



# **BORDER SECURITY**

**IN THE**



# **AL-QAEDA ERA**

**EDITED BY**

**JOHN A. WINTERDYK  
KELLY W. SUNDBERG**



**CRC Press**  
Taylor & Francis Group

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SECURITY  
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# Table of Contents

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Foreword	vii
Acknowledgments	ix
Editors	xi
Contributors	xiii
Introduction	xvii

## *Section I*

### NORTH AMERICA

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>Shifts in Canadian Border Security</b>       | <b>3</b>  |
|          | JOHN A. WINTERDYK and KELLY W. SUNDBERG         |           |
| <b>2</b> | <b>United States Border Security after 9/11</b> | <b>37</b> |
|          | JOSIAH HEYMAN and JASON ACKLESON                |           |

## *Section II*

### THE EUROPEAN UNION

- |          |  |            |
|----------|--|------------|
| <b>3</b> | <b>Protecting the Borders in a Global Society: An Austrian and American Perspective</b>            | <b>77</b>  |
|          | MAXIMILIAN EDELBACHER and PETER C. KRATCOSKI   |            |
| <b>4</b> | <b>National Borders, Surveillance, and Counter-Terrorism Tools in France before and after 9/11</b> | <b>121</b> |
|          | BRUNO DOMINGO  |            |
| <b>5</b> | <b>Border Security in Germany since 9/11</b>   | <b>159</b> |
|          | MICHAEL KILCHLING and AZILIS MAGUER  |            |

<b>6</b>	<b>Italy and Border Security in the Post-9/11 Era</b>	<b>199</b>
	LORENZO SEGATO and MICHELE ORIGGI	
<b>7</b>	<b>Border Security in the United Kingdom: A Contradiction in Terms?</b>	<b>241</b>
	JON MORAN	
<b><i>Section III</i></b>		
<b>THE MIDDLE EAST AND OCEANIA</b>		
<b>8</b>	<b>Australia and Border Protection: Morphing Racial Exclusion into Terror[ism]</b>	<b>275</b>
	SONIA MAGDALENA TASCÓN	
<b>9</b>	<b>Iran—Borders of an Islamic Republic in the Middle East</b>	<b>307</b>
	HUSSEIN AGHABABAEI and HASSAN REZAEI	
<b>10</b>	<b>Epilogue: The Future of Borders</b>	<b>349</b>
	MARIANNE L. WADE	
<b>Index</b>		<b>365</b>

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# Foreword

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The integrity of the borders of a nation state is key to the safety, security, and prosperity of its citizens. There are many definitions of sovereignty, but a common element is territorial integrity. In the past, the main focus of this was a nation's ability to prevent invasion by another power. Therefore, having armed forces sufficiently strong to repel the armed forces of neighboring states was the *sine qua non* of sovereignty. Over the years, however, the control and management of all people and goods crossing into one's country has become an increasingly important concern for nations. Indeed, for centuries, customs duties were a major if not the principal source of income for most states. However, with the increased mobility of people in the modern era, control and management of people flows have grown in importance.

At first, governments focused only on the public health threat posed by migrants and imposed quarantine regulations. Later, concern for the welfare of migrants led to rules for shipping companies and emigrant relief measures in many countries. As numbers of migrants surged in the nineteenth and early twentieth centuries, most nations imposed controls on who could immigrate and from where. Complex systems of visitor visas were also introduced. Domestic security was often a concern but was usually secondary to other factors, such as the domestic labor market and demographic issues.

With the advent of inexpensive and accessible air travel the ability of most anyone to travel is far greater than at any time in the past. Therefore, governments increasingly adapted their concept of border integrity to ensure that persons who could pose a threat to their society would be deterred from entering their territory. Air travel, by its very nature, is vulnerable to terrorists and, in the last half century, the world has moved from an aviation system that was essentially without security to the multiple and complex layers of security of today.

Since the events of September 11, 2001, many nations have made enormous adjustments to their border security mechanisms and have invested huge amounts of money, material, and personnel in efforts to enhance their security. Until now, however, there has been little comparative study of the ways various nations have responded to the threat of terrorism in order to ensure the integrity of their borders, and thereby enhance the safety and security of their citizens and their institutions. This book, therefore, is a timely and welcome addition to the study of border security and the reaction of nation states to the threat of modern terrorism, no matter what the source of that terrorism.



Nation states have many tools at their disposal. They can take administrative measures; they can change legislation; they can reorganize elements of their public service; they can enter into bilateral and multilateral agreements with other nations; and they can mobilize their armed forces and intelligence services. However, the fundamental tenet of terrorists is to goad states into over-reacting so as to undermine the very liberties democratic states seek to protect and, in so doing, lose the support of their citizens. Therefore, governments must weigh carefully the steps they take to protect their populations and must not limit liberties without compelling cause.

In this increasingly interconnected and interrelated world, most countries seek to have freer movement of people and goods. Yet many of the steps taken in recent years in the cause of security have hindered the free movement of people and goods. Where is the balance? This is a question most of the contributors to this book have underlined. It is a fundamental question of policy that governments the world over are trying to answer.

Even when states decide they need greater protections, the choices of how to do so are daunting. Is improved intelligence the best approach? And even if it is, can states afford not to take more “concrete” measures in order to visibly reassure a frightened populace? If a state opts for “hardened” borders, where should the investment take place? Are the United States and Canada well served by investing so much on their mutual border when those investments might be better employed to secure the North American perimeter? Conversely, are nations of the European Union (EU) that are signatories of the Schengen Agreement less safe by relying on other nations within the EU to protect a common perimeter? Finally, how can nation states work better together to neutralize a common threat?

*Border Security in the Al-Qaeda Era* seeks to pose many of these questions in the context of a wide sampling of countries. The contributors provide a significant breadth of coverage, including Canada, the United States, Europe, Oceania, and Iran. While many of the border security challenges each country faces are similar, the authors demonstrate that there are differing approaches given the history, culture, geography, and politics of the various countries profiled. I hope that this book will stimulate discussion of these important issues not only among policy makers but also within the general population, for it is only an informed citizenry that can ultimately ensure that governments take the best approach to border security in today’s world.

**Rob Vineberg**

*Senior Fellow*

*Canada West Foundation*

*(Director General, Prairies and Northern Territories Region,  
Citizenship and Immigration Canada, 1996–2008)*

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# Acknowledgments

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It has been a wonderful and enriching opportunity to co-edit this book with a former student and now colleague and friend in our department. Kelly's dedication and commitment to trying to ensure a timely completion of this book along with the many hours of finalizing the manuscript were embraced with grace and often a charming sense of humor.

I would be remiss not to acknowledge the support of my family, who constantly wonder "why bother?" They regularly scratch their collective heads in amusement and bewilderment while I labor away day-in and day-out over such projects. But they know and understand my passion for what I do, and it is their strength that enables me to pursue such interesting projects.

Kelly also acknowledges the support of his wife Caroline, who continues to support the multitude of life changes they have shared over the past year. From her husband's leaving his position as an officer with the Canada Border Services Agency to entering an academic career with Mount Royal, Caroline has been incredibly understanding and encouraging. Considering the time this co-edited book has taken, along with Kelly's trips to Monash University in Melbourne, Australia, in conjunction with hours spent working on his doctoral thesis, Kelly has continuously reflected on the support he receives from his gracious wife. Kelly also acknowledges my ongoing support in helping him develop his academic experience and abilities, support that I have enjoyed providing over the years and look forward to continuing well into the future.

And while Kelly and I developed the idea for the book, it would not have been possible to complete without the gracious support and endearing guidance of Carolyn Spence and her team at Taylor & Francis. They embraced the project in a way that inspired us to not only meet but hopefully exceed their expectations. However, nothing would have materialized had it not been for the diverse collection of notable contributors from around the world. To them we are most deeply indebted, as not only was it a challenge to meet our deadlines but almost all had to write in a language that is not their mother tongue. Our requests for clarifications at times were always responded to not only in a timely fashion but also with the understanding that we all wanted the "end result" to be of the best quality we could muster.

Nevertheless, as with any final product—be it a book, a movie, a song, or piece of art—nothing is ever perfect or truly finished. Therefore, whatever

shortcomings one might find in this book rest with the editors and not the contributors. For it is we who made the final decisions and tried to guide the contributors to preparing something that we were looking for but could not have found without their assistance and expertise.

Finally, we thank you, the reader, for reading this book and perhaps using it in some constructive capacity. We welcome any constructive feedback, which can be directed to:

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Cheers,  
**John A. Winterdyk**  
**Kelly W. Sundberg**

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# Editors

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**John A. Winterdyk, Ph.D.**, is the chair of the Mount Royal Justice Studies Department. He holds an honors B.A. in psychology from Wilfrid Laurier University and a Ph.D. in criminology from the School of Criminology at Simon Fraser University. His primary areas of interest include young offenders, criminological theory, research methodology, biosocial explanations of crime, border security, and comparative criminology/criminal justice. He has published extensively in the areas of criminological theory, youth at risk, border security, and corrections- and criminal-justice-related issues, as well as on a host of comparative themes. In addition, he is the former editor of the *International Journal of Comparative Criminology* and an adjunct professor at St. Thomas University in Fredericton, NB.

**Kelly W. Sundberg, Ph.D. candidate**, is a faculty member at Mount Royal College in the Department of Justice Studies and formerly an investigator with the Canada Border Services Agency. He holds a bachelor of arts degree in political science from the University of Victoria and a master of arts in justice and public safety leadership from Royal Roads University. He is currently pursuing a doctorate of philosophy in criminology at Monash University in Melbourne, Australia. His research focuses primarily on issues of border security within Canada, Australia, the United States, and other Commonwealth countries. His publications have addressed issues of border and national security in the post-9/11 era, and he has presented on this topic at the Academy of Criminal Justice Science.



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## Contributors

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**Jason Ackleson** is an associate professor in the Department of Government at New Mexico State University. From 2003 to 2008 he was associate dean of the New Mexico State University Honors College. A native New Mexican, he spent several years in the United Kingdom as a Truman and British Marshall Scholar. There he earned his Ph.D. in international relations at the London School of Economics and Political Science (LSE). At LSE he also served as the senior editor of *Millennium: Journal of International Studies*. Working and publishing on questions of security, borders, and globalization, Dr. Ackleson is currently researching migration and border security. Policy analysts have cited his work in testimony before the United States Congress.

**Hussein Aghababaei** received his M.A. in criminal law and criminology from Tarbiat Modarres University (Tehran, Iran) and his Ph.D. in criminal law and Islamic jurisprudence from Shahid Motahhary University (Tehran). He is currently assistant professor in the Department of Law, University of Guilan, Rasht, Iran, where he teaches Islamic criminal law, general criminal law, and comparative criminal policy. Further, he is the vice dean of Faculty of Humanities in Research Affairs, Guilan University. He was a visiting researcher at the Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany, between 2004 and 2008. Dr. Aghababaei has numerous publications on Islamic jurisprudential discourses, Iranian criminal law on security issues, and crimes against national security in Iran.

**Bruno Domingo** received his M.A. in political science from Toulouse Social Science University (Toulouse, France) and is a Ph.D. candidate in political science. He is currently a research assistant at the Centre d'Etudes et de Recherches sur la Police (Toulouse) where he also teaches international and European policing and security. In addition, he is a member of the board of the French Association of Criminology and manages the local observatory of delinquency in Toulouse. He has coordinated some research for the Institut des Hautes Etudes de la Sécurité Intérieure (French Ministry of the Interior). His main areas of research and publication are related to the transformation of customs organizations and border security.

**Maximilian Edelbacher** had a long-standing career with the Austrian Federal Police (1972–2006), where he held numerous senior ranking posts

in both an investigative and administrative capacity. In addition to his decorated law enforcement career, he has also lectured at such notable institutions as Vienna University, Kent State University, and Donau University. Over his career, Mr. Edelbacher has published 18 German books and chapters and 16 foreign books and chapters, as well as over 120 articles in various policing publications and academic journals. Since 1995, Mr. Edelbacher has also served as an expert for the Council of Europe, and most recently has been appointed expert to the Austrian Research Promotion Agency.

**Josiah Heyman** received his Ph.D. in anthropology from the City University of New York in 1988. He is professor of anthropology and the chair of sociology and anthropology at the University of Texas, El Paso. A long-time scholar of the U.S.–Mexico border, he is the author or editor of three books and more than fifty scholarly journal articles and book chapters. His current areas of interest are government regulation of mobility (especially with reference to social inequality), alternative immigration and border enforcement policies, and access and barriers to health care in border regions.

**Michael Kilchling** completed his university studies in law and criminology. In 1995, he received his degree of *doctor juris* at the University of Freiburg. His doctoral thesis on interests of the victim and public prosecution was undertaken with the financial support of a scholarship granted by the Max Planck Society. At present he is working as senior research scientist in the Department of Criminology at the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany. His main research interests include organized crime, money laundering and the financing of terrorism, confiscation and asset recovery, penal sanctions and sanctioning systems, victim/offender mediation and other forms of restorative justice, victimology, and juvenile justice.

**Peter C. Kratcoski** is a former United States Marine and noted academic, having published numerous works within the criminal justice field. He holds his undergraduate degree from King's College, his master's from the University of Notre Dame, and a Ph.D. from the University of Pennsylvania. Dr. Kratcoski has officially retired at the rank of professor emeritus, yet continues to teach at Kent State's Stark Campus and is the North American editor of *Police Practice and Research: An International Journal*.

**Azilis Maguer** was born in 1973. She earned her Ph.D. in political science (University of Paris X, Max Planck Institute in Freiburg). Her areas of specialization include policing and cross-border police cooperation issues in Europe, especially in Germany and France. She has published a number of articles and

a monograph on these subjects. She is currently in charge of coordinating the European Pole of Public Administration (PEAP, Strasbourg, France).

**Jon Moran** is a member of the research staff in the School of Legal Studies at the University of Wolverhampton (England). He has researched public sector corruption including police corruption in the United Kingdom, Hong Kong, Eastern Europe, and Southern Africa. He is well published in the areas of police reform, organized crime, and the demobilization of paramilitary groups and counter-terrorist policing, with his most recent work being *Policing the Peace in Northern Ireland: Politics, Crime and Security after the Belfast Agreement* (Manchester: Manchester University Press, 2008). Currently he is editing *In the Shadow of 9/11: Intelligence and Security in the UK's War on Terror* (Basingstoke: Palgrave, 2008) with Mark Phythian, which deals with the use and effectiveness of counter-terrorist intelligence, counter-terrorist finance, public order, and the effects of the war on terror on civil liberties.

**Michele Origgi** graduated from the Università Cattolica del Sacro Cuore of Milan in 2007 with a degree in applied social sciences (crime and security). Upon completion of his studies, he began work as a curricular intern at the Prefecture of Milan, where his main duties included the collection and analysis of statistics in order to create crime maps using GIS programs. His current research activities involve ongoing collaboration with the U.O. Polizia Locale e Sicurezza Urbana of Lombardy and work with the Centro Ricerche e Studi su Sicurezza e Criminalità (RiSSC).

**Hassan Rezaei** received a Ph.D. in criminal law and criminology from Tarbiat Modarres University (Tehran) in 2002. From 2003 to the end of 2007 he was a research fellow at the Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany. During this period he led the Iranian-German Criminal Law and Criminology Dialogue. In 2004 and 2005 he was a post-doctoral fellow of the U.S. Library of Congress in Islamic Studies. In 2008, as provincial justice coordinator he joined the Rule of Law Program of the UNDP in Afghanistan. His main area of research interest and professional activities has focused on the topics of comparative criminal justice and violent conflict in Middle Eastern societies. Dr. Rezaei has published on the different aspects of post-revolutionary Iranian criminal law and Islamization of criminal justice in the modern world.

**Lorenzo Segato** is director of the Research Center on Security and Crime (RiSSC). His research addresses public and private corruption in Italy, bank security, urban security, situational crime prevention, and evaluation of public policies related to public safety and security. He is currently involved



in international research projects on the evaluation of the security of public spaces and on violent radicalization, with a specific focus on Muslims' radicalization in prison. The outcomes of such projects will contribute to the understanding of the origins and risks of terrorism in European cities.

**Sonia Magdalena Tascón** has been writing about the border for a considerable time, being largely concerned with the migration border and how this both expresses and defines subjectivities and inter-subjectivities in modern times. Sonia currently writes on, teaches, and is heavily influenced by critical cultural/communication theories and the theory and practice of human rights, and how these two may be merged. She is currently teaching and conducting research in the Centre for Human Rights Education, School of Media, Culture, and Creative Arts, at Curtin University in Perth, West Australia.

**Marianne L. Wade, LLB**, is a senior researcher at the Max Planck Institute for Foreign and International Criminal Law. She works in the European Criminal Law Section. Her work focuses on the structural development of a European criminal justice system and on the potential of a European public prosecutor and the supra-national law as a whole. She previously completed a comparative study on the role of prosecution services along with projects concerning terrorism and surveillance.

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# Introduction

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In 1971, the former Beatles singer John Lennon wrote the song “Imagine,” in which the lyrics read

Imagine there’s no countries  
It isn’t hard to do  
Nothing to kill or die for  
And no religion too

While perhaps appearing somewhat idealistic at the time, today’s European Union and its 27 members\* provide an example where borders no longer have formal barriers. People can move back and forth between member countries with minimal delay or passport controls. The 1985 Schengen Agreement† (and subsequent conventions) opened the doors for the free movement of persons throughout member states.‡ The agreement came into effect in 1995 and included eleven main measures. Specific to the theme of this book, the key measures include

- Separation in air terminals and ports for those people traveling from within the Schengen member states from those arriving from countries outside the area
- Harmonization of the rules regarding conditions of entry and visas for short stays
- Coordination between administrations on surveillance of borders
- The definition of the role of carriers in the fight against illegal immigration

\* There are three additional candidate countries applying for admission into the European Union. They are Croatia, Turkey, and the former Yugoslav Republic of Macedonia.

† Schengen is a small town in Luxembourg.

‡ The first agreement signed on June 14, 1985, involved only five countries: France, Belgium, the Netherlands, Luxembourg, and Germany. Italy joined in 1990, followed by Spain and Portugal in 1991, Greece in 1992, and Austria in 1997. The initial agreement was not part of the European Agreement. This action took place in 1997 at the EU summit in Amsterdam, which then placed the Schengen Agreement under the umbrella of the Union.

- The introduction of cross-border rights of surveillance and “hot pursuit”<sup>\*</sup> for police forces under the Schengen States
- The strengthening of legal cooperation through a faster extradition implementation of criminal judgments
- The creation of the Schengen Information System (SIS) (The Schengen acquis 2007)

Despite the removal of borders between European states, the intrinsic identity of each country has remained relatively intact as has their respective cultural, social, and political identities. And while most Europeans may appreciate their freedoms, in the aftermath of the events that transpired in the United States on September 11, 2001, (more commonly referred to as simply 9/11) there are heightened levels of fear and concerns about national and public safety. In countries such as France and Spain, which experienced the largest number of terrorist incidents in 2006 (294 and 145, respectively), there is a heightened level of sensitivity (Europol 2007).<sup>†</sup> Similarly, the August 10, 2006, airport bomb plot in Heathrow, London; the Danish “Homegrown” Vollsmose group in September of 2006; the German trolley bomb case in July of 2006; and more recently the June 2007 attack at the Glasgow Airport in Scotland have raised the level of vigilance in and throughout Europe. Agencies such as Europol, Eurojust, and Interpol have increasingly become more actively involved in counter-terrorism initiatives (Europol 2007). Similarly, as pointed out in the edited collection by Duyne et al. (2000), cross-border crime has also become a greater problem, hence further compromising public safety of citizens as well as fuelling hate/bias-related crimes.

