

# The NATIONAL STRATEGY FORUM REVIEW

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## Securing Human Mobility at the U.S.-Canada Border

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A more strategic approach needs to be taken to the U.S.-Canada mobility security relationship. It should be seen as one element of a civil security (homeland security) alliance, parallel to the U.S.-Canada Basic Defense Agreement and North American Aerospace Defense Command (NORAD). The purpose of a civil security alliance is to preclude catastrophic harm to people on both sides of the border. As an element of a civil security alliance, a strategic mobility security partnership should be formalized that would incorporate such elements as: (1) regular joint threat and risk assessments, (2) deeper mutual assistance, (3) a transatlantic privacy and data-protection framework, (4) a one-stop border preclearance system, (5) aligned admission standards, and (6) integrated surveillance and security operations in the border zone.

Every day, approximately 300,000 people cross the U.S.-Canada border. Roughly 25 million people (75 percent of Canadians) live within 100 miles of the U.S.-Canada border. Thirty million people (95 percent of the Canadian population), live in a province that borders the United States, and 72 million people living in the United States (24 percent of the US population) live in

states that border Canada. More than 75 million border crossings take place across the U.S.-Canada border each year at 86 US ports of entry.

There is no question that this movement of people is a conduit for risks to both sides. Smuggling organizations move roughly 10,000 people into Canada annually. It has a significant immigrant population of almost 6.2 million, or 19.8 percent of the population, many from countries where terrorism is rife. Counterterrorism raids in Toronto in 2006 led to the arrest of 18 members of a terrorist cell who were allegedly plotting to blow up several landmarks and to storm Parliament to kill the prime minister. At least three al Qaeda propaganda releases since 2002 have explicitly threatened Canada and its oil industry. The Canadian Security Intelligence Service (CSIS) states that there are more representatives of international terrorist organizations operating in Canada than in any other country in the world, with the possible exception of the United States. Stating that “Canada has individuals who support the use of violence to achieve political goals,” CSIS lists terrorist activities in Canada as including: “planning or helping to plan terrorist attacks in Canada or abroad; providing a Canadian base for terrorist supporters; fundraising; lobbying through front organizations; obtaining weapons and materials; and coercing and interfering with immigrant communities.” It identifies the terrorist threat as “a real threat to the safety and security of Canadians” and as its operational priority for the foreseeable future.

A much larger number of people seeking to enter the United States from Canada than from Mexico have been prevented from doing so as a result of hits on the U.S. terrorist watchlist, leading government officials to maintain that the threat from violent extremists in Canada outweighs the threat from Mexico. Terrorists have plotted in Canada against sites in the United States and U.S. targets outside the country. In addition, several terrorists (albeit not the 9/11 terrorists, despite a popular misconception) have entered the United States from Canada. One of the two men accused of planning an attack on a Danish newspaper that published cartoons offensive to many Muslims is a Canadian citizen who lived legally in Chicago, where he operated a travel agency and other businesses.

Cross-border organized crime including from the United States into Canada—human trafficking, firearms smuggling (in 2007, the Canada Border Services Agency [CBSA] seized 662 firearms at the border), and transportation of illegal drugs and contraband—remains a significant problem. The Canadian government reports high levels of cigarette trafficking into its country from the United States. Illegal cigarette sales are funding the activities of organized criminal groups. Such illicit activities fuel violence, undermine U.S. and Canadian law, deplete federal and provincial tax revenues, and create unfair competition for legitimate Canadian businesses.

### **Today’s Canada-U.S. Alliance**

Since the 1930s, the United States and Canada have cooperated with each other to facilitate and promote cross-border movement. There are approximately 140 border-crossing points along the 5,525-mile U.S.-Canada border, including 50 or so small country roads and paths through uncleared forests and hundreds of unmanned roads and paths. In 2006, more than 30 million Americans and Canadians—a total of 70 million travelers and 35 million vehicles—crossed the border.

