canada and the United States did not loom large on anyone's radar screen, and within eighteen months of the election of the Mulroney government, negotiations had started. The issue then for Canadians was the threat of increased U.S. protectionism and how best to secure access to the U.S. market.

Economic integration has been happening faster than most predicted. Those sectors of the economy, which are more highly integrated, have seen a marked decline in the number of cases of countervail and anti-dumping actions by the United States.²⁴⁵ The continuing uncertainties of the border, even with free trade, have implications for investment decisions, where Canada appears to be losing out to the United States in the amount of non North American FDI.²⁴⁶ The October 2003 "NAFTA @ 10" report by DFAIT said that, "the susceptibility of Canada-U.S. trade

245. See Patrick Macrory, *Dispute Resolution in the NAFTA: A Surprising Record of Success*, C.D. Howe Institute Commentary 168, Sept. 2002, available at http://www.cdhowe.org/pdf/commentary_168.pdf.

246. *Rapport Sur Les Enjeux de Politiques*, Investment Partnerships Canada, Mar. 2003, at 4 (showing that Canada's share of FDI from outside North America has dropped from approximately 10% in 1988 to 6% in 2000, and that there has been a corresponding increase in the U.S. share of such FDI from outside North America, which has gone from 88% to 92% in the same period).

to increased security and delays at the border is one of the most challenging aspects to Canadian trade policy over the medium term.”²⁴⁷ The same report also suggests that “the greatest impact of increased border frictions may not be on trade, but on foreign direct investment (FDI).”

While the proponents of the “big idea” or “strategic bargain” suggested linking American concerns with security and Canadian and Mexican concerns with economic security, the reality is that Canadians should be just as concerned about physical security as their American counterparts. Canada needs to move on the security front to protect itself as well as to provide increased assurances to the United States that terrorists will not use Canada as a drop-off point from which to attack the United States. That appears to be the way in which the new Martin government is proceeding.

There has been no clear indication from the United States government as to how a proposal from Canada would be viewed. Canada should not expect any such indication from the U.S. side until the Canadian side has determined what it wants. There is no agreement in Canada on how to deal with the realities of increasing integration, and there was a clear decision by the Chrétien government to avoid serious debate on the matter. The Martin government will not want to unveil its thoughts in this respect until after a federal election, and probably not until after the U.S. presidential election this fall. Some people, including myself, believe that this built-in delay is a propitious time for the Martin government to establish a new Royal Commission on Canada’s economic prospects in an increasingly integrated North America. Creating such a commission before a Canadian general election with an eighteen-month time frame to report back would start the ball rolling in terms of identifying Canadian objectives, or some real options.

What this means is that the physical security and economic security agendas will not be linked (many agree they shouldn’t be) because there is a greater need to proceed on the former than the later. So the potential trade-off of a strategic bargain does not appear possible at the present time and it may not ever be. But that doesn’t obviate the necessity from looking at both aspects of security and honing in on what is necessary for Canada’s interests and for those of Mexico. Canada cannot afford to be seen as delaying implementation of changes to policy or the administration of policy that will increase physical security because of the potential that movement in that area might mean movement by the United States in terms of our economic security. It also means that proposals for an economic perimeter will have to be developed on their own merits, of which there are many.

The Mexico issue is complex, sensitive, and likely to complicate matters, because Mexico’s relationship with the United States is much more complex than Canada’s already complex relationship. Furthermore,

247. *NAFTA @ 10: A Preliminary Report*, DFAIT Oct. 2003, at 4, available at <http://www.dfait-maeci.gc.ca/eet/research/nafta/nafta-en.asp>.

Mexico's vast network of bilateral free trade agreements could be an impediment to moving to a North American customs union and/or common market. It has to be in Canada's and the United States' interest that Mexico make the transition from developing country to a developed country. Part of the history of the European Union has been to include economically under developed countries like Portugal, Spain and Greece in the union for political purposes (to anchor them in democracy—a goal which appears to have succeeded). Even those like the Canadian Council of Chief Executives, who call for a trilateral approach, envision a very bilateral approach to many of the physical and economic security problems identified in this paper. Many observers have suggested that the European example of "two speeds" might be appropriate for North America. Start off with a Canada-U.S. relationship, and at a later date move to include Mexico when it is ready. Mexico should be excluded from any talks about designing any new architecture; we should not become hostage to Mexico, notwithstanding the views of Hufbauer and Schott that Mexico has to be included in any deal for it to fly in Congress.

CONCLUSION

The either/or construct of "Fortress America or Fortress North America" is not reflective of the reality that is happening in North America. We already have a variety of perimeters around Canada and the United States, and the countries are strengthening these perimeters by correcting many of their existing weaknesses. A Canada-U.S. border that can have fifteen "Smart Border" points and 4,000 miles of the forest primeval cannot be the perimeter on which the United States bases its homeland security. Canada has agreed to be part of various American perimeters to meet previous threats to its security. Neither country can individually address all of the threats posed by terrorists to the North American continent. Heightened security for North America can only come with increased cooperation between the three countries concerned, even if the levels of cooperation are at different levels. This does not imply a harmonization of immigration or refugee policies or a loss of sovereignty. Rather, it implies using Canadian sovereignty wisely to counter the new threats that can exploit weakness in a system designed prior to 9/11. NORAD has not threatened Canadian sovereignty over the past forty-six years, and it has enhanced our security. The cooperation required to meet the new threat goes far beyond military cooperation and extends to enhanced cooperation and information sharing in the intelligence, police, and immigration areas.

Attempts to link physical and economic security in North America, while conceptually sound, are out of sync with both the requirements and the political realities on both sides of the two borders with the United States. Canadians and their government need to act on physical security issues now, in their own interests. They also need to tackle the issue of what is required by governments in the face of deepening economic inte-

gration to best protect Canada's interests. A new arrangement for economic security with the United States is required. It needs to be as comprehensive as possible and it needs to be ambitious and of sufficient weight to catch attention in Washington. It will probably involve the creation of a strengthened economic perimeter around Canada and the United States, going beyond free trade to a common external tariff, and the creation of new joint institutions. I do not think this can be done on a trilateral basis at this time, but the possibility of Mexico participating at a later time should not be excluded.