When States respond to real or perceived threats to national security, it is important to recognize the legal measures they take (such as border security measures). For example, how a State chooses to respond not only plays a key role nationally but also tends to have international economic, political, social, and humanitarian implications (see Council of Europe 2000). Ultimately, when threatened, a State must react in some capacity and it must demonstrate to its citizens that their safety and that of their nation is being

<sup>\*</sup> Prior to the agreement, police could not follow a criminal across jurisdictional lines. However, under the agreement (Article 41) police from one nation can cross national borders to chase their target for up to 30 kilometers. Either the officers are required to wear their uniforms, or their vehicles must be marked as police vehicles. Officers may use their weapons only for self-defense. The new provision was a result of the Prüm Treaty in 2005 (see Chapter 5 for more detail), which expanded the cross-border cooperation, particularly with regard to terrorism. “Foreign” officers can detain but not arrest. Great Britain does not participate in the “hot pursuit” provision.

<sup>†</sup> It is noted that the majority of the incidents in both France and Spain involved separatists’ acts.

addressed—“Justice must be seen to be done.”\* However, in the process of responding, States must be mindful to balance fairness with justice, while remaining sensitive to constant and dynamic changes within society.

While we may not have yet seen the final impact of the 2001 events on the globalization process and security and justice within and between countries, most countries introduced new measures shortly after 9/11, and as will be evidenced throughout this book there have been varying degrees of impact on the freedom and movement of people (see, for example, the Security Council Resolution 1373 [SC Rec. 1373 2001]). The Security Council Resolution identified several key protocols that all those who ratified the resolution should incorporate into their border security measures. In essence, the Security Council decided that all States shall (*inter alia*): deny safe haven to those who in any way might support terrorist acts or provide safe havens; restrict those who in any way might exploit their respective territories for those purposes against other States or their citizens; and prevent the movement of terrorists by effective border controls through monitoring identification documents, etc. (Krieken 2002).

Man is born free, and everywhere he is in chains. One man thinks himself the master of others, but remains more of a slave than they are.

**Jean Jacques Rousseau**  
(1762 from the *Social Contract*)

Europe is not the only part of the world that has stepped up border security and the monitoring of people’s movements. The impact of 9/11 and strong reaction by the United States have also prompted virtually every nation throughout the world to re-evaluate their policies regarding national and border security. However, this has been most clearly evidenced in the United States with its implementation of the USA PATRIOT Act in 2001—which stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.”† Under this Act, law enforcement agencies at all jurisdictional levels are afforded sweeping powers to protect the United States homeland, maintain national security, and conduct anti-terrorist initiatives (see Chapter 2 for further discussion).

\* Lord Chief Justice Hewart, from England, is generally credited with using this aphorism during a 1924 ruling in the *Rex v. Sussex Justices, Ex parte McCarthy* case (Seen to be done 1999).

† The Act was passed in just over one month after the attack and was only supposed to be in effect until 2005. In July 2005, the Act was essentially left unchanged and signed into law in March 2006.

In addition, President George W. Bush<sup>\*</sup> used the phrase “war on terrorism” to heighten both public fear and gain domestic and international support for American anti-terrorist measures that would restrict or rescind some of the basic freedoms Americans enjoyed in their country.<sup>†</sup> Referring to the ongoing terrorist activities between India and Bangladesh, Sen (2005) suggests that such a strategy is essential to not only sensitize the public, but also to gain their support for government actions. Again, as noted in *Crime and Criminal Justice in Europe* (Council of Europe 2000, 11), “Elections can be won or lost on people’s perceptions of their (government’s) ability to handle crime.” However, when the public does not fully understand the meaning and purpose behind a terrorist act, their support of government initiatives may be ill founded (Mueller 2006). For example, terrorist acts against governments can be divided into four main types: religious ideological terrorism, secular ideological terrorism, ethnic nationalistic terrorism, and left-wing or right-wing single-issue terrorism (Europol 2007). However, concerns about maintaining border security (that is, the entry of potential terrorists) is currently focused mainly on Islamic terrorist activities, which pale in numbers in comparison to the threats, potential threats, and incidents by the other types of terrorism—at least within Europe (see, for example, Europol 2007).<sup>‡</sup> Therefore, an issue that can be raised is to what extent do the measures taken to protect one’s borders from Islamic terrorism erode the civil and human rights of the citizens of the State? This is one of the themes that will be explored by the contributors.

While few people initially appeared to question the sweeping range of unfettered powers given to State authorities to protect the United States, within a short period of time claims and accusations were made about the PATRIOT Act breaching various civil and human rights of people. A 2003 CNN news report indicated that “the internal watchdog of the Justice Department has found 34 new credible civil rights and civil liberties violations” (Bohn 2003). (Further discussions about the security measures in the United States in the aftermath of 9/11 are presented in Chapter 2.) Although this Act attempted (we can assume) to strike a balance between respecting people’s liberty with maintaining heightened vigilance, it also tried to ensure their safety.

<sup>\*</sup> While Bush is credited with using the phrase, it should be acknowledged that the whole Administration and mass media helped support and fuel the tenure of Bush’s choice of describing the 9/11 incident.

<sup>†</sup> It has also been suggested that using the word “war” also served to escalate the conflict between the United States and the Islamic world to a more dramatic level than “perhaps” intended.

<sup>‡</sup> It should be noted, however, that according to White (2006), among others, that, globally, 1970s religious terrorist attacks have increased in frequency, superseding secular, ethnic national, and religious motivated terrorism.

The issue of balancing liberty and safety within a nation is reflected in many of the earlier writings about the role of law, social responsibility, and equality. Question 90 of Thomas of Aquinas's (1225–1274) *Summa Theologica* states: "Law is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated" (Wade 2007, 4). The French scholar Jean-Jacques Rousseau (1712–1778) in a non-secular context used the term *social contract* to describe his premise for ensuring political order. He argued that by surrendering one's claims to natural or individual rights for the common good of all, a society functions best. Hence law is an instrument to help guide its citizens. Another related expression of law representing an instrument and extension of the people comes from the work of the English jurist and social reformer Jeremy Bentham (1748–1832) who, borrowing from various ancient Greek philosophers, felt that people's actions are dictated by two constructs: pain and pleasure. Since we value pleasure over pain (hedonism),\* governance should try to optimize the safety and well-being of its citizens. This notion was referred to as "utilitarianism" by the English scholar John Stuart Mill (1806–1873). Within such a framework, the global reactions to 9/11, which include numerous nations implementing restrictive laws that stifle individual freedoms and liberties, may not be deemed fully justified. The reality of the post-9/11 threat is one where the threat is ambiguous, the terrorists are for the most part anonymous, and the targets are speculative; one must question how warranted it is to diminish long-established civil liberties of a domestic population in the name of "national security." These and related issues are explored by the contributors in reference to their country, and we will revisit these issues in the Epilogue once the reader has had the opportunity to read and reflect on the comments put forth by the authors.

Canada represents another country that took dramatic measures to protect its citizens from possible terrorist threats or attacks (see Chapter 1 for further discussion). Canada's approach has been one of placing an increasing emphasis on *interdiction*. The government of Canada introduced a number of measures to prevent and intercept "irregular migrants" from entering or remaining within its borders (Aiken 2006). Specifically, on November 20, 2001, the royal assent of Bill C-36, the Anti-Terrorism Act, created measures to deter, disable, identify, prosecute, convict, and punish terrorist groups. The Act also includes new investigative tools for law enforcement and national security agencies. Furthermore, in keeping with the Canadian Constitution, the Act includes safeguards to ensure that the fundamental rights and freedoms of Canadians are upheld (Royal Assent 2001). Embedded in the safeguard section of the legislation is a sunset clause that dictates all powers to dissolve unless a resolution is passed by both the House of Commons and the Senate to extend

\* Derived from Greek implying that pleasures are the greatest pursuit of humankind.

either or both of these powers for up to five more years.\* The latter point was met with vociferous resistance by some politicians and academics, as the legislation's broad definition of terrorism (see below), it was thought, may lead to unfair arrests and racial profiling.†

For over a century, Canadians were able to enter the United States‡ by simply presenting government-issued photo identification. Today, in the era of al-Qaeda, the American Department of Homeland Security has slowly been implementing its Western Hemisphere Travel Initiative, which, once fully implemented on January 1, 2008, will require all visitors to the United States (including Canadians) to have a valid passport for entry. Contrast this with the border between India and Bangladesh, whose 4,096-kilometer border neither follows any geographical alignment nor contains any clear demarcation. Yet the idea of a border has resulted in numerous clashes between the two sides and even the massacre of 16 border security force personnel at Boraidari (Sen 2005). Therefore, while appearing to represent an extreme contrast, this example does serve to suggest that some form of structured demarcation may be of value between nations. For example, while the Mexico–United States border is heavily patrolled and includes sophisticated surveillance equipment, the border is still very porous, as numerous illegal Mexican and other Latin Americans (and potential terrorists) cross the border every day. The question, however, is in what form and how formal/restrictive such boundaries should be expressed. The contributors will address this issue as well.

To win the war on terror, we must know who our friends are and where our enemies are hiding. We can't continue fighting terrorism using the same foreign policy blueprints that were in place before September 11th.

**Evan Bayh**

*U.S. Senator (Indiana)*

*Speaking in regard to 9/11*

\* In Canada, all legislation enacted under Section Thirty-three of the Canadian Charter of Rights and Freedoms (the notwithstanding clause) has an implied sunset clause of five years.

† At the time of preparing the Introduction there was a tragic incident at the Vancouver International Airport in Vancouver, Canada, in which a distraught 40-year-old Polish immigrant, Robert Dziekanski, unable to speak any English and acting somewhat erratic, was tasered by the RCMP with minimal questioning and died. At the time of preparing this section, it was not clear whether the incident had anything to do with racial profiling or was an unfortunate extension of new border/security measures introduced since 9/11, but it is a tragic example of problems with border security—at least in Canada. For further details on the incident see <http://www.cbc.ca/canada/british-columbia/story/2007/11/14/bc-taservideo.html> (retrieved Nov. 19/07).

‡ The two countries share the longest uninterrupted border in the world, and it is often referred to as the longest undefended border in the world—almost 9,000 km long.

## What Is Terrorism and How Do We Explain It?

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We should perhaps begin by asking, why is it important to define “terrorism”? Terrorist acts in the form of hijackings, kidnappings, and assassinations have regularly captured media headlines since the early 1970s. Left-wing secular terrorist action has been undertaken by such groups as the Weathermen in the United States, the Red Army Faction in Germany, and the Red Brigades in Italy. Ethnic national terrorist actions were also prominent around the same time, being perpetrated in Canada by the FLQ in Quebec, in the Northern Basque region of Spain by the ETA, and perhaps most notably in Ireland by the IRA. Exploring the very question is essential, considering we live in a society that tends to respond to events (such as terrorism) and various behaviors (such as child abuse) in an increasingly polarized manner (Law Commission 2004). Yet the range of options available for dealing with criminal events or behavior is ever expanding (community-based programs, restorative justice, diversion initiatives, and a host of sentencing options, etc.) as are the types of modern terrorism.

White (2006) discusses four main methods of modern terrorism. They include cyber-terrorism, suicide terrorism, and weapons of mass destruction: biological agents, and chemical and radiological agents. This book focuses on the overarching effect of terrorism (in particular Islamic terrorism). Specifically, the contributor(s) of each essay examines how 9/11 has impacted his or her country’s criminal justice responses and how the event impacted the public’s response, and explores inter- and intra-border-related issues and how these issues relate to the broader economic, humanitarian, and social elements presented in the Introduction.

David Garland (2001) has noted that there appear to be two trends when it comes to criminal justice and the meaning of crime (or in our case, terrorism). The State, Garland suggests, is concerned with the *punishment of criminals* (terrorists), while the other trend involves the *control of crime* (terrorism). Given the nature, complexity, and scope of terrorism, Garland suggests that efforts to control terrorism are beyond the State’s scope of ability (also see Hamm 2007; O’Malley 2000). If the latter can be described as having an element of truism, then based on what much of the current literature reports, trying to control terrorism by rooting it out and applying harsh criminal sanctions will simply not work. What is called for by scholars such as Garland (2001) and Reiman (1995) is a critical examination of how laws and governance are used to define a construct such as terrorism and to explore the meaning behind the term.\* Pillar (2001, 73)

\* Hamm (2007) also presents a strong case for looking at terrorism simply as a crime rather than some unique phenomenon, and encourages us to apply sound criminological theory and tools of inquiry to study the crime.



meanwhile describes four main models of counter-terrorism: criminal justice system, military force, diplomacy, and interdiction of financial assets. He also suggests the “possible use of the intelligence apparatus for covert actions.”

Regardless of whether we view terrorism as an “overblown,” value-laden term or a necessary construct to delineate a truly heinous crime, we must acknowledge that laws and sanctions alone cannot provide and never have provided a solution to what is a complex concept. Rather, laws merely provide a definition of the harm, and justify reaction. However, we must also bear in mind, as Chaliand (1982, 30) pointed out, “What was once only a last resort is now systematically adopted as a means of expression.” That is to say, where once terrorism had limited political connotations, drew limited media attention, and was largely seen as a weapon of the weak who sought to draw attention to their cause or issue, today acts of terrorism have become somewhat institutionalized as a means of spreading propaganda as they capitalize on the attitude in the Western media and are no longer seen as a mere weapon of the weak (see Sederberg 1989). To this end, this collection of essays attempts to examine these issues in relation to the transformation of border security in the al-Qaeda era.\*

It is perhaps ironic in these times when the word *terrorism* has a tendency to conjure up fear and pejorative imagery of what terrorism can entail. Yet the word *terrorism* first gained prominence during the French Revolution (1793–1794). The *regime de terreur* was viewed as a positive political system that used fear and violence as a way to remind people about the virtues of life (Hoffman 2006).† For example, if it were not for the efforts of certain individuals or groups, many countries would not have their independence today—including the United States (Hoffman 2006).‡ However, the events of 9/11 have changed how many view what terrorism means and represents. As White (2006, 2) notes in his book on terrorism, “Before that date [September 11, 2001], few Americans paid much attention to terrorism.” Yet throughout

\* The fact that we use the phrase “al-Qaeda era” in itself implies a certain level of significance to the events of 9/11. It implies that the attack of 9/11 marked a major turning point in border security issues on an international scale. This is in sharp contrast to how States, politicians, and the public in general used to view terrorist events (see Chaliand 1982).

† The French reign of terror was led by Maximilian Robespierre (1758–1794) who, depending on which historical accounts one reads, played a significant role in igniting the French Revolution. His contemporary American counterpart in the early 1950s was the late Senator Joseph McCarthy, who had an alleged secret list of “traitors” who resided in the United States. McCarthy, like Robespierre, managed to convince most of his nation’s citizens that they deserved support (Fromkin 1977).

‡ The American Revolution started out as a terrorist act against England, and the dumping of tea in Boston Harbor (the “Boston Tea Party”) was considered a terrorist act (Hoffman 2006).

the ages violent actions have been described by a number of different descriptors, such as war, liberation, terrorism, or simply crime (see Chaliand 1982). Hence, simply trying to define the concept is a challenge and subject to change both in time and place.

The only thing academic scholars do appear to agree on is that terrorism is a problem—but, as implied above, for whom? Mueller (2006, 1), for example, argues that the problem is in fact “overblown.” In his introduction he refers to an interview on one of the *60 Minutes* TV episodes in which filmmaker Michael Moore remarked: “The chances of any of us dying in a terrorist incident is very, very, very, small.” But the response by Bob Simon was perhaps even more poignant when he observed: “But no one sees the world like that” (Mueller 2006). And in a slightly less abrasive manner, Lebovic (2007, 181) would appear to echo Mueller’s assertion by stating: “Security challenges must be kept in perspective and policies must be adopted that are commensurate with the threat.” However, what may be key and what will be explored by some of the contributors is this: should the focus be on the vague phenomenon referred to as “terrorism” or should border security personnel focus on “the criminal” type as is suggested by Hamm (2007), among others?

Although the notion of terrorism may be more familiar to people now than it once was, Lineberry (1977, 5) points out that according to some scholars on the subject, even the 1970s were described as “the age of terror.”<sup>1</sup> It is the ability of terrorists to provoke a dramatic response from the public and state authorities that gives those responsible for the action the advantage (Fromkin 1977). Or, as stated recently by Gunther Schlee (How enemies are made 2007, 40), “Just shooting into a crowd can be enough to prompt extreme reactions.”

The media would also appear to fuel public fear through honoring the dictum, “If it bleeds, it leads,” as they accord a disproportionate amount of attention to spectacular acts of violence. Mark Hamm (2007, 1) opens the introduction to his book on terrorism by simply stating: “We are hammered by a televised rain of suicide bombings, mass murders, and assassinations . . . This represents a seismic shift in the nature of terrorism, a shift from the symbolic to the concrete.” But over two decades earlier, Chaliand (1982), among many others, already noted that without mass media, the effectiveness of terrorism is virtually negligible. For example, while in the past the United States dominated mass media broadcasts concerning terrorist acts, the emergence of the Arab television network *al Jazeera* in the 1990s provided a whole new

<sup>1</sup> Several of the key events during the late 1960s and early 1970s that drew attention to “terrorism” included the FLA crises in 1969; Swissair Flight 330 crash in 1970 resulting in the death of 38 people; the various activities of the Black Liberation Army in the United States; and Bloody Monday in London, England (see [http://en.wikipedia.org/wiki/List\\_of\\_terrorist\\_incidents](http://en.wikipedia.org/wiki/List_of_terrorist_incidents)).

platform for terrorists to reach not only a wider audience but also in new ways (White 2006). Where once the United States could control the images that were broadcast (beheading of captors by extremist groups, for example), it no longer has total control. Furthermore, the multitude of means by which to post information on the Internet further helps to support Chaliand's (1982, 30) earlier assertion that use of the media has been "systematically adopted as a means of expression."

As various experts on the subject have noted, the strategy of terrorism lies not in its numbers or strength but its ability to achieve its *goal* through the response(s) to its act(s) (e.g., Garfinkle 2004; White 2006). While in the past their goals might have achieved short-term success they rarely were able to win mass support for their cause or plight (Chaliand 1982). Today, however, as in the case of al-Qaeda, they have demonstrated long-term success because of the policies and debates that are still occurring today concerning security and freedom. Hence, the effect lies not in the violence but the psychological impact that it creates. Herein lies the crux of the problem and the dilemma for targeted nations—such as most of those represented in this text. As the response to the act draws mass media attention, the State is more or less compelled to respond—"justice must be seen to be done"—even if reasons for reacting might be different than anticipated. In trying to do something such as altering levels of national security, including border security, the very initiative can create a backlash against itself. As James Lebovic (2007, 177) recently noted: "The challenge for . . . policymakers is in recognizing the strengths and the limits of offenses and defenses, and, thus, how each might reinforce or undermine deterrence relationships between [country] and its adversaries."\* The paradox is that the terrorists are accomplishing what they set out to do!†

Therefore, the meaning of terrorism also lies in the ability to understand the *purpose* of the act in the first place. Schlee, among others, suggests that what often appears on the surface to be conflicts based on ethnic differences are actually conflicts based on resources or value systems (How enemies are made 2007). The contributors will describe and examine the meaning and implications of the definition in relation to border security measures taken.