The Canada-U.S. Free Trade Agreement (CUSFTA) of 1989 and the subsequent North American Free Trade Agreement (NAFTA) of 1994 have expanded cross-border commerce between the United States and Canada, which is the United States' largest trading partner. As is elsewhere described, a nuclear alliance is firmly cemented in the North American Aerospace Defense Command (NORAD), a binational command formalized in the NORAD Agreement and the U.S.-Canada Basic Defense Document.

Somewhat contradictorily, although JTF-North collaborates with a variety of U.S.-Canada joint working structures, the Northern Command (NORTHCOM) established in 2002 and its Joint Task Force North (JTF-North) coordinate and manage military homeland security support to law-enforcement authorities "for the interdiction of suspected transnational threats within and along the approaches to the continental United States." Operation Winter Freeze, for example, was a three-month operation in 2005 that brought the Army and Air Guard together with JTF-North to provide support to the Border Patrol in interdicting individuals seeking to enter the United States illegally along a 295-mile segment of the U.S.-Canadian border.

Notwithstanding this unilateralist approach, elements of what could become a broader security alliance have been instituted. The Canada-U.S. Civil Assistance Plan (CAP) of 2008 between NORTHCOM and Canada Command is a framework that allows both militaries to support each other during civil support operations responding to floods, forest fires, hurricanes, earthquakes, and terrorist attacks. In December 2008, the two countries renewed the Emergency Management Cooperation Agreement of 1986, continuing mutual assistance in providing supplies, equipment, emergency personnel, and professional and expert support through integrated response and relief efforts during cross-border emergency situations.

### **The U.S.-Canada Relationship with Regard to Securing the Movement of People**

Despite our long history of cooperation and common interests, the primary instinct of the United States after 9/11 was to tighten the common border. Canada's primary instinct was to take independent steps deemed sufficiently reassuring to the United States to preserve the open cross-border flow of people and commerce. Since 9/11 the two countries have issued a string of declarations, and agencies have individually entered into various memoranda of understanding, but no full-fledged mobility security or larger homeland security agreement has emerged that compares with the existing military alliance. The latest increment of progress is a July 2009 Canada-US Action Plan for Critical Infrastructure which focuses on precluding and mitigating threats emanating from beyond national borders, especially threats to shared infrastructure. This is an important step toward a civil security alliance that more closely reflects the need for shared responsibility, institutional development, and respect for national frameworks exemplified in NORAD.

As is illustrated by NORTHCOM's Winter Freeze exercise, most major post-9/11 assessments, decisions, programs, and expenditures involving securing the cross-border movement of people have been unilateral. Canada and the United States have each taken myriad independent actions to build security measures into their immigration, border, and related intelligence and law-enforcement programs. In Canada these range from a major reform to prevent the exploitation of its birth-certificates, to the establishment of the Public Safety Canada ministry, upgrading its

border technology, and enhancing infrastructure and emergency preparedness, among many other changes. The United States made extensive changes from tightening the visa process and non-visa travel program, adding the Electronic System of Travel Authorization (ESTA), establishing the Department of Homeland Security (DHS), tripling the number of Border Patrol agents along the U.S.-Canada border, and requiring U.S. and Canadian citizens to present identification establishing citizenship status when entering the United States (the Western Hemisphere Travel Initiative (WHTI)). Canada has announced a timeline to initiate its own fingerprint program to verify the identity of visa holders at ports of entry by 2013. Millions of dollars of economic stimulus funding will be used to increase technology and improve infrastructure at ports of entry along the U.S.-Canada border.

### **The Status of a Joint Strategy to Secure the Cross-Border Flow of People**

Alongside these major, unilateral post-9/11 mobility-related security initiatives, the two countries have made numerous efforts to work together. The first of a series of joint declarations came on December 12, 2001, when the two nations signed the U.S.-Canada Smart Border Declaration, building on previous agreements such as the 1995 Shared Accord on Our Border, the 1997 Border Vision, the 1997 Cross-Border Crime Forum, and the 1999 Canada-U.S. Partnership Process. The two countries also issued a Joint Statement on Cooperation on Border Security and Regional Migration Issues in 2001. The two countries agreed to work together toward a more joint approach to border security in a December 2008 agreement, resulting in the July 2009 announcement discussed above. This was preceded in May 2009 by a Canada-U.S. Framework for the Movement of People and Goods across the border during and following an emergency. Also in 2009, Canada, New Zealand, Australia, the United Kingdom, and the United States entered into an agreement to share selected administrative information about travelers, including biometric data.