\* Lebovic was referring to the United States but the editors simply substituted "[country]" as the observation applies to all countries that have/have not introduced anti-terrorist precautions.

† For example, part of the American reaction to the 9/11 attack was to arrest hundreds of people of Middle Eastern appearance or origin and place them in what is euphemistically called Guantánamo Bay Detention Camp. At its peak there were in excess of 700 suspected detainees being held. Starting in 2002, the terrorists essentially accomplished part of their objective when the *Washington Post* began to question the justification of the American actions (Vogel 2002).

So far, we have attempted to provide some discussion around the possible meaning of terrorism and how it might be or has been operationalized. We have not yet offered a definition of “terrorism.” As reflected above, this is in part due to the relative lack of consensus on what it means. For example, Schmid (1983) identified over a hundred different definitions. To compound the matter, Schmid also observed that among the definitions there were often incompatible elements emphasized. This is partly due to the fact that terrorism is a *concept* and not a physical object. Hence, all the contributors will offer their State’s definitions within their respective chapters, and we will examine these within the Epilogue of this book. In the meantime, we will draw from one of the more popular textbooks on terrorism, by Johnathan White (2006), and draw on his approach by referring to two established pieces of work that attempt to define the concept.<sup>7</sup>

White refers to the work of Brian Jenkins, who identifies six elements that define terrorism. They include

- Terrorism is violence or the threat of violence.
- It may be a crime, but criminals are not terrorists.
- The victims are of secondary importance.
- Terrorism is designed to create drama.
- The drama is for a target audience.
- These factors separate terrorism from other forms of conflict (White 2006).

The other author White refers to is former CIA executive Paul Pillar, who includes four elements in his definition of terrorism. They are

- It is planned in advance rather than being an impulsive act of rage.
- It is a political activity.
- It is aimed at civilians.
- It is carried out by sub-national groups.

Both Pillar’s and Jenkins’s definitions are “professional”/expert definitions. However, there are also official definitions offered by each State, the United Nations, etc. For example, the Canadian Criminal Code defines “terrorist activity” as an action that takes place either within or outside of Canada that is

- An offense under one of the UN anti-terrorism conventions and protocols.

<sup>7</sup> It should be noted, however, that White (2006, 4–7) also explores the challenges confronting our efforts to define terrorism.

- Taken for political, religious or ideological purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming, or endangering a person, causing substantial property damage that is likely to seriously harm people, or by seriously interfering with or disrupting an essential service, facility, or system.

Having attempted to provide a critical framework upon which to understand what terrorism is (or is not) it has been demonstrated to be something of an “empty concept” (Sederberg 1989, 25) requiring clearer operationalization before states can individually and collectively combat the phenomenon. This general theme will be explored by the contributors as well.

Before moving on, however, brief attention will be given to some of the explanations of terrorism. While it is not a primary focus of the theme of the text, explanations have a tangential (both direct and indirect) relationship to how states view and respond to terrorism and suspected terrorists. White (2006, 10) begins his section on how terrorist groups justify their behavior by observing, “Killing and maiming people for a belief is not an easy task, even when people are deeply committed to that belief.” Citing various sources, the explanations presented include

- Terrorists are social outcasts who see the risk of retaliation for their acts as being minimal. Terrorists are social misfits who seek out other misfits and gain support through association (White, 11, citing the work of Jerrold Post).
- Prospective terrorists: 1) must identify an enemy and create an atmosphere ... of “us-against-them,” 2) must have “a story” that inspires membership, and 3) as a group, need their own language and symbolic words to demonize the enemy (White, 11, citing the work of Jessica Stern).
- Groups look for conspiracies and then blame a particular group for the conspiracy. Then they demonize the enemy as representing the cause for social injustice.

We will now take a look at the extent of the problem (White, 11, citing the work of Chip Berlet and Matthew Lyons). White concludes his review by noting that according to various researchers, terrorist profiling is not possible as there is no one personality type. However, he summarizes the ideas of Jeffery Ross (1999), who suggests that we should not assume there is one type of terrorist; rather, terrorists and terrorism can best be understood by combining social structure and group psychology. As the social environment creates social stresses, certain individuals or groups will rebel.

All these explanations provide broad interpretations of how someone might join or form a terrorist group, but they offer no insight into how they can engage in “killing and maiming people.” Furthermore, we gain no insight into how the individual members get to the point where they might seek out involvement in a terrorist group. For example, there are many people in society who are considered social outcasts and social misfits but who do not become terrorists. The theories covered are not able to account for such differences.

In his recent book on terrorism, Mark Hamm (2007) uses two leading criminological approaches to explain why terrorists engage in the crimes they do. He relies on the routine activity perspective (RAT) of Cohen and Felson (1979) and the social learning theory that was formalized by Akers and Burgess (1966).

Citing a more recent discussion by Felson, Hamm (2007, 4) points out that the RAT approach “shows how crime feeds off the larger system of daily activities ... It focuses on crime events and situations, that is, specific acts rather than general offender propensities.” In other words, the RAT provides a framework for understanding how offenders create opportunities for crime to occur. However, in referring to the work of Edwin Sutherland (a founding father of criminology in North America), Hamm points out that opportunity alone is insufficient for a crime to take place. The opportunity requires a social context or, more specifically, a social learning context. Therefore, in accordance with the social learning theory, the criminal activity involves “techniques of committing the crime—such skills are acquired through “deliberate tutelage, training, and socialization” of offenders (4). Hamm uses six in-depth, carefully selected (that is, purposive sampling) case studies to illustrate the value of viewing terrorism as a crime from a criminological perspective. Key for policy makers is that Hamm’s approach attempts to illustrate that “understanding the origin and meaning of the crime inside terrorist groups” (20) is far more effective in combating terrorism than relying on tougher borders, increased airline security, etc. While the latter measures have produced positive results, they do not address the underlying opportunity of a social learning context under which terrorist crimes emerge.

Again, the contributors have been asked to comment on how their country tends to view the causes of terrorism and how it has impacted their border security responses.

### **How Extensive Is Terrorism?**

“Theater of fear,” a “weapon of the weak,” and “propaganda of the dead”—phrases used to describe the nature of terrorism.

We have to protect ourselves and I'm sure we will. It cannot be dealt with by one retaliatory blow, it requires a systematic attack against terrorism.

**Henry Kissinger**

*Former Secretary of State  
Speaking of the events of 9/11*

While there are no reliable statistics on the absolute number of terrorist acts because of recording, reporting, and definitional issues (Europol 2007), the absolute number of terrorist acts pales by comparison to any of the conventional crimes (such as property and violent crime). Yet the subject of terrorism and related themes, especially in the aftermath of 9/11, has given birth to numerous reports, articles, and general and specific books on the subject—this one included. However, what is noticeably absent in the research and written material is how countries have reacted, especially with regard to broader security matters. For example, a search through one of the world's most comprehensive libraries for criminal justice and criminological literature revealed only two related books.\* And while it is likely there are a few other related academic-based texts on the subject, compared to the general theme of terrorism little appears to have been written to date. This book attempts not only to fill some of this void but also to place the subject into the international and comparative arena. Yet, while academia may be slow to examine border security issues, the theme is one of the most popular reality shows on television in Australia, called *Border Security—Australia's Frontline!*†

Many colleges and universities now offer one or more courses addressing terrorism. There is no shortage of fascination with the phenomenon, whose physical toll dwarfs its emotional impact. And if the observation by the noted psychologist Sigmund Freud (1861–1939) bears any truth, then terrorism will always be a part of our world. Freud argued that “civilization, with its institutional restraints and the repression of human nature, guarantees discontent” (cited in Alexander and Finger 1977, 5).

Mueller (2006, 2) points out that “international terrorism generally kills a few hundred people a year worldwide ... usually the number who drown yearly in bathtubs in the United States.” He goes on to cite the work of an astronomer who calculated the risk of someone being killed by a terrorist anywhere in the world to be about 1 in 80,000, or about the same chance

\* Sankar Sen (2005): *Law Enforcement and Cross Border Terrorism*. This book looks at the conflicts between India and its bordering countries. And P.J. van Krieken (2002): *Terrorism and the International Legal Order: With Special Reference to the UN, the EU and Cross-Border Aspects*. This book provides a comprehensive examination and overview of “various efforts made on the legal front towards an international legal order” in the aftermath of 9/11.

† For a general description and overview see <http://au.blogs.yahoo.com/border-security/> (retrieved Nov. 20/07).



as being hit by an ill-directed asteroid or comet! Yet various media outlets that have polled people's perceived risk of being a target have shown there has tended to be an increase in this perception since 9/11 (Mueller 2006). But since 9/11 there has not been one successful attack on American soil, although based on media reports and official news releases there have been a number of thwarted suspicious incidents and apprehension of suspected terrorist sympathizers. For example, the FBI website reports that between 1986 and 2000 there were 335 incidents and suspected incidents involving terrorism, of which 88 were international in nature (FBI 2007).<sup>\*</sup> And while there are various informal sources that offer statistics, it would appear, at some level, that the transformation of border securities has had a positive effect on protecting its citizens.

While the measures taken by the Americans may have thwarted terrorist incidents, the same cannot be said about other parts of the world. Therefore, another theme that can be explored in this text is whether there may be a "best practice," or at least one upon which other countries could consider modeling their border security measures after.

In 2007, Europol produced its fifth edition of the European Union Terrorism Situation and Trend Report. While the report provides a detailed breakdown of five different types of recorded terrorism (Islamic, separatist, left-wing, right-wing, and "other/not specified") among the eleven member States for 2006, the report fails to show the trends since 2001. Nevertheless, there were 498 terrorist attacks in 2006 among the eleven reporting member States.<sup>†</sup> The vast majority (424) were domestic-based acts involving "separatist terrorist groups" motivated by nationalism, ethnicity, or religion. With the exception of five of the incidents, France and Spain were the sole targets (Europol 2007). This EU report indicates that in 2006 there were 706 arrested terrorists, of whom 257 were Islamic-related terrorists, 226 were separatists, and the remaining divided between the left- and right-wing terrorist groups.

While the numbers are revealing, the report notes that they are limited to the eleven member States and that some States did not fully report for various reasons or used different definitions, and in some cases investigations were still ongoing at the time. It is even suggested that some "perceived as low level and/or local impact are underreported" (Europol 2007, 11).

<sup>\*</sup> No data on the number of incidents and suspected incidents were reported for post 9/11. However, according to the website <http://doctorbulldog.wordpress.com/2007/11/14/at-least-19-terrorist-attacks-thwarted-in-the-united-states-since-911/>, there have been at least 19 thwarted terrorist attacks since 9/11.

<sup>†</sup> Of the 27 EU members only eleven countries provided data for 2007 as compared to 15 in 2006. The countries represented are Austria, Belgium, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Spain, and the United Kingdom.



Elsewhere, the *Washington Post* (Glasser 2005) reported that according to the U.S. State Department, recorded terrorist attacks more than tripled globally from 2003 to 2005. They rose from 173 to 655 attacks. A significant proportion of them (198) originated in Iraq. However, it was later admitted by the head of the State Department that the numbers were “vastly understated.” Notwithstanding how reliable their data might be, the number of deaths resulting from the terrorist incidents was pegged at around 1,000 (Glasser 2005).

Although but a snapshot of what and how some sources attempt to count terrorist acts, it is evident that the accuracy of any of the estimates is seriously compromised, as it is with conventional crime figures. If we cannot accurately count, let alone estimate, the number of terrorist incidents (regardless of what type they are), how can nations then begin to justify any of the measures they have taken to transform their borders in the al-Qaeda era? These issues are explored, to varying degrees, in several of the essays.

## What Kinds of Responses Are Used to Address Terrorist Threats?

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Before December 1975, how many people had ever heard of the islands of the Moluccas? Before September 2001, how many people had ever heard of al-Qaeda?

The fight against terrorism requires a concerted and multifaceted strategy at both the domestic and international level, and should involve military, economic, diplomatic and legal methods.

**Dr. Peter J. van Krieken**  
2002, *The Hague, Netherlands*

Who does not remember where they were on September 11, 2001? What were your immediate feelings?\* The majority of such offerings tend to be State specific with the bulk of such commentary having an American focus. Nevertheless, as Nuttall (2000, 159) pointed out: “People everywhere want to feel safe and secure.” So, it is no surprise that there is a diverse body of literature and a plethora of experts who have written about how best to curb terrorist threats through various crime policy initiatives. Fromkin (1977, 33) puts forth the observation that “terrorism wins only if you respond to it in

\* An interesting comparison of reactions can be made with those who might remember or have learned about December 7, 1941. While the context of the events were somewhat different, it was a surprise attack on American soil that resulted in significant casualties and sponsored very similar reactions to 9/11 (see Mueller 2006, 51–66).

the way that the terrorists want you to.” The challenge is to know how they want or expect the target/State to react. Because of the public fear that is generally associated with such acts, it is virtually impossible for the State not to do something (be it the United States declaring “war” on the terrorists, the Israelis storming a hijacked plane, or the UN in the 1970s recommending nothing be done). Regardless of what actions or inactions are taken, there will also be those who are motivated by political dreams and inspired visions and are convinced that their actions are both necessary and effective.

Ironically, the techniques and tactics used by guerrillas and now terrorists\* are as old as time. Chaliand (1982) describes terrorist strategies as choices of the weak who oppose the strong. Their methods enable them to avoid direct decisive confrontation and rely on harassment and surprise. To this end we are reminded of Emile Durkheim’s (1858–1917) assertion that crime is both normal and functional as it serves as a basic instrument for social change and draws attention to the social discontent of various citizens or groups.

We are also reminded that as recently as the 1970s the United States, with the insistence of then Secretary of State Henry Kissinger, “tightened airport security, increased scrutiny of foreign travelers, coached American businessmen working abroad, and improved protection of (its) diplomats” (Strother and Methvin 1977, 39). This call for increased security was in response to a series of national and international terrorist incidents that occurred during the mid-1970s in Brazil, the Netherlands, and Germany, and five bombings by Puerto Rican terrorists in New York City, which involved kidnappings and assassinations of foreigners and nationals. However, as Strother and Methvin (1977, 40) further noted, national and international counter-measures proved ineffective. What was called for was to “uncover and smash their [terrorists’] elaborate support auxiliaries,” in addition to catching the offenders.

Chaliand (1982) summarizes the four main techniques that have been used in the past. Briefly, they include

- Resettlement of the local population to control them better and to block the insurgents’ support. In Iraq that could equate to American and other allies setting up military bases throughout the country.
- Reliable analysis of local data and the development of or use of private, mobile, and aggressive specialized forces. However, the development or use of such forces presents potential risk as recently evidenced by the U.S. private security force known as Blackwater.

\* Smith (n.d.) provides an excellent summary table comparing guerrilla warfare with urban terrorism. Visit <http://www.whisprwave.com/msu-hs-class/issues-in-terrorism/guerrilla-vs-terrorist.htm>.

In September 2007, Blackwater was accused of killing 16 innocent people in Baghdad's Nisour Square.

- Development of intelligence techniques, including torture, aimed at breaking up insurgents.\*
- The detection and liquidation of an insurrectionary organization that is in the initial stages of organization and development. Chaliand points out that this practice is not widely used.

What history has shown is that regardless of the efforts to counter terrorist threats, those who become labeled as terrorists constantly adapt to their environment. To borrow from the French sociologist and scholar Gabriel Tarde (1843–1904), who in his “laws of imitation” states that people essentially imitate others’ behavior but adapt according to perceived risk (reduction of risk of punishment).<sup>†</sup> In other words, terrorists constantly adapt their methods of attack and instill fear to fit the most opportune of settings and means to attain their goals.<sup>‡</sup>

One of the themes that we have witnessed in the aftermath of 9/11 is that most countries have operated more or less independently in responding to perceived risks of terrorism. However, recent research shows that informal social control through building community and international capacity is more effective than the formal measures introduced by criminal justice agencies and institutions (Lebovic 2007). After reading the contributions in this collection, we will revisit this theme in the Epilogue.

Regardless of all the efforts to respond, or not respond, to terrorist tactics, we should ask ourselves: “Have terrorists been successful in achieving their political purposes?” When powerful countries such as the United States try to “interfere” with the internal affairs of those perceived as less powerful, the reasons usually being cloaked along the lines of democracy, human rights, etc., and disguise the fact that they are largely based on conflict over economic or strategic issues, can such actions be rationalized (How enemies are made 2007)? Ruggiero (2000) raises this issue as well in relation to other

\* In the case of the United States, for example, it is constantly attempting to conduct its counter-terrorist strategies outside its borders on foreign soil. This was evidenced in the recent case of Khaled El Masri, a German citizen of Lebanese origin. Masri alleges that he was detained, flown to Afghanistan, and interrogated and tortured by the CIA for several months as a part of the “war on terror.” He was later released without charge or compensation (*Guardian* 2005) (for further details see <http://www.guardian.co.uk/afghanistan/story/0,,1390257,00.html>).

<sup>†</sup> For an enlightening contemporary examination of Durkheim’s and Tarde’s ideas within the context of crime control and the international travel of crime policies see Karstedt (2004).

<sup>‡</sup> Here one could draw on the theory of Robert Merton’s anomie and the concept of “innovation” as a means of attaining goals through illegitimate means (for a general review of the theory see Williams and McShane 2006).

forms of transnational crime in pointing out how the United States claimed it was fighting “narco-guerillas” in Colombia, when what it appeared to be doing was finding a way to maintain an influence after reluctantly withdrawing its military from the country (see also Lebovic 2007). However, what is less clear is how other countries perceive and interpret such initiatives.

From our contributors, readers will find that different countries use different departments and agencies to protect their borders. Readers might want to explore what, if any, implications there are for civil and human rights. In addition, it is interesting to compare and contrast the level of technology different countries use to protect their borders and what relative impact or effectiveness they have. Consider White’s (2006) assertion that the American introduction of biometric measures was not well received by the public and international community. Yet, when one realizes that more than “500 million people cross U.S. borders each year, and 330 million of them are foreigners,” it would appear prudent to have some monitoring system to protect one’s sovereignty (see below) (316).

## Who and What Is al-Qaeda?

---

Al-Qaeda is to terror what the mafia is to crime. But its goal is not making money; its goal is remaking the world—and imposing its radical beliefs on people everywhere.

**George W. Bush**

*Former U.S. President*

*September 20, 2001, Address to the Joint Session of the Congress  
and the American People*

As this book focuses on the impact of 9/11 by al-Qaeda, we will provide an overview of who and what it is in this section. Although there are many types and forms of terrorism in the world today (generally see, for example, Hoffman 2006; White 2006), the focus, as noted earlier, of this text is on the impact 9/11 has had on border security. Al-Qaeda assumed responsibility for the act. But who are they and why did they do what they did? While we cannot do justice to the theme in the Introduction to a book with a different focus, it at least warrants providing a contextual framework.