Canada and the United States initiated three important joint mobility security programs—airport preclearance, law-enforcement Integrated Border Enforcement Teams (IBETs), and the joint registered-traveler program (NEXUS, at ports of entry)—before 9/11. Under the U.S. airport preclearance program, Customs and Border Patrol (CBP) officers at select overseas airports and ports conduct checks on travel documents, customs, and agricultural inspections for individuals seeking to enter the United States. Precleared passengers arrive at a domestic terminal in the United States and exit the airport without further immigration checks. IBETs cooperatively investigate national-security risks, criminal smuggling of contraband and cash, human trafficking and smuggling, and immigration violations between ports of entry, although agents remain attached to their own organizations. The NEXUS program allows registered travelers who have been pre-vetted to use dedicated, fast-track lanes at air, land, and marine ports of entry.

In 2009, the two nations launched two binational law-enforcement programs: the Integrated Maritime Security Operation (IMSO or Operation Shiprider) and the Border Enforcement Security Team (BEST). The IMSO incorporates joint operations in the maritime environment using cross-designation of USCG and Canadian officials. Border Enforcement Security Teams (BEST) use a strike-force concept and cross-designation to provide for law-enforcement collaboration at ports of entry.

In other mobility security arenas (intelligence sharing, threat and risk assessment, refugee programs, visa-free travel policy, and identity management), the United States and Canada are moving toward fully effective collaboration, but do not yet have an organizational partnership or close policy congruity. A memorandum of understanding between the two countries to share terrorist biographic information that predated 9/11 was updated afterward. At their summit in May 2009, DHS and Public Safety Canada leaders committed to developing joint threat and risk assessments, which would provide a foundation for deeper strategic integration on security issues. The U.S.-Canada Safe Third Country Agreement of 2002 requires the two nations to cooperate in managing the flow of asylum seekers at common land-border crossings. While migrants must apply for asylum in the country in which they first arrive, Canada has a number of exemptions to which the United States does not adhere. Canada and the United States have waived visa requirements for citizens from different sets of countries, disagreeing over what countries' nationals can safely cross the perimeter of North America without a visa.

The two countries have not agreed on a standard method for establishing personal identity in crossing the border, although both to some degree have supported borderland states and provinces in developing mutually accepted Enhanced Driver's License with radio frequency identification (RFID) and citizenship information features for use at ports of entry. DHS and its Canadian counterparts terminated negotiations over the concept of shared land port of entry management in April 2007, after agreeing to provide Canada with a reciprocal preclearance area in the United States and to allow CBP officers to carry weapons at Fort Erie.

### **The Next Steps in Structuring a U.S.-Canada Mobility Security Alliance**

In sum, the United States and Canada have been able to integrate command and control of their common airspace and nuclear weapons, but have as yet been unable to integrate regulation of cross-border movement. Agreements between the two countries have lacked the substantive commitments and dedicated follow-up needed to ensure their success, and they have not been rooted in a larger vision of a civil security alliance.

The post-9/11 policy discussion about U.S.-Canada mobility security relations began with the premise – especially prevalent among the Canadian public – that the United States has a terrorism problem and Canada does not. Security measures at the border and elsewhere have been viewed as a U.S. need, and one that threatens Canada's vital economic interests. Numerous academic policy analyses have dwelt on differences in political values and preferences between the two nations, and have highlighted Canadian efforts to soften Washington's hardening of the border. Under this view, security initiatives came from Washington and mitigating initiatives came from Ottawa. Canadian officials have viewed many U.S. measures as providing more but not better security, and as impairing trade.