Al-Qaeda (from Arabic meaning “the base”) was formed in 1988 but can trace its roots to the jihadist (“struggle” or “effort”) network, which represents an international connection among various Islamic groups with extremist

and violent predispositions. White (2006) provides the following description of someone who is a jihadist\*:

- Worships by waging holy war, or *jihad*
- Wants to force a strict code of Islamic law
- Believes in waging war against infidel (i.e., one without faith) warriors<sup>†</sup>
- Believes in killing Muslims who disagree with their interpretation of Islamic law or who collaborate, in some manner, with infidels against Muslim communities or States
- Uses terrorism to wage jihad<sup>‡</sup>

Initially, the many media outlets tended to refer to al-Qaeda as “fighters,” not as terrorists, as they were defending their homeland. This was particularly true when they were engaged in battle with the Russians in Afghanistan. Most sources agree that al-Qaeda was born in Afghanistan under the leadership of Osama bin Laden (see Box 0.1) in 1988 (White 2006).

On November 12, 2002, Osama bin Laden named Australia, Britain, Canada, France, Germany, Italy, and the United States as potential targets for his al-Qaeda network (BBC News 2006). These countries were chosen because bin Laden wanted to identify targets where their organizations have been hurt, or as one writer noted, they “operate very much on an eye-for-eye basis” (Scheuer cited in Hamm 2007, 194). (All these countries are covered in this book.) Over the past half decade, there have been a number of al-Qaeda-sponsored or -inspired attacks against a number of the 2002-identified target nations (Hamm 2007). From this list, Australia was targeted on October 12, 2002, through an attack on a Bali nightclub frequented by Australian tourists; Spain’s national rail system was attacked; and a train system was also attacked in 2004 when Britain’s transit system in London was bombed (Hamm 2007).

\* The points were modified after consulting with the Islamic scholar and researcher Hassan Rezaei, who also contributed to this collection. It is also important to note that the literal and theological definition of jihad in Islam refers more generally to the struggle against evils (those coming from within the individual, such as temptations that are against the Islamic faith and considered unjust, as well as those originating externally and that are considered to undermine the Islamic faith and are considered unjust). The “struggle” against internal and external unjust forces are done in the name of their God and the prophet Mohammed. We appreciate his clarification of these key descriptors.

<sup>†</sup> Contrary to the description provided by White, Rezaei points out that non-Muslims are recognized in traditional Islamic law, which is also normally acceptable for jihadists.

<sup>‡</sup> In a pre-9/11 text on terrorism, White (1991, 99) provided the following description: “... the Iranians were allied with other terrorist states, and they supported a shadowy group known as Islamic Jihad. The media attributes this rise in terrorism to the rise of Islamic fundamentalism in Iran.” However, White goes on to note that the observation was only partly correct. The revolution in Iran was the result of frictions dating back to European imperialism and that jihad “is far more indicative of a sectarian split in Islam.”

**BOx 0.1 MOHAMMAD OSAMA Bin L ADEN**

Born in 1957 to a wealthy and prestigious family involved in the oil industry in Saudi Arabia and one of fifty-plus children, bin Laden was raised a strict Salafid Sunni Muslim. He has had several wives and fathered between 12 and 24 children over the years. FBI reports describe him as soft spoken and well mannered, and although not formally trained in the Sunni, he is considered extremely well versed about the faith.

His orientation to jihad began in the late 1970s and early 1980s with his involvement in Maktab al-Khidamat, which was largely responsible for funneling money to support the Afghan War. There are mixed reports as to whether his early ventures were in part supported by the CIA, but he is generally credited with forming al-Qaeda in 1988 (White 2006). This group was well trained and played a major role in pushing the then Soviet Union (Russians) out of Afghanistan. In many parts of the Muslim world he was regarded as a pious and courageous warrior.

The fight against the United States came shortly after Iraq invaded Kuwait in 1990 and after the Americans decided to intervene in what has been referred to as Desert Storm to drive the Iraqis out of Kuwait. The U.S. and its allies used Saudi Arabia as a base, and this spawned threats by bin Laden to overthrow the Saudi government and force the Americans and their allies off of Muslim soil. The first of many attacks linked, directly and indirectly, to bin Laden and al-Qaeda occurred on December 29, 1992, when a hotel housing American troops in Aden, Yemen, was bombed (White 2006).

As of this writing, bin Laden remains a fugitive, but the movement continues its attacks against the United States, its allies, and even those Muslims who appeared to have sympathized with the United States. Ironically, perhaps, bin Laden has evaded capture longer than it took to fight World War II.

**What Is National Sovereignty and Its Role in National Security?**

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Of all the rights possessed by a nation, that of sovereignty is doubtless the most important.

**Emmerich de Vattel**

*in The Law of Nations (1872), as quoted in Jeremy Rabkin's  
Why Sovereignty Matters (1998, 27).*

When asked what their rights are, other than basic responses (life, liberty, equality, etc.) few people really understand what it means for a country to be sovereign, or the purpose of being a sovereign nation within an interdependent world. Yet it is the threat of a country's sovereignty that triggers dramatic State and often public reaction.

Bagwell and Staiger (2003, 6) define sovereignty as "the possession of the sole decision-making authority in determining one's policies." However, they question: "What are the sovereign rights of nations in an interdependent world, and to what extent do these rights stand in the way of achieving important international objectives?" (1). While there is no clear answer, the question has direct relevance to the issues examined in this text. For example, as most States took varying measures to secure their borders in the aftermath of 9/11, to what extent did some of the individual measures compromise achieving international objectives such as trans-border real-time inventory systems, international shipping, and global air travel?

One of the key features, acknowledged in the political science literature, is not only for governments to exercise unilateral control over the policy instruments that they consider important, but to also be able to operate their internal affairs without outside interference (Bagwell and Staiger 2003). When writing on Canada's move toward independence, Maurice Oliver (1945, 404) noted that "no nation capable of governing itself can submit forever to being ruled by and for the benefit of another nation." Hence, if a State is truly sovereign, then any political decisions that are made are done so independently of others.

To what extent did many of the countries covered in this book acquiesce to then President George W. Bush's September 20, 2001, battle cry for a "war on terrorism" and for rooting out not just al-Qaeda but *all terrorist groups* that threaten freedom and democracy? He then went on to state: "This is not, however, just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom ... We ask every nation to join us." Did Bush reference the NATO Charter (Article 4), which implies an attack on one nation (the United States) constitutes an attack on all? If so, does this ultimately undermine the notion of national sovereignty (Address 2002)?

In a slightly different context, to what extent has the development of the European Union and the European Court of Justice undermined the sovereignty of the member States? MacCormick (1999) raises the question about the potential specter of a European "super-state" that may undermine the independence and autonomy of member states. In so doing, how do European countries deal independently and collectively with the real or perceived risk of terrorist attacks? Article 41 of the Schengen Agreement includes provisions for law enforcement officials to cross into another country, but when no



country is willing to surrender its sovereignty or autonomy when it comes to transnational crimes, how effective are such measures or initiatives? Finally, to what extent will the evidence gathered on one side of the border be admissible at trial on the other side of the border, and is the standard of evidence gathering on one side of the border the same standard as the one on the other side of the border?

These and related issues will not be addressed in these pages, but are offered as points to ponder as you read the various essays.

## **What Is the Focus of This Book?**

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The aftermath of the 9/11 al-Qaeda attacks has resonated around the globe socially, economically, and politically. Resulting from the 9/11 attacks, the manner in which most nations protect their borders has dramatically changed. However, as noted earlier, little has been written on the subject to date. Nations such as Canada and the United States have reorganized their traditional customs and immigration services into single enforcement-focused departments, where other nations have enhanced laws to allow separate border services to work closer together in an attempt to combat terrorism (Sundberg and Winterdyk 2005), and as will be seen throughout this text, the other countries have also undertaken various measures to secure their borders from potential terrorist attacks.

We have invited contributors from all the countries identified (Australia, Canada, England, France, Italy, and the United States) by Osama bin Laden in 2002 as potential targets for attack, as well as a few that were not directly identified so as to provide a contrast (Austria and Iran). In addition, we invited contributions from several other countries but were politely informed that they could not contribute because border and national security were not matters for public disclosure! It is perhaps the latter feedback that provides a strong rationale for why such a reader is necessary.

All the contributors have written, in some capacity, about border security issues. To bring these contributors together to write about border security in one book has never been done before. Therefore, we feel that since the 9/11 incident had a global impact, it merits providing an opportunity to explore border security within an international context without requiring any of the authors to assume international expertise on the scale that this book offers. Rather, by following the guidelines provided to all the authors (with the exception of the Epilogue), the text will hopefully allow readers to examine issues within a context that are most relevant to them. The contributors have been asked to cover a number of basic themes in regard to their country and border security post 9/11. The themes were drawn from a review of some of the existing literature on border security, themes covered



in this Introduction, as well as points raised by several reviewers of earlier drafts of the Introduction. The themes and subject areas include

1. A brief overview of the history of terrorism in the country and the extent and nature of any terrorist activities and suspected incidents post 9/11.
2. The definition of terrorism as used by the country with specific reference, if any, to how it relates to border security.
3. A description of how data on terrorism and suspected terrorist incidents are handled by border security.
4. An overview of the structure, organization, and operation of border security in their country with attention given to any notable changes since 9/11.
5. A discussion of how, if at all, any changes to border security have impacted the movement of national persons and goods as well as the movement of foreigners in their country. Reference to such issues as the role of mass media may also be addressed.
6. A description of any “preferred” explanation of terrorism and terrorists by border security or the government.
7. What, if any, specific steps have been taken to improve national security against, in particular, potential terrorist threats or attacks? How, if at all, have any border security changes impacted the economic, political, social, and humanitarian elements of its citizens?
8. How, if at all, have any changes potentially impacted the country’s sense of sovereignty?
9. The European contributors will consider, relative to their situation, any implications as they might relate to the newest and smallest of the 26 EU commissions, the Justice, Freedom, and Security Commission.
10. An examination about whether or not the al-Qaeda threat has contributed to changes in border security and impacted civil liberties and human rights.

Without trying to be presumptive, some of the comparative issues that readers might consider bearing in mind as they read the contributions from the different countries include the following:

- Although the French sociologist Emile Durkheim suggested that crime is functional and reflects a level of “disorganization” within society—or as Karl Menninger (1971, 4) wrote, “Society gets the crime it deserves”—we should ask the questions: *Just how serious is the threat of terrorism to the countries represented in this book? How extensive is the problem perceived to be in the respective countries?*

And perhaps more telling, *How are terrorist acts dealt with by the respective countries?*

- The “war on terror or terrorism” is a concept initiated by U.S. President George W. Bush and his associates throughout the United States and abroad. To what extent have the military, political, and legal measures to counter terrorism in different countries been justified?
- To what extent have measures taken by those countries presented in this book been used to justify unilateral pre-emptive war, perpetual war, human rights abuses, and other violations of international law such as the treatment of offenders?
- To what extent do terrorists take advantage of differences in legislation between the various countries?
- To what extent do the different countries’ border security measures complement or differ from one another? Are there any differences or similarities that appear to be “better” than others? What, if any, implications or observations can be drawn?
- Mueller (2006, 5) suggests that one of the “best” ways to limit the threat is by “creating the potential to absorb its direct effects and to mitigate its longer range consequences.” Is there any evidence of this being attempted or done by any of the countries presented?
- Although, in principle, initiatives such as Article 41 of the Schengen Agreement allow for “hot pursuits,” especially in the case of suspected terrorists, how might issues of sovereignty and issues regarding a country’s “rule of law” be respected?
- To what extent have changes in border security issues, if at all, led to bilateral coordination of law enforcement or border control intervention?

Although as the editors we accept full responsibility for the integrity of this collection, we are extremely grateful to those who support the perceived need to participate in its production. The book was inspired in part by the personal experience of one of the co-authors, who has worked in the area of border security, as well as a critical concern about how nations respond to real or perceived critical incidents such as a terrorist attacks and the broader human rights and socio-political concerns that generally accompany dramatic reactions by the State.

We do not claim to provide any answers as much as hopefully raise awareness and promote critical dialogue around the themes and issues that arise from reading this collection.

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**North America**

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**I**



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# Shifts in Canadian Border Security

# 1



JOHN A. WINTERDYK  
KELLY W. SUNDBERG

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## Contents

Introduction	4
Canada and the Longest undefended Border in the World	4
Defining Terrorism in a Canadian Context	6
Criminal Code of Canada	8
Immigration and Refugee Protection Act	11
“Old” and “New” Terrorism and Their Impact on Border Security	13
Canada’s Historic Approach to Border Security	23
Contemporary Issues in Canada’s Border Security Strategy	24
How Canada Protects Itself in the Aftermath of 9/11	25
Impact of Globalization and New Border Security Reforms on Canada	29
Conclusion	31
References	32



## Introduction

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This chapter, along with the others in this book, looks at how the September 11, 2001, al-Qaeda terrorist attacks in New York; Washington, D.C.; and Pennsylvania (herein referred to as 9/11) impacted the way nations protect their citizens, assets, and territories from acts of terrorism—specifically the role border security plays within the context of counter-terrorism. All the nations reviewed in this book make reference to “border security” (customs, immigration, and border *policing* programs) as a key component of their national security and counter-terrorism strategies; Canada is no exception. The events of 9/11 caused the Government of Canada to implement the most significant national security and border security reforms since its inception in 1869. This chapter will explore 1) Canada’s experience with terrorism; 2) how domestic and global terrorism has impacted Canada’s national and border security strategies; 3) the impact Canada’s national and border security strategies impact the movement of people and goods crossing its border; and 4) how Canada’s recent national and border security reforms have impacted civil liberties and human rights. An assessment of how Canada defines terrorism and what systems, authorities, and procedures it has in place will also be reviewed.

Most citizens trust their government to take appropriate measures to protect them from threats to their collective safety and security. Jean Jacques Rousseau (1712–1778) formalized this concept in his 1762 work, *The Social Contract*, when he suggested the only means of protecting the whole of society from natural and moral inequalities was for the citizenry to freely place social control with their sovereign power (Cranston 1968). Since the Peace of Westphalia in 1648, all nation states have had authorities, mechanisms, and systems in place to maintain public order and ensure sovereignty (Gross 1948). Today in Canada, these authorities include organizations such as the Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service (CSIS), Canada Border Services Agency (CBSA), and Canadian Forces. The structures, mandates, and strategies of national security authorities have remained relatively constant over time and generally have proven effective in the pre-9/11 era when law and order was the main focus and terrorism a peripheral concern (Bailey and Dammert 2006). However, in the aftermath of 9/11, Canada, like many countries around the world, has made significant efforts to reform its traditional authorities, systems, and strategies in an attempt to safeguard Canadians from the new threat of global terrorism.

## Canada and the Longest Undefended Border in the World

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Canada is the second largest sovereign territory on earth, second only to Russia, yet it only represents 0.5% of the world population (UNDESA 2004).

Despite its relatively small population of approximately 33 million citizens (Statscan 2007), Canada is consistently ranked among the top 10 world economies (Conference Board of Canada 2008) and is considered by the United Nations Development Program to have one of the highest standards of living on earth (UNDP 2008). This unique multicultural nation with the second largest foreign-born population in the world at 19.8% (Chui et al. 2007) is viewed as a champion of democracy, social tolerance, multiculturalism, and human rights (Freedom House 2007). Yet, despite the multitude of accolades Canada receives, this prosperous and peaceful nation is immune from the plight of terrorism. Canada's current exposure to terrorism comes in large part as a result of its immediate proximity to the United States and its current military involvement with the American-led "war on terror" in Afghanistan (CSIS 2008). However, as will be discussed, Canada's initial experience with terrorism came from within and had no noticeable impact on the nation's border security strategy.

Canada is the largest of the twenty North American nations, having the longest coastline (243,042 kilometers) and territorial land boundary (8,893 kilometers). Its shared land border with the United States constitutes the longest undefended bi-national boundary in the world (UNSD 2008). Resulting from its immense geographic size, combined with its proximity to the United States, the majority of Canada's cross-border movement occurs at its 133 ports of entry along the United States border (Hataley 2007). In 2007, over 70 million people (36 million vehicles) crossed into Canada by land and another 3 million by sea from the United States (CBSA 2008). Considering this immense traffic, combined with Canada's sheer size, there is little wonder why Canada faces such significant challenges in its ability to control, monitor, and regulate its cross-border movement of people and goods.

Over 90% of Canada's population lives within 200 kilometers of America (BBC 2008). This population disbursement has resulted in a strong interconnectedness between the two nations. Canada and the United States are each other's largest trading partners and together represent the largest bilateral trading relationship in the world (DFAIT 2001). International agreements such as the North American Free Trade Agreement (NAFTA), North American Aerospace Defense Command (NORAD), and the 32-Point Smart Border Declaration and Action Plan all significantly influence Canada's national and border security strategies. In short, a study of Canada inevitably involves a study of its close relationship with the United States. As much as Canadians try to distinguish themselves from their southern neighbors, American actions impact virtually every aspect of their lives. Former Prime Minister Pierre Elliott Trudeau illustrated this notion in his 1969 address to the National Press Club in Washington, D.C., (CBC Archives 2008) when he stated: "Living next to you [the United States] is in some ways like sleeping with an elephant. No matter how friendly and

even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt.”

## Defining Terrorism in a Canadian Context

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During the Reign of Terror at the onset of the French Revolution between 1793 and 1794, the term *la terreur*, translated as “the terror,” was used for the first time to describe an act of violence by a group intent on overthrowing a sovereign authority (Andress 2006). It was not until the 1920s, over a century and a half later, when the international community once again attempted to formulate a definition of what constitutes an act of “terror” or “terrorism” (Golder and Williams 2004). Still today, even in the aftermath of 9/11, the international community has yet to achieve a globally accepted definition (see the Introduction and other chapters in this anthology). The most recent attempt to achieve a definition for terrorism came on December 17, 1996, with Resolution 51/210 of the United Nations General Assembly in their formulation of Article 2(1)—Draft Comprehensive Convention on International Terrorism, which proposes

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
  - a. Death or serious bodily injury to any person; or
  - b. Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
  - c. Damages to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing an act.

As of the date of this publication, the above draft definition has yet to be accepted (Golder and Williams 2004).

Despite the lack of an internationally accepted definition, Canada enacted its now Anti-terrorism Act only four months after the 9/11 terrorist attacks. This Act, through its amendments to other legislation, provides a definition for what constitutes “terrorist activities” and makes it a crime to promote, fund, or otherwise contribute to terrorist activities. Through this Act, the Government of Canada publishes a list of terrorist groups within the *Canada Gazette* who are deemed by the Minister of Public Safety to constitute a threat to the safety and security of Canada. Organizations

listed by the Minister are subject to having their assets frozen and their non-Canadian members prohibited from entering or remaining in Canada (PSC 2008). The Act also complements Canada's endorsement of the United Nation's Anti-Terrorism Conventions. As of August 2008, there are 41 terrorist organizations listed within the *Canada Gazette* (PSC 2008).

The Anti-terrorism Act is not stand-alone legislation, but rather acts as a cohesive bond that brings other laws together in an attempt to combat terrorism. When enacted on December 18, 2001, the Anti-terrorism Act amended the Criminal Code of Canada, Official Secrets Act, Canada Evidence Act, Proceeds of Crime (Money Laundering) Act, Income Tax Act, and the Charities Registration Act. On November 1, 2001, one month before the enactment of the Anti-terrorism Act, Canada replaced its Immigration Act with the Immigration and Refugee Protection Act (IRPA).<sup>\*</sup> Under the IRPA, non-citizens believed to be members of a terrorist group listed in the *Canada Gazette* or who are involved in terrorist activities described by the Criminal Code of Canada are considered inadmissible and as such are prohibited from entering or remaining in Canada. These non-Canadians are also subject to arrest, detention, and deportation. Although the former Immigration Act had provisions to restrict the access of persons involved in terrorist activities from entering or remaining in Canada, the IRPA provides greater abilities and powers for law enforcement to respond to persons involved in terrorist-related activities. Most noteworthy are the provisions in IRPA to issue security certificates against non-citizens suspected of being involved in terrorist activities (CBSA 2008)—the ramification of these certificates will be discussed below.

Amendments to the Evidence Act allow law enforcement and security officials to protect the means and sources of their information during legal proceedings involving terrorist-related cases. Furthermore, the Anti-terrorism Act amendments have provided police, border security, and intelligence personnel special powers, including electronic surveillance, search and seizure, covert (undercover operative) surveillance, and the use of anonymous informants to investigate offenses designated as "terrorist activities." Although provisions existed under pre-9/11 legislation, the manner in which disclosure is given concerning where information was obtained is better safeguarded under the new Anti-terrorism Act.

The 1985 Canadian Security Intelligence Service Act has always provided separate powers for members of the CSIS to conduct electronic surveillance, obtain warrants, and generally investigate threats to Canada's national security. However, CSIS officers have never been afforded the powers of arrest

<sup>\*</sup> Although enacted on November 1, 2001, the Immigration and Refugee Protection Act did not come into force until June 28, 2002 (see [http://www.irb-cisr.gc.ca/en/about/publications/irpa/index\\_e.htm](http://www.irb-cisr.gc.ca/en/about/publications/irpa/index_e.htm)).

or detention. Prior to the Anti-terrorism Act, information provided to law enforcement by the CSIS required disclosure during the course of a criminal proceeding. With the Anti-terrorism Act and its amendments to other legislation, the CSIS's information is more secure from disclosure.

The Criminal Code of Canada, as amended by the Anti-terrorism Act, and the IRPA are the main counter-terrorism tools the Government of Canada has to prosecute and, in cases involving non-citizens, to detain and remove persons involved in terrorist activities. The following provides the key provisions of these two pieces of legislation.

## **Criminal Code of Canada**

Part II.1 of the Criminal Code of Canada defines "terrorist activity" as

83.01(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

- (i) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,
- (ii) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971,
- (iii) the offences referred to in subsection 7(3) that implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973,
- (iv) the offences referred to in subsection 7(3.1) that implement the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979,
- (v) the offences referred to in subsection 7(3.4) or (3.6) that implement the Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on March 3, 1980,
- (vi) the offences referred to in subsection 7(2) that implement the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988,
- (vii) the offences referred to in subsection 7(2.1) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988,

- (viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988,
  - (ix) the offences referred to in subsection 7(3.72) that implement the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, and
  - (x) the offences referred to in subsection 7(3.73) that implement the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999, or
- (b) an act or omission, in or outside Canada,
- (i) that is committed:
    - (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and
    - (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and
  - (ii) that intentionally:
    - (A) causes death or serious bodily harm to a person by the use of violence,
    - (B) endangers a person's life,
    - (C) causes a serious risk to the health or safety of the public or any segment of the public,
    - (D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or
    - (E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counseling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed

conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

Sections 83.02 through to 83.04 of the Criminal Code of Canada provide offenses related to the financing of terrorist groups. Under these sections, it is considered an indictable offense and punishable by up to 10 years imprisonment for 1) providing or collecting property for terrorist activities (s. 83.02 CCC); 2) providing, making available, etc., property or services for terrorist purposes (s. 83.03 CCC); 3) using or possessing property for terrorist purposes (s. 83.04 CCC).

Sections 83.05 through to 83.07 of the Criminal Code of Canada require the Minister of Public Safety to publish a list of terrorist organizations within the *Canada Gazette* and review this list every two years. These sections stipulate the manner in which the list is created and how judicial review of the list is undertaken, and affords an appeal mechanism for groups or individuals who feel they are erroneously listed in the *Canada Gazette*. Of particular interest is section 83.06, which allows for the confidential information collected by a foreign government to constitute evidence for the purpose of making the list. This list is a key tool for the government in that simply belonging to a group on this list constitutes terrorist activity under all other Acts amended by the Anti-terrorism Act.

Sections 83.08 through to 83.12 of the Criminal Code of Canada allows for the freezing of assets believed to be associated with terrorist activities. Provisions are included within these sections for protection from civil liability, audit, and accountability measures in regard to the government's freezing of a person's or group's assets. Sections 83.13 through to 83.17 allow for the seizure and forfeiture of assets, securities, property, or other items of valuable consideration believed to be associated with terrorist activities. Section 83.14 provides a means through which forfeited assets can be used to compensate victims of terrorist acts.

Sections 83.18 through to 83.23 of the Criminal Code of Canada provide offenses related to the participation with, facilitation of, instruction to, and harboring of persons or groups involved in terrorist activities. Under these sections, it is considered an indictable offense to 1) participate in terrorist activities (s. 83.18 CCC)—punishable by a maximum term of 10 years imprisonment; 2) facilitate a terrorist activity (s. 83.19 CCC)—punishable by a maximum term of 14 years imprisonment; 3) commit an indictable offence for a terrorist group (s. 83.20 CCC) —punishable by a maximum term of life imprisonment; 4) instruct a terrorist group to engage in a terrorist



activity (s. 83.21 CCC)—punishable by a maximum term of life imprisonment; 5) instruct a person to engage in a terrorist activity (s.83.22 CCC)—punishable by a maximum term of life imprisonment; or 6) harbor a person or group involved in a terrorist activity (s.83.23 CCC)—punishable by a maximum term of 10 years imprisonment. Section 83.23 of the Criminal Code of Canada makes it an offense to hoax about the aforementioned activities and carries a maximum term of five years imprisonment if the Crown proceeds by indictment and a maximum term of no more than two years if the Crown proceeds by way of summary conviction.

Prior to the enactment of the Anti-terrorism Act and amendments to the Criminal Code of Canada, the only legislation to specifically refer to terrorist acts was the former Immigration Act—however, this Act failed to provide a definition of what being a terrorist constituted (Golder and Williams 2004). As Lemay-Langlois and Brodeur (2005, 132) point out, Canada's current counter-terrorism law "explicitly defines terrorism as violent action in pursuit of goals, be they political, religious, or 'ideological' ... yet one important aspect of extremist terrorism today is precisely the absence of the expected logical connection between tactical means and strategic ends." The only time Canada has used its legislative power to address a terrorist act was during the October Crisis of 1970, when it utilized the War Measures Act (Lemay-Langlois and Brodeur 2005). Ironically, the 1914 War Measures Act was never intended as counter-terrorism legislation, but rather mirrored Britain's Defence of the Realm Act, which gave the government powers to address the threat of a foreign military invasion (Bélanger 2004). Considering this, Canada has yet to enact legislation that directly addresses the terrorist threat it faces—neither now nor historically.

### **Immigration and Refugee Protection Act**

The Immigration and Refugee Protection Act (IRPA) is the principle legislative tool used in Canada's border security strategy for preventing those believed to be involved in acts of terrorism from entering or remaining in Canada. The IRPA is also the only piece of legislation under Canadian law that provides a form of preventive detention in relation to non-citizens believed on reasonable grounds by immigration officials to pose a threat to Canada's national security. This Act allows for the arrest, detention, and removal of non-citizens who on reasonable grounds are deemed to pose a threat to national security and the safety and security of the Canadian public—specifically, Section 36(1) of the IRPA states:

A permanent resident or a foreign national is inadmissible on security grounds for



- (a) Engaging in an act of espionage or an act of subversion against a democratic government, institution or process, as they are understood in Canada;
- (b) Engaging in or instigating the subversion by force of any government;
- (c) Engaging in terrorism;
- (d) Being a danger to the security of Canada;
- (e) Engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
- (f) Being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Sections 77 through 80 of the IRPA allow for the application, review, appeal, and execution of what are commonly referred to as “security certificates.” Under Section 77 of the IRPA, the Minister of Public Safety and the Minister of Citizenship and Immigration shall sign a certificate stating that a permanent resident or foreign national is inadmissible on grounds of security, of violating human or international rights, or of serious criminality or organized criminality, and shall refer the certificate to the Federal Court. Once approved by the Federal Court, this certificate is considered under Section 80 to be conclusive proof that the person named is inadmissible. As such, the certificate itself becomes a *de facto* removal order, and in turn negates the necessity to hold or continue an examination or admissibility hearing. Although the recent Supreme Court of Canada decision in *Charkaoui v. Canada* (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9 has required that the security certificate processes be reviewed and amended, the Government of Canada (PSC 2008) has affirmed it will continue to use security certificates and will modify legislation to allow it the latitude to deliver “its obligation to safeguard public safety and national security.”

There is no question that laws designed to prosecute persons involved in terrorist activities are an important part of a nation’s counter-terrorism strategy. However, laws are by nature reactive and are only utilized once a criminal act has occurred. As such, we must question what efforts are being taken to prevent, and not just respond to, acts of terrorism. Crime prevention is a cornerstone within any criminal justice system, yet little government effort appears to exist that pre-empts groups and individuals from committing acts of terrorism. New technologies have been introduced to detect explosives, screen persons known to be members of terrorist groups, and physically secure buildings and public areas, yet little has been done to build understanding, tolerance, and respect between communities.

Public Safety Canada does host the Cross-Cultural Roundtable on Security (PSC 2008); however, as University of Toronto Law Professor Kent

Roach (2006, 10) identifies, “The establishment of the Roundtable constitutes a positive gesture of outreach by the government to minority communities, [however] the ultimate success of the Roundtable as an active and credible presence is in doubt.” As admirable as it is for the government to include the Cross-Cultural Roundtable within its national counter-terrorism policy, any effort to build bridges between communities must be earnest and sincere or risk being seen as a patronizing gesture, which could breed resentment, distrust, and anger—ultimately provoking a group or individual to commit a terrorist act.

### **“Old” and “New” Terrorism and Their Impact on Border Security**

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The threat of terrorism is not a new phenomenon. Groups have used terror and violence to advance their political, social, ethnic, religious, or nationalistic agendas for centuries (Winterdyk and Sundberg 2004). Over the past half century, prominent terrorist groups such as the Euzkadi Ta Askatasuna (ETA or Basque Separatists) in Spain and Southern France (1959–present), the Front de Libération du Québec (FLQ) in Canada (1963–1970), the Baader-Meinhof Gang (RAF) of former West Germany (1968–1977), the Aum Shinrikyo cult in Japan (1984–present), Italy’s Red Brigades (1972–1999), the Provisional Irish Republican Army (IRA) in the United Kingdom (1968/69–present), and al-Qaeda originating in Afghanistan and now globally poised (1988–present) have accounted for numerous acts of terror through the world, resulting in thousands of innocent lives being lost (Winterdyk and Sundberg 2004). What is important to observe is how the evaluative nature of terrorism over the last decade has acted as a catalyst for rapid border security reforms throughout the world—especially the actions of al-Qaeda.

Canada’s contemporary experience with terrorism has emerged through three primary experiences: 1) the 1970 October Crisis involving the Front de Libération du Québec (Québec Liberation Front), commonly referred to as the FLQ; 2) the June 23, 1985, Narita Airport and Air India bombings involving the Indian-based Sikh extremist group Babbar Khalsa; and 3) the December 14, 1999, arrest of Algerian terrorist Ahmed Ressaym at the Canada–United States border with a cache of explosives believed destined for detonation at Los Angeles International Airport (LAX) on the eve of the millennium, coined by the media to be the “Millennium Bomber” (see Bell 2004; Leman-Langlois and Brodeur 2005; Hataley 2007; Hamilton and Rimsa 2007). Although there have been numerous other terrorist incidents that have impacted Canada over the years (for example, the 1967 bombing of the Yugoslavian embassy in Ottawa, and the 1982 attack on Litton Industries

by the Squamish Five), these three represent the main events that have shaped Canadian counter-terrorism efforts and subsequent border security reforms within the past half century (see Hataley 2007).

Before we can examine how terrorism has impacted Canadian border security, we must first identify the evolution of terrorism within a global and then Canadian context. Université de Montréal criminologists Leman-Langlois and Brodeur (2005) offer the first operational typology of terrorism based on incidents spanning Canada's recent history. This typology identifies *conventional terrorism* and *new terrorism*, and goes on to extract the key features for each. The goal of their work was to open a discussion of law enforcement strategies based on the assumption that counter-terrorism tactics will be effective only if they are intertwined within the distinct fabric of the terrorist groups they are focused on (Leman-Langlois and Brodeur 2005). While we will utilize the general typology of Leman-Langlois and Brodeur (2005), we will also draw on other works to provide a more focused discussion on Canada's recent border security reform.

Canada's traditional approach to managing its borders was "regulatory"—its revenue agency was primarily responsible for regulating cross-border movements of people and goods, with a principle mandate to collect duties and taxes (McIntosh 1984). Over the past decade this approach has changed to one of border "security" with the newly established Canada Border Services Agency (CBSA). The CBSA is today Canada's primary agency tasked with safeguarding Canadians from foreign weapons, drugs, criminals, and terrorists (CBSA 2008). Although the Government of Canada's official position regarding its drastic border reforms in 2003 was that it streamlined the flow of goods and people between Canada and the United States (PMO 2003), much evidence exists to support the new threat of terrorism as the key contributing factor (Andreas and Biersteker 2003; Drache 2004; Geddes and Gillis 2005; Sundberg and Winterdyk 2006).

Conventional and new terrorism exhibit differing features in regard to their territorial proximity, means of communication, motivation, and discrimination in choosing targets (Leman-Langlois and Brodeur 2005; Kellett 2004; Kushner 1998). First, conventional terrorist groups typically operated within a single nation in hopes of changing its "political regime or to provoke the secession of a part of its territory inhabited by a minority group (ethnic, linguistic, or religious)" (Leman-Langlois and Brodeur 2005, 131). The territorial proximity of conventional terrorists evolved to include trans-national and international terrorism. Trans-national terrorists would muster in a "safe" country so as to attack another, whereas international terrorists are located in a multitude of countries (often having a multi-national membership base) and have a global scope for perpetuating their attacks (131). This transition from the local to the international is indicative of the new form of terrorism (Kellett 2004; White 2006).

Second, the differing means by which conventional and new terrorists communicate with the world is very pronounced. Both conventional and new terrorists strived for media coverage; however, the former were more focused on claiming responsibility through written or auditory means, whereas the new terrorists communicate through images of destruction, death, and chaos (Habermas and Derrida 2003; Leman-Langlois and Brodeur 2005). In a Canadian context, the Front de Libération du Québec (FLQ), Canada's first conventional terrorist group, viewed having its manifesto broadcast over Radio-Canada (Canada's national francophone radio station), as a major communications goal. In contrast, al-Qaeda indirectly delivered its message of terror to a global audience instantaneously via live television images of the New York "Twin Towers" collapsing (Leman-Langlois and Brodeur 2005).

Third, the motivation between conventional and new terrorist organizations arguably provides the starkest transition in the evaluation of terrorism, as Leman-Langlois and Brodeur (2005, 133) state: "Politics can be said to inspire all conventional terrorism ... However, it is religion that is at the root of the present [new] wave of terrorism." And as they rightly caution, "The distinction between politics and religion is often problematic"; however, when we consider the "dominant features" of the conventional and new terrorism forms, there are "mainly" strong undertones of "political" motivation in the conventional and an equally strong undertone of "religious" in the new. Kellett (2005), Kushner (1998), and White (2006) support the notion that politics is the dominant motivation in conventional acts of terrorism, whereas religion is for the new.

Finally, there is a noticeable distinction between how conventional and new terrorists choose their targets. Conventional groups such as the FLQ were somewhat discriminating in whom they targeted. They launched attacks against politically significant targets such as stock exchanges, military interests, and political party offices. Although there is no question that innocent people were killed in these strategic and politically motivated attacks, the new terrorist groups are less concerned with whom they kill and are primarily interested in mass destruction, death, fear, and chaos (Leman-Langlois and Brodeur 2005).

By contrast, new terrorism is akin to "bit by bit" genocide. It does not discriminate among individual members of its target group, with consequences startling in their horror. Not only are civilian men, women, and children indiscriminately killed if they are perceived to belong to an enemy state, nation, or ethnic or otherwise identified group ("apostates," Jews, U.S. citizens, Westerners), but recent events have shown that the boundaries of nationality are also becoming irrelevant, and that even the remotest connection with the "enemy," such as working for the UN or the Red Cross in Iraq, qualifies one as a potential target. Importantly, this de-personification is also reflected on the side of the perpetrators, who are used as expendable bomb

delivery systems and who only regain their name, for propaganda purposes, after their death (Leman-Langlois and Brodeur 2005, 134).

By reviewing the differing features of conventional and new terrorism, we can identify how the evolving types of terrorist groups have impacted Canada's border security strategy. Leman-Langlois and Brodeur (2005) identify four distinct types of terrorist groups that have existed through Canada's history: 1) demand based, 2) private justice, 3) revolutionary, and 4) restoration groups. Conventional demand-based terrorist groups account for the majority of terrorist acts within Canada's history. These groups are small and commonly come together on an ad hoc basis, focused on a single objective they perceive as a specific societal problem (see Leman-Langlois and Brodeur 2005, 124). Within Canada, demand-based terrorism has involved acts of vandalism and violence by animal rights groups, anti-abortion activists, and eco-terrorists. These groups have generally targeted corporations, universities, or political party offices (Leman-Langlois and Brodeur 2005). The recent Sea Shepherd Conservation Society's ramming of a Canadian Coast Guard icebreaker with their vessel in hopes of disrupting the traditional seal hunt along the Saint Lawrence Seaway would fit this first typology (see Barker 2008). Members of demand-based groups normally are not considered "terrorists" by the general public, and are usually citizens of the nation they act within. Demand-based terrorism has had little impact on Canada's overall counter-terrorism strategy or on the way it normally has protected its borders (Leman-Langlois and Brodeur 2005).

Private justice terrorism comes in the form of "a response to an event, situation, or conflict that is intended to obtain retribution, as defined by the attacker." Although not as prevalent as demand-based terrorists, justice terrorists have been a concern for Canadian law enforcement. In 1981 members of a white supremacist group were involved in a plan to overthrow the government of Dominica with hopes of forming an Aryan nation on the small Caribbean island (Leman-Langlois and Brodeur 2005). Other examples include the 1970s incident involving a group of Yugoslavian-Canadians friendly to the Tito regime who launched an attack against the Yugoslavian Embassy in Ottawa in response to the Yugoslavian government's attempt to target dissidents who fled to Canada (Leman-Langlois and Brodeur 2005). Although private justice terrorism does involve people who often originate from outside Canada or who have ties to foreign countries, their acts fall within the realm of conventional terrorism and as such have not resulted in significant counter-terrorism or border security reform.