Several factors make the time auspicious for a wholesale reexamination of mobility security arrangements between the two countries. First, cabinet-level leaders in both countries have agreed to meet every six months, creating a high-level forum for these discussions. Second, DHS has completed work on its first Quadrennial Homeland Security Review (QHSR), which provides it with a firmer conceptual footing for international cooperation. Third, DHS is investing in border infrastructure on the northern border. It can either do so unilaterally or in

cooperation with its closest ally. Fourth, the Canadian government has emphasized the importance of intelligence-led border security policies to enhance legitimate cross-border trade. Such policies would benefit significantly from closer coordination. Fifth, recent terrorism prosecutions in Canada and its agreement to a joint risk and threat assessment with DHS may create a significantly different environment for bilateral discussions.

Innovation should occur on three levels. The first is continued incremental progress toward joint border management. The new Action Plan for Critical Infrastructure provides a foundation for future advances. The two countries should base their discussions on the explicit premise that civil security must be driven by intelligence, surveillance, interdiction, and joint solutions. There are obstacles to be overcome. For example, Canada does not have an equivalent to the U.S. Border Patrol and therefore does not have human resources *to* integrate with the Border Patrol. Most importantly, no true integration can occur without achieving a single, land preclearance structure, which is currently off the table.

An intermediate and supporting step would be to make explicit that the United States will not seek to replicate on the Canadian border its infrastructure and operations along the U.S.-Mexico border, which include hundreds of miles of physical fencing and a commitment to a virtual fence. SBInet, the massive surveillance technology system intended for the southern and northern borders, is of questionable value. SBInet is intended to fuse input from three sources of detection (radar, visual, and ground sensors), which are affixed to large towers, in an attempt to deliver a single communication to Border Patrol stations. SBInet ultimately seeks to assess and classify threats, to coordinate responses among law-enforcement personnel, and to monitor the border. DOD has been trying to build a system similar to this one for combat purposes for decades, but without success. Even if SBInet were feasible, it may not be the right approach for U.S. borders, where distinctions between types of intruders matter greatly. DHS has repeatedly delayed and modified deployment dates of SBInet technologies and DHS Secretary Janet Napolitano has suspended and directed a reassessment of the entire program. Regardless of its potential, SBInet does not make strategic sense on the northern border as a unilateral program. Canada is the closest U.S. ally, and U.S.-Canada cross-border communities are highly integrated. These circumstances call not only for a joint approach but also for less costly, more community-friendly ways of managing risk.

The third arena for innovation is strategy. Over time, a statement of a larger vision ought to be adopted. This would be based on a mutual understanding of the aims of what the United States is calling “homeland security” and what Canada has labeled “public safety.” The phrase “homeland security” suggests that the focus of protection is the U.S. or Canadian homeland territory as delimited by its borders. A new strategic vision would make clear that it is the American or Canadian people, including as they choose to cross borders, who are the focus for security. Thus, the overall context should be *civil security* or *defense of the person*, not *homeland security*. The United States and Canada should explore the goals and substance of a civil security alliance to protect U.S. and Canadian residents and citizens wherever they are. Such a homeland or civil security framework, which would knit together the patchwork of incremental agreements, would be complementary to the U.S.-Canada Basic Defense Document.

Based on a shared understanding of civil security and the strategic environment, Canada and the United States should continue to deepen the dialogue about securing the movement of people. That mobility channels can be sites and vectors of attack, exploitation, and systemic collapse makes securing human mobility one of the major operational goals of civil security, comparable to securing cyberspace, financial flows, and the energy supply. Under a basic civil security framework agreement, there could be one or more specific treaties and informal agreements relating to mobility security. Key subjects include: threat and risk assessments; mutual legal assistance and extradition; data security/privacy; preclearance; entry standards; and integrated management of border security in between ports of entry. All of these are in various stages of discussion, and all of them are the same issues that Canada and the United States must pursue with other allies who must jointly secure global channels for the movement of people.

Mobility security should be treated like other high-priority security arrangements between the United States and Canada, as a common challenge to be resolved in a manner consistent with the two nations' long-standing alliance. Viewed from the perspective of the existing NORAD and Emergency Management Agreements, the failure to share the border security burden more completely is difficult to understand.