Revolutionary terrorists are focused on changing the fundamental nature of a society and its government at the state level through such means as a coup d'état. Although the presence of revolutionary terrorists has been rare in Canada, they have received the majority of Canadian media attention and also have invoked the greatest governmental reactions (Leman-Langlois

and Brodeur 2005). As already mentioned, the Front de Libération du Québec (FLQ) and the Indian-based Sikh extremist group Babbar Khalsa are two revolutionary terrorist groups that have greatly impacted Canada. The Liberation Tigers of Tamil Ealam (LTTE), although not involved in violence from within Canada, would also constitute revolutionary terrorists through their active fundraising activities within Greater Toronto's expatriate Tamil population (see Bell 2004).

The FLQ represents the first terrorist group to invoke a counter-terrorist response from the Government of Canada (see Box 1.1). Their primary objective was to establish Québec as an independent nation under socialist rule (Tetley 2006). During the October Crisis of 1970, the FLQ was responsible for numerous incidents of vandalism and violence, including several bombings throughout Montréal—one of which killed Army Sergeant Wilfred V. O'Neill and another of which seriously injured Army Sergeant-Major Walter Lejay—as well as the kidnapping of British Trade Commissioner James Richard Cross and the kidnapping and subsequent murder of Québec Deputy Premier and Labour Minister Pierre Laporte (Tetley 2006). In a response, the Government of Canada implemented the War Measures Act and swiftly deployed the Canadian military throughout Québec to assist the police in quashing the FLQ and bringing peace back to the province (see Leman-Langlois and Brodeur 2005; Tetley 2006).

On June 23, 1985, members of the Babbar Khalsa, an Indian-based Sikh extremist seeking an independent Sikh state of Khalistan within the Punjab, allegedly placed bombs in luggage aboard two separate Air India flights originating in Canada (see Bell 2004; Hamilton and Rimsa 2007). The first bomb exploded while being offloaded from Air India flight 301 at the Narita International Airport in Tokyo and killed two luggage handlers. The second bomb detonated mid-flight aboard Air India flight 182 over the coast of Ireland, killing all 329 passengers. The Air India flight 182 bombing constitutes the deadliest single terrorist attack associated with Canada, and the second most deadly act of aviation terrorism aside from 9/11 (Hamilton and Rimsa 2007). Resulting from what is now referred to as the Air India bombing, Canada greatly improved the way it conducts pre-screening at airports and also improved protocols addressing how law enforcement and intelligence organizations investigate threats to Canada's security (see Wallis 1998; PSC 2008).

Over 200,000 Tamils live within the region of Greater Toronto and another 50,000 live in other Canadian metropolitan centers. Many of Canada's Tamil population first came to Canada as refugees during the 1990s, and at one point were the leading source of all refugee claims made with Citizenship and Immigration Canada (Bell 2004). The vast majority of these people fled the bloodshed, violence, and guerrilla warfare that plagued their home nation to make a better life for themselves within Canada. However, according to the CSIS, there are believed to be over 8,000 LTTE guerrilla fighters



**Box 1.1 THE FLQ AND THE OCTOBER CRISIS OF 1970**

The first terrorist incident Canada experienced in its post-confederation period was what has become known as the October Crisis of 1970. Between 1963 and 1971, the FLQ mounted a campaign of terror within the Province of Québec, including numerous acts of vandalism, robberies, intimidation, bombings, kidnappings, and murder. Between 1963 and 1970, the FLQ launched a number of bombings of various targets throughout Québec (Hamilton and Rimsa 2007), most notably

- April 20, 1963—A Canadian Army recruiting center in downtown Montréal was bombed. This attack marked the first murder committed by the FLQ, when the night watchman, Canadian Army Sergeant Wilfred V. O'Neill was killed by the blast;
- May 17, 1963—A series of 15 bombs were set around the English district of Westmount in Montréal. Of these bombs, 10 exploded and five were disarmed. During this attack, Canadian Army Sergeant Major Walter Lejay was seriously wounded while attempting to disarm one of the bombs;
- February 13, 1969—A bomb was detonated in the Montréal Stock Exchange building, injuring 27.

The FLQ's reign of terror within Canada culminated in October 1970 with what is commonly referred to as the October Crisis (see Torrance 1988; Tetley 2006; Hamilton and Rimsa 2007). During October 1970, the FLQ was responsible for two kidnappings and one murder. On October 5, 1970, members of the FLQ kidnapped British Trade Commissioner James Richard Cross and held him hostage for a total of 60 days. Five days later, on October 10, 1970, Québec Deputy Premier and Labour Minister Pierre Laporte was kidnapped and subsequently executed. During these events, the FLQ made a number of demands, which included the release of their members who were imprisoned for various criminal acts, the broadcast and publication of their manifesto, safe passage to Cuba for key members of the FLQ, and the rehiring of postal workers fired for their support for the FLQ (Torrance 1988). The FLQ was responsible for over 170 acts of violence, including more than 70 bombings or attempted bombings, six deaths, several dozen injuries, and hundreds of thousands of dollars in property theft, destruction, and vandalism (Tetley 2006).

In response to the high profile kidnappings and continued violent and cavalier actions of the FLQ, then Canadian Prime Minister Pierre Elliot Trudeau invoked the War Measures Act, which empowered the military and police to conduct aggressive counter-terrorism investigations, raids, arrests, and detentions (Tetley 2006). The use of the War Measures Act represented the first time in post-confederation Canada that civil liberties and rights were suspended with the justification of maintaining law and order during a national emergency (Tetley 2006). Although Trudeau did receive considerable opposition and criticism for using the War Measures Act, the fact that he was re-elected in the subsequent federal election suggests that at the end of the day he did enjoy public support for his hard line approach in dealing with the FLQ.

who successfully entered Canada as refugees. Once in Canada, many of these former LTTE fighters are alleged to have raised tens of millions of dollars per year to finance the continued efforts of their LTTE comrades back in Sri Lanka (Bell 2004). The Toronto-based Mackenzie Institute, one of Canada's largest public policy research institutes, has asserted that the LTTE's fundraising efforts over the past decade are "arguably the most sophisticated of any terrorist organization being undertaken on Canadian soil" (Hataley 2007). Although countries such as the United States, United Kingdom, and Australia have officially viewed the LTTE as a terrorist group for quite some time, it was not until April 2006 that the Government of Canada listed them as such in the *Canada Gazette* (Table 1.1).

Terrorist groups such as al-Qaeda, the Armed Islamic Group (GIA), and others included within the restoration-terrorism typology represent the catalyst for recent and significant border reforms within the United States, and in turn Canada (see Adelman 2002; Bell 2004; Hamilton and Rimsa 2007). These groups constitute the new form of terrorism (Leman-Langlois and Brodeur 2005, 128) involved in "various kinds of attempts to re-establish a historical situation ... [that] are based on grandiloquent or simply 'irrational' versions of historic misdeeds, or [are] the result of wide-scale victimization that fuels desires for revenge, reparation, and, ultimately, restoration." Of the groups within the restoration-terrorist typology, CSIS considers al-Qaeda and the GIA to pose the greatest risk to the safety and security of Canada (CSIS 2008). Other groups from this typology with members living within Canada are the Hezbollah, Hamas, and other Islamic jihad groups originating from the Middle East.

The first incident of the new terrorism impacting Canada's border security strategy came in 1988 with the arrest of three Syrian terrorists by American border officers while attempting to enter the United States from Canada with



Table 1.1 Major Terrorist Related Incidents in Canadian History

Date of Incident	Type of Incident	Terrorist Group Involved	Connection to Canada	Type of Terrorist Group	Goal of Terrorist Group
January 29, 1967	Yugoslavian embassy in Ottawa bombed	Exiled Yugoslavian nationals	Immigrants from Croatia with foreign ties	Contemporary (private justice terrorists)	European-based group seeking revenge upon Yugoslavian government
February 13, 1969	Bombing of the Montreal Stock Exchange	FLQ	Domestic/homegrown	Contemporary (revolutionary terrorists)	Québec-based group seeking regional independence
October 5, 1970	British Trade Commissioner James Cross kidnapped	FLQ	Domestic/homegrown	Contemporary (revolutionary terrorists)	Québec-based group seeking regional independence
October 10, 1970	Québec Deputy Premier Pierre Laporte kidnapped	FLQ	Domestic/homegrown	Contemporary (revolutionary terrorists)	Québec-based group seeking regional independence
October 17, 1970	Laporté's body found by police	FLQ	Domestic/homegrown	Contemporary (revolutionary terrorists)	Québec-based group seeking regional independence
October 14, 1982	Litton Industries factory in Toronto bombed	Squamish (Vancouver) Five	Domestic/homegrown	Contemporary (demand based terrorists)	Anarchist group opposed to the military industrial complex that demands end to weapons manufacturing

June 23, 1985	Luggage from Air India Fl. 301 explodes in Tokyo Airport	Allegedly Babbar Khalsa	Expatriates with foreign support	Contemporary (revolutionary terrorists)	Punjab-based group seeking regional independence
June 23, 1985	Air India Fl.182 explodes over coast of Ireland	Allegedly Babbar Khalsa	Expatriates with foreign support	Contemporary (revolutionary terrorists)	Punjab-based group seeking regional independence
April 5, 1992	Iranian embassy in Ottawa raided	Supporters of the Mojahedin-e-Khalq Organization (MEK)	Immigrants (refugees) from Iran who allegedly received Iraqi support	Contemporary (private justice terrorists)	Alleged exiled Iranian nationals seeking revenge against Iranian government
December 14, 1999	Ressam arrested at Canada/US border with car full of explosives	Affiliated with Armed Islamic Group (GIA) and al-Qaeda	Algerian national and failed refugee claimant empathetic to GIA and al-Qaeda	New type of terrorism (restoration terrorists)	Islamic extremist focused on mass damage/death of Western targets
June 2 and 3, 2006	Police in Ontario arrest 18 alleged members of a regional terrorist cell	Alleged independent Islamic-based group inspired by al-Qaeda	Primarily 1st generation Canadians of Islamic heritage.	Alleged to be part of the New type of terrorism (restoration terrorists)	Still before courts with no confirmed ties to terrorism

explosive devices (Hataley 2007). The second incident involved the 1993 New York World Trade Center bombing when it was discovered that some of the terrorists were living in Canada and planned to flee back to Canada after perpetuating their attack (Hataley 2007). In both of these cases, these terrorists were believed to have links to al-Qaeda. However, it was not until 1999 that Canada became very much a security concern for the United States.

On December 14, 1999, the Algerian national Ahmed Ressam (coined by the media as the “Millennium Bomber”) was caught trying to cross the Canada–United States border at Port Angeles, Washington, with a car full of explosives. Ressam belonged to a Montréal-based terrorist cell allegedly linked with both the Algerian terrorist group Armed Islamic Group (GIA) and the Afghan-based al-Qaeda (see Bell 2004; Hataley 2007; Sands 2001). Ressam and his Algerian associate Mourad Ikhlef were planning a terror attack at Los Angeles International Airport on the eve of the millennium. Over the course of several weeks, Ressam and Ikhlef made their way from Montréal to the lower mainland of British Columbia, where they stayed for several weeks in a motel and assembled their bomb. On December 14, 1999, Ressam traveled alone from the lower mainland to Vancouver Island, boarded the Coho ferry, and sailed from Victoria, B.C., to Port Angeles, Washington. Because of Ressam’s nervous disposition and questionable identity documents, he caught the eye of a U.S. customs inspector, who directed him for a secondary examination. It was at this point that Ressam attempted to flee on foot from the inspector and was subsequently apprehended and arrested (see Bell 2004; Flynn 2002; Hamilton and Rimsa 2007).

In April 2001 Ressam was convicted in Los Angeles of conspiracy to commit terrorism, document fraud, and possession of deadly explosives. Subsequent arrests of Ressam’s terrorist cell included: 1) Fateh Kamel, convicted in Paris in April 2001 for supplying fraudulent passports to various Islamic militants; 2) Mokhtar Haouari, convicted in New York in 2002 for providing a fake driver’s license and other assistance to Ressam; 3) Samir Ait Mohamed, indicted by U.S. authorities in 2001 on charges of conspiring to commit an act of international terrorism and currently fighting extradition to the United States from Canada; and 4) Mourad Ikhlef, accused by Canada of assisting Ressam in his terrorist plot and deported back to Algeria in March 2003 (see Hamilton and Rimsa 2007).

The ability of Ressam and his fellow terror cell members to enter Canada as refugee claimants, disappear with ease into the community, and subsequently resurface to engage in a terrorist plot caused great concern regarding the level of border security and the apparent ease with which potential terrorists can move freely between Canada and the United States. Ressam initially came to Canada as a refugee claimant in 1994 using a fraudulent Republic of France passport. As in most Canadian refugee claim cases, Ressam was released into the community pending his hearing before the Immigration

and Refugee Board. Ressam failed to appear for his hearing and disappeared from the government's radar. It was not until his arrest by U.S. border officials that Canadian officials once again discovered Ressam's whereabouts (see Adelman 2002; Hamilton and Rimsa 2007).

In their 2004–2005 Public Report, the Canadian Security Intelligence Service (CSIS) reported on page 2 that “a relatively large number of terrorist groups are known to be operating in Canada, engaged in fundraising, procuring materials, spreading propaganda, recruiting followers and conducting other activities.” Furthermore, this report identified that there are numerous individuals currently residing in Canada who have both trained in al-Qaeda terrorist camps and fought against Canadian Forces in Afghanistan. In their earlier 2002 report, CSIS warned that aside from the United States, Canada has more international terrorist groups active within its borders than anywhere else on earth.

Just as the October Crisis galvanized the way Canada viewed terrorism during the 1960s, the Air India bombings significantly impacted Canada's approach to counter-terrorism activities during the mid-1980s. It was the December 1999 arrest of Ressam that resulted in Canada's review of the way it secured its borders, including the way it managed its inland immigration enforcement program (Adelman 2002). Ressam's connection to the new form of terrorism and the subsequent 9/11 attacks perpetuated by similar types of terrorist groups have acted as the catalyst through which organizations such as the CBSA have been formed.

## **Canada's Historic Approach to Border Security**

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Every sovereign nation has a border authority responsible for regulating the movement of persons and goods across its political boundaries. In Canada these authorities were traditionally in place to collect duties and taxes (McIntosh 1984); however, over the past few years they have evolved into a sophisticated law enforcement entity: the CBSA. Canada Customs was established under the Customs Consolidation Act of 1841 along with the establishment of Canada's first customs house in St. Jean, Québec (McIntosh 1984). Shortly after, in 1906, the Canada Immigration Department was established under the first Immigration Act of 1906 (Kelley and Trebilcock 1998; Knowles 2000). When the Royal Canadian Mounted Police (RCMP) was formed on February 1, 1920, Canada put in place its initial tri-service border management strategy. Customs inspectors, immigration officers, and police constables worked together to maintain Canada's sovereignty and border integrity. Customs inspectors controlled all of Canada's harbors, airports, and major land crossings; immigration officers worked alongside customs inspectors at major ports of entry; and RCMP members periodically

patrolled Canada's inter-port and remote regions (Sundberg 2004). It was not until December 12, 2003, that this system dramatically changed.

### **Contemporary Issues in Canada's Border Security Strategy**

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Starting with the 1988 Canada–United States Free Trade Agreement and expanded 1994 North America Free Trade Agreement came a new era of bilateral meetings between Canada and the United States addressing trade and security along their shared border. The two most notable pre-9/11 meetings were the 1995 Canada–United States Accord on Our Shared Border, and the 1999 Canada–United States Partnership Forum (Hataley 2007). Resulting from 9/11 came the most significant border security agreements between the United States and its bordering neighbors of Canada and Mexico. The first of these post-9/11 partnerships came with the Canada–United States December 12, 2001, 32-Point Smart Border Declaration and Action Plan and the subsequent United States, Canada, and Mexico Security and Prosperity Partnership of North America (SPP) Agreement. Most recently, as a result of the 2004 United States Intelligence Reform and Terrorism Prevention Act and its accompanying American Western Hemisphere Travel Initiative (WHTI), Canadians for the first time in their history are required to produce a passport when entering the United States (Hataley 2007). There is no question that in the recent post-9/11 years border security has come to the forefront of Canadian and United States relations.

The 2001 32-Point Smart Border Declaration and Action Plan has had the greatest impact on how Canada secures and manages its international boundary. Outlined in the action plan are a number of initiatives that provided for ongoing collaboration between Canadian and American border agencies in identifying and addressing security risks, while at the same time promoting the free flow of trans-border trade (DFAIT 2001). During her February 2, 2004, Speech from the Throne, former Governor General of Canada Adrienne Clarkson identified that the establishment of the CBSA was in direct response to “building on the smart border initiative” and improving “the unique relationship” Canada and the United States shared (PMO 2003).

The biggest challenge for the Government of Canada in the post-9/11 era is to appease American security concerns in relation to their shared border while at the same time maintaining open trade with the United States (see Hataley 2007; Janigan 2004; Jack 2003; Fife and Toulin 2001). As Crispo (2003) observes, increased inspections of goods and people entering the United States in the post-9/11 era have caused significant decline in Canadian production. Andreas and Biersteker (2003) and more recently Hataley (2007) all share Crispo's position that Canada has little choice but to join the United States in its efforts to secure the longest undefended border in the world. If

the United States views Canada as a “weak link” in its homeland security strategy, Canadian businesses will surely experience devastating economic, social, and political damage (Hataley 2007).

## **How Canada Protects Itself in the Aftermath of 9/11**

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With the 32-Point Smart Border Declaration and Action Plan and in light of the 9/11 attacks, the Canada–United States border changed forever. On October 8, 2001, in direct response to 9/11, United States President George W. Bush established the Department of Homeland Security (DHS). On March 1, 2003, the DHS grew to include two new bureaus: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) (Ridge 2003). The American CBP and ICE bureaus consolidated the once separate agencies of customs and immigration into a single enforcement body. Considering the impact 9/11 has had on the American people and the close relationship these two nations have, it is no surprise that only a few short months after, Canada adopted similar national and border security structures.

On December 12, 2003, former Canadian Prime Minister Paul Martin announced the creation of the Public Safety and Emergency Preparedness portfolio (today known as Public Safety Canada). It was with this announcement that the Canada Border Services Agency (CBSA) was born. The CBSA became one of six agencies under the umbrella of Public Safety Canada (PSC). The other five agencies are the RCMP, Canadian Security Intelligence Service (CSIS), Correctional Service of Canada (CSC), the National Parole Board (NPB), and the Canada Firearms Centre (CFC) (PSC 2008). By consolidating these six agencies under the authority of a single minister, the government of Canada has attempted to “create important synergies between national security and emergency management, corrections and crime prevention, justice information networks and law enforcement agencies” in hopes of enhancing Canada’s overall level of safety and security (PSC 2008).

The CBSA comprises approximately 13,000 public servants formally of the Canada Customs and Revenue Agency (CCRA), Citizenship and Immigration Canada (CIC), and the Canadian Food Inspection Agency (CFIA). In general terms, the CBSA takes over the CCRA customs program, the CIC intelligence and enforcement branches, and the CFIA ports of entry passenger and initial import inspection services (EKOS 2007). Keeping with the American philosophy that consolidated safety and security organizations improve a nation’s overall level of *homeland security*, the amalgamation of Canada’s border services was meant to “[provide] integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods” (CBSA 2008). Perhaps the most notable difference between the former Canadian border services agencies and the new

CBSA is that CBSA officers are now issued handguns and have been given expanded policing powers (CBSA 2008).

Although Canada and the United States have cooperated on an ad hoc basis before in regard to the combating of drug and weapon smuggling, the 32-Point Smart Border Declaration and Action Plan and 9/11 formalized the first permanent joint border law enforcement initiative: the Integrated Border Enforcement Teams (IBETs) (Hataley 2007; RCMP 2008; CBSA 2008). As of August 2008, there are currently 24 IBETs strategically located along the length of the Canada–United States border comprised of RCMP, CBSA, CBP, ICE, and U.S. Coast Guard officers (RCMP 2008). The events of 9/11 have also brought about greater cooperation between Canadian and United States law enforcement in the exchange of information. The Canadian Police Information Centre (CPIC) in Ottawa and National Criminal Index Center (NCIC) in Washington have exchanged criminal information electronically between each nation’s federal police for over a decade; however, in the post-9/11 era this exchange has now included the exchange of “terrorist-related” information such as lookouts for possible terrorist group members (NLETS 2005). This relationship works separate from each nation’s longstanding membership with INTERPOL.

Although Canada has maintained its immigration department (CIC) to process immigration applications and administer the Citizenship Act, the enforcement and security screening of all non-citizens is now handled by the CBSA, with some assistance from the CSIS. The CSIS is responsible for ensuring that possible terrorists are listed on Canada’s immigration computer systems and that all refugee and permanent resident applications are screened to prevent possible foreign terrorists from taking refuge and settling in Canada (CIC 2008). The CBSA also take an active role in interviewing and, if needed, taking enforcement action against non-citizens seeking to enter or remain in Canada either temporarily or permanently (CBSA 2008).

In addition to the electronic sharing of information, great advances in the use of biometrics for travel documents have also emerged as a result of the 9/11 and 32-Point Smart Border Declaration and Action Plan. The next version of the Canadian passport will have an embedded micro-chip to facilitate clearance during cross-border travel and to also enhance the security of the document itself (CBSA 2008). In addition, “pre-screening” programs such as NEXUS are becoming commonplace for frequent cross-border travelers (Hataley 2007). Under these programs, citizens from Canada and the United States can apply to either federal government for a NEXUS card, which can be used instead of a passport. During the application program, their personal (including biometric) information is forwarded to both the CBP and CBSA and checked against criminal databases, no-fly lists, and terrorist member alert systems (CBSA 2008). The border officials of each country have in essence jointly “pre-cleared” a significant segment of cross-border travelers and thus are able to increase their speed of transit while ensuring enhanced security.



**BOX 1.2 CANADA–UNITED STATES: STILL  
THE LONGEST UNDEFENDED BORDER?**

Whereas the Canada–United States border has been traditionally referred to as the longest undefended border in the world, post-9/11 security reforms have brought this description into question. As of 2003, both sides of this vast bilateral boundary are guarded by paramilitary and armed policing organizations. In March 2003 the United States formed the bureau of Customs and Border Protection (CBP) under its newly established Department of Homeland Security, followed in December 2003 by Canada’s formation of the Canada Border Services Agency (CBSA) under the newly created Department of Public Safety. Both the Canadian and American border security organizations are composed of each nation’s former customs, immigration, and food inspection services (Sundberg and Winterdyk 2006). Although the traditional customs, immigration, and food inspection services of the United States have been armed for decades, the CBSA constitutes the first armed service to protect the northern portion the Canada–United States border.

Both Canada and the United States maintain independent immigration departments; however, the enforcement, intelligence, overseas security screening, and port of entry inspection duties are now the responsibility of their newly amalgamated border security organizations. The one difference between the two models is that the United States created a separate bureau within its Department of Homeland Security for internal customs and immigration controls (Immigration and Customs Enforcement [ICE]), whereas Canada has its internal functions managed by the CBSA (Sundberg 2004). Although the Government of Canada has not officially acknowledged that it has modeled its new national and border security organizations on the United States Department of Homeland Security and its sub-bureaus (for example, CBP and ICE), it is an uncanny coincidence that within months of American reforms, Canada also established a single national and border security organization tasked with protecting its homeland.

Never in Canadian history have armed officers guarded the northern section of the 49th Parallel. This longstanding tradition came to an abrupt halt in 2006 when the Government of Canada allocated over \$101 million to arm over 4,800 Border Services Officers (CBSA 2008). The Canadian border has transformed into a paramilitary policing organization with a focus on enforcement as opposed to facilitation. Border Services Officers wear ballistic vests, semi-automatic handguns,

(continued)



and other typical policing equipment. They are empowered to not only take action against immigration and customs-related offenses, but can act on a multitude of federal statutes (Sundberg and Winterdyk 2006). In short, as of 2003, Canada now has an armed border police that guards its frontiers.

Considering the many rapid and dramatic border security reforms that have transpired within Canada since 9/11, are Canadians safer? Arguably, Canada does border a nation with one of the highest violent crime rates per capita, a nation that takes pride in firearm ownership, and a population whose consumption of illegal narcotics is significant. Logically it makes sense to equip the men and women tasked with maintaining Canadian sovereignty and controlling the flow of people and goods entering from the United States with police training, law enforcement powers, and defensive weapons. Yet, at no point has the Government of Canada justified the paramilitarization of its borders as a response to protecting Canadians from violence, guns, and drugs emerging from the United States.

Canada has stated its border security reforms are in part a way of streamlining trade between Canada and the United States while enhancing the government's ability to identify potential high-risk travelers and goods. The reality is that since 9/11 not one terrorist has been apprehended along the Canada–United States border, guns smuggled from abroad are killing Canadians at an unacceptable rate, narcotics are still being trafficked into Canada and consumed within Canadian communities, and costs associated with imported and exported goods have increased as a result of border security reforms (see Crispo 2003).

Security measures are needed and important. We need well-trained and well-equipped police and law enforcement officials; we can benefit from new technologies designed to safeguard our communities; and legislation allowing for the prosecution of violent and harmful acts is paramount in maintaining healthy and cohesive communities. However, what is equally important is that those empowered to maintain public order and protect our sovereignty are also protectors of established civil liberties and freedoms, that new technologies don't cause a culture of fear and do maintain the dignity and privacy of citizens, and that laws are based on natural justice, are transparent, and keep with the Canadian tradition of innocence until guilt is proven beyond a reasonable doubt. If we fail to achieve this balance between security and safety with rights and freedoms, we will have lost all that we have strived to achieve as a people since our inception.

## Impact of Globalization and New Border Security Reforms on Canada

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Globalization, including the new threat of global terrorism, has greatly impacted Canada over the past several decades. As Canada becomes increasingly interconnected with other nation states, its domestic institutions are forced to adapt a more global perspective. Without globalization Canadians would not enjoy many of the comforts they take for granted, such as modern infrastructure, advanced technologies, prosperous industry, and one of the world's highest standards of living (Quinet 2002). However, with globalization comes a compromise in sovereignty (Fife and Toulin 2001), an increased threat of transborder crime (Bruggeman 2001), and a level of subservience to world powers such as the United States (Janigan 2004; Dowhaniuk 2004). The integration of Canada's public safety and emergency services was influenced by global forces such as the 9/11 terrorist attacks, the severe acute respiratory syndrome (SARS) epidemic in 2003, the bovine spongiform encephalopathy (BSE) outbreak in 2003, and the U.S. trade restrictions on Canadian softwood lumber starting in 2001 (see Drache 2004; Sundberg and Winterdyk 2006). These events provide a sobering account of just how vulnerable the Canadian economy is to the forces of globalization.

In light of major border security reforms on each side of the Canada–United States border, has public safety and border security improved for Canadians? In the first three years following 9/11, Canada spent \$9 billion on increased security, including the creation of the CBSA (Geddes and Gillis 2005). However, as Senator Kenny identified, “The money [spent on security] is inadequate and a sense of urgency [on behalf of the Government toward security improvements] is missing” (21). In short, it would appear there are significant shortcomings.

Ron Moran, President of the CBSA employees union, has stated, “There have been no clear and direct management requests for more scrupulous attention to documents, there have been no requests to increase the number of referrals from the Primary Inspection Line [at border crossings] to Secondary Inspection Areas, nor has any additional staff been called to help manage what should be an increased workload due to heightened vigilance” (Gatehouse 2005, 17). Questions have also been raised by the media that the explosives detection equipment currently used in airports may not detect homemade explosives commonly utilized by terrorist groups like al-Qaeda (see McGregor 2005, A3).

Most recently, the Government of Canada's practice of hiring over 1,200 post-secondary students to work summers as border services officers has come under fire because of their lack of experience, their immaturity, and the cynical view of their duties (CBC News 2007b). In the fall of 2007, CBC

News reported that a number of student officers posted inappropriate photos and anti-government comments on social-networking websites. Also in late 2007, it was reported that 20% of CBSA officers had failed their initial firearms training course, which raised questions about their ability to defend Canada from foreign threats (Williamson 2007).

The most damaging event to the CBSA came on October 4, 2007, when a newly accepted permanent resident, Robert Dziekanski, became disruptive in the CBSA portion of the Vancouver International Airport. Mr. Dziekanski went unnoticed for hours by CBSA staff and began wandering in a disoriented manner within the secured CBSA clearance area. After several hours transpired, members of the RCMP attended the CBSA area to address Dziekanski's erratic and disruptive behavior. The RCMP members subsequently tasered and ultimately killed Dziekanski within the CBSA clearance area. Although several inquiries are under way as this book goes to press, CBSA President Alain Jolicoeur admitted he wished his officers had offered Mr. Dziekanski better assistance, and he committed himself to improving CBSA operations at the airport (CBC News 2007a).

As real as border protection might be, it must be balanced against the demand and need for free trade and commerce, and perhaps most importantly, a sense of freedom. The question or challenge is whether it is possible to maintain an openness of free trade and movement of lawful people and goods without overly restricting such movements. Consistent with the Canada–U.S. Border Accord of 2001, Canadian and American border protection endeavors must optimize the free movement of legitimate people and goods with minimal detraction from personal freedom. Only time will tell if this goal is achievable in today's heightened environment of national and border security.

Border restrictions for both nations means billions in trade lost and diminished cross-border movement. Every day over \$2 billion (CND) in trade occurs between Canada and the United States with over a million people moving across the boundary (Coalition for Secure and Trade-Efficient Borders 2005). Some suggest that since 2001, the time it takes to clear an American-bound transport shipment of automotive parts has increased 300%, resulting in an approximate \$800 CDN increase in the end cost for every North American–made car (Vieira 2005).

So as much as Canada and the United States might want to build bigger and better organizations mandated to keep undesirable people and goods out, these measures appear not to be as effective as planned. As with the physical presence of the wall between Israel and Palestine or between the former East and West Berlin, border security is more than just building high-tech barriers and developing new law enforcement organizations: it requires attention to the human factors associated with community building and organizational

development (see, for example, Pratt 2005; Gillis and Gatehouse 2005; Flynn 2002; Koring 2005; Sundberg and Winterdyk 2006).

Flynn, a United States Coast Guard Commander and senior fellow with the National Security Studies Program at the Council on Foreign Relations, best articulates how border and homeland security must be viewed if there is any form of effectively preventing future acts of terror. Flynn (2002, 74) states: “Ultimately, getting homeland security right is not about constructing barricades to fend off terrorists. It is, or should be, about identifying and taking the steps necessary to allow the United States to remain an open, prosperous, free, and globally engaged society.” Although speaking in reference to the United States, Flynn’s assertion is equally applicable to any nation exposed to the threat of terrorism. Border controls are important; however, they should be a last resort in the fight against terrorism. Building stronger, higher, and more secure fences between nations in the era of global terrorism can never provide true security against an attack. The members of al-Qaeda and other terrorist organizations carry many passports, are born in every region of the world, and communicate with one another over the uncontrollable and predominantly anonymous Internet (9/11 Report 2004). Security services and lawmakers around the world should listen to experts such as Flynn and focus more on bridging communities and developing relationships, and not put our full focus on the building of walls and fences.

## Conclusion

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Considering the CBSA was only formed in 2003, we can provide only an initial inquiry into its successes and challenges. However, one must question the wisdom of making such drastic bureaucratic and organizational changes at a time when the world is facing such a new and unpredictable terrorist threat. The old saying, “Don’t fix it if it isn’t broken,” may be a fitting one when considering the Government of Canada’s decision to establish the CBSA. The creation of the CBSA constitutes one of the largest government reorganizations since the amalgamation of the Canadian Forces during the mid-1960s (Sundberg 2004). Organizational transition is often rife with challenges, tribulations, and at times disorganization and frustration (see Fullan 2001)—how wise was it to expose Canada’s border security establishment to such organizational upheaval so shortly after 9/11?

This chapter provides a summary of the evolution of Canada’s border security strategy, explores the means Canada has used to protect itself from acts of terrorism, and accounts for the key events that have influenced its current strategic position. In reading this chapter, and in reflecting on the other chapters in this book, it is our hope that a greater understanding of how globalism, including global terrorism, has impacted not only Canada, but

most every other industrialized nation on earth. In this reflection, it is paramount that we continue to question whether security and border reforms are in fact creating safer societies or whether they are infringing on our rights and established liberties. Walls have proven over the centuries to provide no protection but rather cause animosity. It is our sincere hope that through comparative research on border security, nations can best find the balance between security and freedom.

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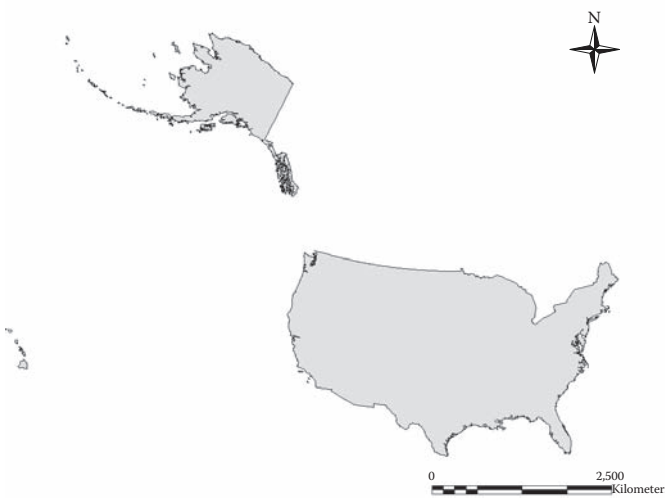


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# United States Border Security after 9/11

# 2



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## Contents

Introduction	38
U.S. Border Security Policy before 9/11	40
Basic Border Security Locations and Operations before 9/11	40
Pre-9/11 Programmatic Emphases: Border Patrol, Walls and Fences, and the Military	42
Pre-9/11 Programmatic (De)Emphases: Ports of Entry, Consulates, and Counter-Terrorism	45
Responses to 9/11: U.S. Border Security, 2001–2005	49
The Initial Policy Response	50
The Creation of the U.S. Department of Homeland Security	51
New Screening and Mobility Procedures: The Advent of “Smart Borders”	54
Visas, Watch-Lists, and Consular Operations	55
Developments in 2004: US-VISIT and the Intelligence Reform and Terrorism Prevention Act	57

Reversion to the Mexican Border: U.S. Border Security, Late 2005–Present	58
Conclusions	66
References	67

## Introduction

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The horrific 9/11 attacks were on U.S. soil, and thus the United States is central to a global survey of border security policies and practices in the era of al-Qaeda.<sup>\*</sup> Furthermore, the United States is the global political hegemon, and the North American economy is (together with the European Union and East Asia) a major focus of world travel and goods shipment. Hence, U.S. border security policies have a crucial impact on the rest of the world through the practicalities of movement, the diffusion of models of border control, and the explicit and implicit policy demands the U.S. government places on the rest of the world. U.S. border policies and practices thus merit careful scrutiny.

Border security is not easily separated from a number of other processes and locales of state governance. In the interest of delimiting a potentially vast subject matter, we will focus primarily on governance over entry and exit, by air, sea, or land, through the formal territorial boundaries of the United States, whether authorized or not. We will pay some attention to activities that occur outside the formal territorial boundaries of the nation, such as visa issuance and pre-screening of people and goods destined for the United States, but which are tightly integrated with the task of border control. We will not address interior enforcement issues (e.g., Coleman 2007), however, even when it involves processes such as immigration that crosses borders prior to being located in the national interior, and even if such issues are blurred in the public mind with border controls.

We find it helpful to distinguish three different targets of border enforcement: terrorism (terrorists, their transnational networks, and their supplies for acts of violence), mass unauthorized migration, and contraband, especially of psychotropic drugs (see Payan 2006). Each of these issues involves somewhat different geographic locations and modes of border crossing. Interdiction of terrorism involves very finely directed actions against very small numbers of persons and conveyances, often based on specific intelligence (Jones and

<sup>\*</sup> In keeping with this book, however, we are careful not to overstate the U.S. perspective in terms of terrorism and policy and practice responses to it. The delineation of political terrorism against civilians is complex and disputed, and to focus on al-Qaeda, our present task, risks ignoring other sources of terror directed at civilians. And the United States has been by no means uniquely or even primarily the focus of political terrorist attacks and border and non-border security responses.

Libicki 2008; Kerwin and Stock 2006), although there are also relevant mass screening tactics, such as radiation monitors at ports of entry, while interdiction of unauthorized migrants and voluminous contraband involve mass enforcement approaches, checking every person and many conveyances, often (but again not always) without fine-grained intelligence prior to the point of contact.\* In particular, both before and after 9/11 the U.S.–Mexico land border received the majority of border enforcement resources and the bulk of publicity, although a systematic study of Islamist terrorists indicates no connection to that border, by contrast with the U.S.–Canada land border and international airports (Leiken and Brooke 2006a; also see Winterdyk and Sundberg in this collection). Fundamentally, not all border enforcement activities and geographic emphases are directed at terrorism—a rather evident point when flatly stated, but one that is often poorly understood and has been obscured by post-9/11 rhetoric.

In this chapter, we develop the theme of continuity *and* change in U.S. border security. No matter how dramatic and important 9/11 was, we must avoid assuming that U.S. border security initiatives after that date responded mainly or exclusively to international terrorism. Rather, we take this as an open question. One way of doing this is to identify trends predating 9/11 that have continued or deepened since that date, as well as those that have changed. For similar reasons, we are attentive to practices on the ground, and not just the texts of laws and official policies, or the discourse of politics. The fundamental point is to take an open and inquisitive approach to a subject that is often predetermined by unexamined frameworks.†

This chapter is laid out mainly in a chronological fashion, with some moving back and forth as needed. It begins with the period before September 11, 2001, in particular from the 1980s onward. There were, first, meaningful al-Qaeda and other international terrorist acts and threats in this period, even if the U.S. government did little in the way of border security to respond. But more importantly, consideration of the pre-9/11 period enables us to

\* One can argue that even if there has never been any past connection between mass immigration enforcement at the Mexican border, the possibility is there of terrorists or terrorist materials entering the country along with the other unauthorized migrants or contraband smugglers. The counterargument is that flawed enforcement-only approaches to immigration and drug law create these large-scale uninspected flows, so that they are actually counterproductive in terms of isolating specifically dangerous terrorists and terror materials—the basic point being that when looking for a “needle” it makes no sense to create a larger “haystack.” See Ewing (2007) and Kerwin and Stock (2006).

† The term security is particularly fungible, and needs to be tied down to specific issues. The Department of Homeland Security through its title appears to be dedicated to fundamental protection against death-dealing terrorism, but many of its core functions are far more pedestrian in nature (e.g., narcotics interdiction). The reader should consult the literature on “securitization” of political issues (Buzan et al. 1998; Huysmans 1995; Wæver 1995).

identify and analyze changes and continuities in the period since. Then, we look at the period from 9/11 to the end of 2005. This was the period when most of the major changes were made to border organizations and policies, or at least authorized in law. It is the period that helps most in identifying the terror-aimed features of U.S. border practices. In December 2005, however, House Resolution 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, a strong anti-unauthorized-immigrant measure, passed the U.S. House of Representatives. While defeated in the Senate, it marks the beginning of a reversion of border policy toward a focus on mass unauthorized migration. Hence, the third part of the chapter addresses the period from 2006 to the present (the time of writing being July 2008). We close by looking at the overall trends and issues raised in this survey of U.S. border policies and practices.

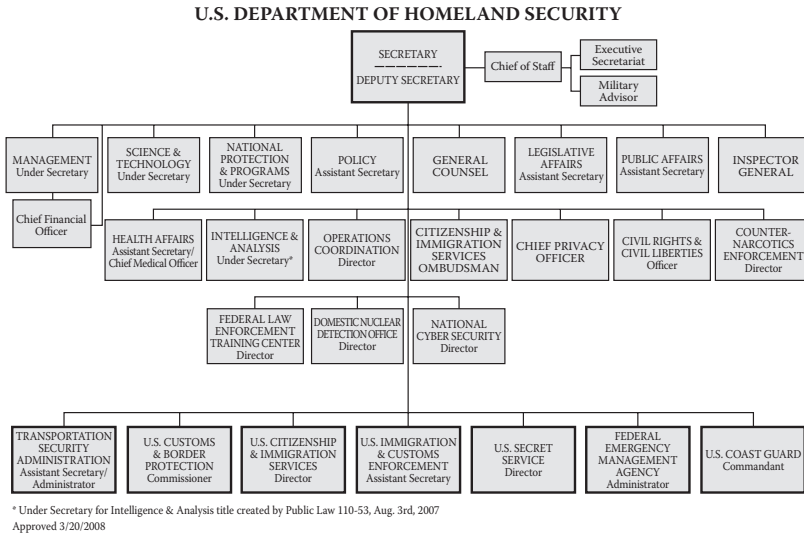
## **U.S. Border Security Policy before 9/11**

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We begin by offering a survey of all the different geographical locales and kinds of movement that are entailed in border security. This has the benefit not only of introducing the reader to the massive range of border security issues encompassed by U.S. policy, but also demonstrating how remarkably fragmented U.S. border control organizations were in the period before 9/11 and the consequent creation of the Department of Homeland Security (DHS).

### **Basic Border Security Locations and Operations before 9/11**

Ports of entry are all the transportation points through which people and goods are authorized to enter the national territory. These include international airports, seaports, and land border crossings. Geographically in the United States, they are spread throughout the nation (airports), along two coasts (the Atlantic-Caribbean and the Pacific) and two land borders (the U.S.-Mexican border and the U.S.-Canadian border). Before the creation of Homeland Security, all ports had dual governance: the Immigration and Naturalization Service (INS) and the Customs Service—plus a number of smaller agencies (the Animal and Plant Health Inspection Service [Department of Agriculture], Nuclear Regulatory Commission [Department of Energy], etc.). INS inspections were part of the Department of Justice, which, as the name indicates, regulated the entry of persons (visiting non-immigrants, immigrants, and citizens) into the country, while the Customs Service was part of the Treasury Department and regulated all goods, whether declared or smuggled. Furthermore, while Customs inspected land conveyances, it shared air conveyance inspection with the Federal Aviation



**Figure 2.1**

Administration and sea vessel conveyance inspection with the Coast Guard (both in the Department of Transportation). Please see Figure 2.1.

The regulatory functions of ports of entry are commensurately complex, as one might expect. They include allowing or turning away entering persons, charging people with law violations for attempted fraudulent entry, allowing the entry of goods or interdicting contraband (and conducting arrests for carrying contraband), applying tariffs and regulations to goods, enforcing laws and regulations concerning exit from the country, and registering those entries and exits of people and goods from the country (often, however, not performed). At the same time, ports are major bottlenecks in the international transportation grid, so that they are under powerful commercial and political pressure to move people and goods rapidly through this inspectorial process; there is an undeniable tension between thoroughness of inspections and speed of inspections. Interestingly, all entering persons at ports must undergo inspections, while entering shipments do not have this requirement (all shippers provide formal declarations, but only approximately 10 to 20 percent of shipments receive any physical inspections). Finally, it is worth emphasizing the centrality of ports to border security—the flow of people through U.S. ports may be 1,000 times the size of the flow of unauthorized migrants across land borders (500 million versus 500,000 annually, though the latter number is informed guesswork), although publicity devoted to ports versus non-port borders appears to be roughly the inverse.

In between ports, entry to the national territory is always unauthorized, whether through the air, onto shore, or across land. The Border Patrol was (and is) responsible for interdicting entry across the land surface. The Border

Patrol was part of the INS (before inclusion in the Department of Homeland Security), but it was relatively autonomous, being unified only at the highest level with the rest of the immigration service, and having its own, much more powerful political constituency than the rest of that organization. Interdiction of unauthorized entry by air was and is under the official jurisdiction of the Department of Defense, but many detection activities and the authorization to make law enforcement arrests devolved onto the Customs Service (which had an impressive “air force”). Law enforcement along shores was the responsibility of the Coast Guard, though in some locations along the Caribbean, the Border Patrol also had responsibility.

Both before and after 9/11, the Consular Service of the Department of State awarded visas for non-immigrant travel to the United States (immigrant visas were more complex, involving both the INS and the Department of State). There was also pre-screening of travelers by the INS at some airports before flights to the United States and pre-clearance of some cargo by Customs before shipping. (The concept of pre-screening—the pushing out of U.S. law enforcement into international locales—predates 9/11, and was and is directed at contraband commodities and potential immigration violations as well as terrorism). The U.S. border-control system, then, applied and continues to apply two to three layers of scrutiny to entering non-citizens (visa awarding, possibly pre-screening, and port-of-entry inspections) and zero to two layers to entering shipments (possibly pre-screening and possibly port inspections).

To make things even more complex, other U.S. agencies have more specialized roles in border security. An example is the El Paso Intelligence Center (EPIC), which is an interagency office that collects and analyzes tactical intelligence on drug, alien, and weapon smuggling, and since 9/11, similar issues in counter-terrorism (such as trends in fraudulent documents). EPIC’s lead agency is the Drug Enforcement Administration (Department of Justice) and has participants from over twenty other law enforcement organizations. And a number of other agencies can be cited to illustrate the immense complexity and density of border security operations (see Table 2.1).

### **Pre-9/11 Programmatic Emphases: Border Patrol, Walls and Fences, and the Military**

Surveying U.S. border and border-related programs before 9/11, we see both elements that would substantially change under the anti-terrorism agenda after that date, and also important ways that things have not changed, either continuous themes or first steps toward current policies. Geographically and programmatically, the main focus on U.S. border security before 9/11 was interdiction of unauthorized migrants and contraband outside of ports of

**Table 2.1 Principal U.S. Agencies Involved in Border Operations (2008)**


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Department of Homeland Security ( <i>see Figure 2.1 for detailed depiction</i> )
Department of Defense, Northern Command (including Joint Task Force North); National Guard
Department of State, Consular Service
Drug Enforcement Administration (Department of Justice)
Federal Bureau of Investigation (Department of Justice)
Bureau of Alcohol, Tobacco, and Firearms (Treasury Department)
U.S. federal prosecutors, courts, prisons, and adjunct agencies
State and local law enforcement agencies, prosecutors, courts, prisons, and adjunct agencies

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entry, especially movement across land and by air on the U.S.-Mexican border, and also by sea around Florida. This meant that security at the U.S.-Canadian land, air, and maritime borders was de-emphasized, as was security at all ports of entry, and security in the visa-awarding and admissions process. The post-1980 growth of the Border Patrol, upgrading of surveillance equipment and other border interdiction tools, introduction of the military to border control, and the first wave of building border walls all illustrate these emphases.

The Border Patrol had 2,268 agents in September 1980; in September 1993, it had about 3,965 agents. The growth, though marked (4.8 percent annually) was uneven, and there were periods of stagnation (1988 to 1993, for instance). Growth after September 1993 and before September 2001 was explosive, however. The Border Patrol more than doubled from 3,965 to 9,651 in this period, an annual rate of expansion of 18 percent (all figures calculated from Transactional Records Access Clearinghouse 2006a). In addition, the geographic allocation of the Patrol, already much heavier on the Mexican than the Canadian line, became yet heavier there (from 9.3 percent on the northern border and 87.2 percent on the southern border in September 1980 [a small number were in other locations] to 3.4 and 93.9 percent, respectively, in September 2001) (TRAC 2006b).

Starting in late 1993 and 1994, exactly when the expansion of the Border Patrol speeded up, a new tactic was applied at the border (summarized from Andreas 2000; Dunn n.d.; Nevins 2002). Past Border Patrol practice had been to stay back at least a short distance from the border, wait for people to come far enough inward that they could not quickly retreat, and then attempt to arrest them. Most arrestees were allowed to sign a voluntary departure, skipping the deportation process (and leaving them with no record of deportation), and then were rapidly returned to their home country. This enabled Mexicans to try repeatedly to enter until they succeeded.



Called “line watching,” the new tactic placed Border Patrol officers and vehicles in close spacing (a few hundred feet apart) almost directly on the boundary in major urban crossing corridors, such as El Paso and West San Diego County. Intending entrants could not see a place to cross, so this deterred them from entering at all—in a few, mainly urban places. However, the immense personnel requirements for this density of packing meant that it could only be sustained for short sections of the border. Thus, most unauthorized crossers simply shifted into more open-spaced segments of the boundary, where the old pattern of detection and arrest continued (as well as the facilitating practice of rapid voluntary return). The tactical shift was not effective at stopping or reducing unauthorized flows, then, in border-wide perspective (in addition to the sources cited above, see surveys of migrants in Mexico: Fuentes et al. 2007; Massey et al. 2002). Because the blocked segments had been urban or peri-urban, however, and the new crossing spaces were in remote river, mountainous, or desert areas, the rate of death and injury crossing the border increased significantly (Cornelius 2001; Eshbach et al. 1999; Eshbach et al. 2003).

In addition to adding human resources, during the 1980–2001 period, the Border Patrol also repeatedly received new and upgraded operational and surveillance equipment, almost entirely dedicated to the southern border. These included helicopters, fixed-wing aircraft, motion sensors, closed-circuit television, low-level light and heat-sensing night vision equipment, stadium lighting, horizontal radar, upgraded weaponry, improved communications networks, and so forth (Andreas 2000, 52, 55–56, 90; Dunn 1996, 38, 43–44, 53, 69, 78–80). The United States had over 13,000 sensors along its borders, mostly the Mexican border, by 2000, although not all were operative (Koslowski 2006). Such technologies, while offering the Border Patrol some limited benefits in certain areas of the border region, tended to be plagued by deployment, readiness, and system integration challenges. For instance, the two major security systems deployed in the 1990s and early 2000s—the Integrated Surveillance Intelligence System (ISIS) and its successor, the America’s Shield Initiative (ASI)—consolidated surveillance technologies at the border at a cost of millions of dollars, but never achieved their full goals and objectives. This led to a U.S. Government Accountability Office (GAO) report that concluded the systems had “unresolved key issues” (Ackleson 2003; GAO 2006, 45). The systems were eventually discontinued and replaced by SBInet, part of the Secure Border Initiative unveiled by the Bush Administration in late 2005.

The 1990s also saw the beginning of the placement of walls and advanced fences along the Mexican border, a trend that continues to the present day (previously, both northern and southern borders were marked by a mix of no barriers, livestock fencing, and chain link fence with barbed wire on top). Fourteen miles of wall made of solid steel plates were erected in western San Diego county starting in 1990 (Nuñez-Neto and Kim 2008, 1), and in 1993, Sandia National Laboratories provided a study to the INS that recommended

triple layer, hard-to-cut-and-climb fencing on all high traffic sections of the border (Dunn n.d.; Nuñez-Neto and Kim 2008, 4). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorized additional walls along the border, and by 2007, there were seven sections of solid wall along the border (most built before 2001) totaling 62 miles (Dunn n.d.). The effectiveness of walls as a barrier to unauthorized migration has been questioned, however (Nuñez-Neto and Kim 2008, 13–18).

The U.S. military became involved at the border during the 1980s and 1990s, supporting the Border Patrol, U.S. Customs (in air operations), and the ports of entry (Dunn 1996). The military roles have included construction, logistical support, unloading shipments, intelligence gathering and interpretation, and, most commonly, air and ground reconnaissance and surveillance. In addition, Joint Task Force 6, based at Fort Bliss, Texas, coordinates military assistance to border region law enforcement agencies, initially focusing on drug smuggling and later on unauthorized migration and terrorism-related enforcement. Regular military units were assigned to assist border law enforcement until 1997, when they withdrew after a Marine reconnaissance unit killed a U.S. citizen near Redford, Texas (Dunn 2001). National Guard units, which can be assigned either by state governors or the federal government, have participated in border operations both before and since that date. The regular military cannot enforce civilian laws directly, due to the Posse Comitatus law, but National Guard units under state assignment are not restricted in this fashion.

The pre-9/11 period also saw an extensive upgrading of airspace surveillance along the Mexican border and the Florida and Puerto Rico regions. This included the deployment of military AWACS aircraft (Airborne Warning and Control System–equipped Boeing 707s) and tethered Aerostats with cameras and radars to monitor air traffic, as well as Customs Bureau P-3 interceptors and helicopters to interdict unauthorized air entries (Andreas 2000, 46, 52).

### **Pre-9/11 Programmatic (De)Emphases: Ports of Entry, Consulates, and Counter-Terrorism**

Documentation about ports of entry during the two decades before 9/11 is harder to come by than for the non-port land and air boundaries, despite their enormous importance to both security and travel. Although staffing levels grew modestly during this period and new port infrastructure was gradually installed, it hardly kept up with the massive expansion in traffic at the land borders and international airports, because of growing transnational travel and especially the increasing continental and global integration of manufacturing (for example, truck traffic between the United States and Mexico and Canada quadrupled in the decade after the North American Free Trade Agreement was signed in 1994). Port officers studied ethnographically

by Heyman in 1991 and 1992 (Heyman 2001) were overwhelmed by required overtime and the intensity of the job. We sense that ports were relatively neglected in favor of the politically more attractive Border Patrol and Customs air force—for example, port inspections in the INS were never funded at the level of the Border Patrol.

The 9/11 Commission Staff found that the main priority at international airports was clearing passenger entries as quickly as possible (Eldridge et al. 2004, 3). Land ports were more complex. There were strong political pressures on port management to move traffic through inspections quickly (Andreas 2000, 46–47; Heyman 1999b, 626–27), but at the same time there were also political drives to interdict drugs; only inspection of people, whether for immigration or terrorism, was de-emphasized (but never completely absent). Seaports, which handle enormous physical volumes of cargo, of great economic importance, always prioritized clearance over security, and insofar as they were seen as locales for border inspection, it was aimed at drugs and other contraband. Ports as terror targets themselves received little attention. The Coast Guard focused mainly on immigration interdiction (of Haitian and Cuban boat people) and drug law enforcement in near-coastal seas.

However, some initiatives at ports did anticipate post-9/11 developments (Andreas 2000, 46–47, 76–81). The drug interdiction agenda drove changes in enforcement, such as the introduction of non-intrusive equipment for scanning cargo, although such technology was not a control panacea (Ackleson 2003). Managing the contradiction between traffic facilitation and optimal inspection led to the beginning of programs to differentiate between trusted travelers and shippers (presumptively low risk), who could be allowed to pass through ports quickly with little to no inspection, and untrusted travelers and shippers (presumptively higher risk), to whom more attention could be devoted. A pre-approved truck program with no inspections, Line Release, began in California as early as 1987 (Andreas 2000, 77). INSPASS, a trusted travel system, had begun at some international airports and was piloted at the Canadian and Mexican land borders during the 1990s (Hays 1996; United States Immigration and Naturalization Service n.d.).

Most major ports—but not all land ports—were connected during this decade to electronic databases that allowed inspectors to access biometric (fingerprint) identification and background biographic, crime, and security information (IDENT, IBIS, NAILS, TECS, and TIPOFF) (Eldridge et al. 2004; Heyman 1999a). Although these databases were available, their use was discretionary, not required, and identity documents were not machine readable in connection to the databases. Also, oral declarations of U.S. citizenship were accepted at the discretion of port officers, so that only declared non-citizens had to have any kind of identification at all. Meanwhile, IIRIRA in 1996 gave the power of summary (“expedited”) removal to U.S. border

agencies, which allows for immediate expulsion from the country with no administrative or legal process, used principally at ports of entry.

Also portending future developments at ports, though little developed, was the congressional mandate in the IIRIRA (1996) for the INS to develop a comprehensive system for registering the entry and exit of all foreign nationals from U.S. territory. This mandate was repeated, and modified somewhat, in the Immigration and Naturalization Service Data Management Improvement Act (DMIA) of 2000, which directed the integration of existing Department of Justice and Department of State electronic foreign visitor arrival and departure databases, including those created at ports of entry and at consular offices (EPIC 2007b). Although there were a series of pilot projects of entry registration, including fingerprints, before 9/11, no meaningful entry-exit system was implemented during this period. In addition, the initial vision for an entry-exit system was not to identify small numbers of specific individuals (terrorists, for example), but rather to identify and somehow act on the millions of unauthorized immigrants who have overstayed their visitor visas and remained in the United States (that is, it was envisioned as a mass enforcement measure).

The pre-border visa-awarding process before 9/11 is quite different from how it is today, at least from the border security perspective. The 9/11 Commission Staff (Eldridge et al. 2004, 7, 73–74, 82) found that potential for unauthorized immigration was the main concern of U.S. consulates before 9/11, rather than the potential for terrorism (the immigration concern focuses on visa overstays, as just described). This concentration on preventing unauthorized migration was a major reason that the dangerous potential of the 9/11 hijackers was not perceived by U.S. consular officers.

The watch-lists available to consular officers as of 9/11 (and also to immigration pre-screening officers, at those airports where this was done) had serious flaws in terms of lack of comprehensive information about applicants for travel to the United States, especially because the FBI supplied little information (Eldridge et al. 2004, 78–80).<sup>7</sup> Nor did the specific watch-lists used by the Department of State at consulates draw on the same underlying databank

<sup>7</sup> In addition, watch-lists (despite their aura of vital national security) are compiled on the basis of many different legal mandates and concerns—from well-grounded to quite strange—inside the executive branch of the government, and thus cannot be assumed to be aimed exclusively or even primarily at terrorism. This has been exacerbated by a weak process for vetting information to be added and for deleting problematic information and identities. Frontline border and consular officers, in turn, are mandated to enforce watch-lists (a message reinforced by the “vital security” aura), and while they may have discretion whether or not to allow a given person entry in the face of a watch-list “hit,” they are not empowered to alter and clean up the underlying derogatory information and labeling, even as they have to address the impacted individual right in front of them. For an example of the politics and practices of U.S. watch-lists, see Canadian writer Farley Mowat’s *My Discovery of America* (1986).

as the watch-lists used farther down the line, at ports of entry, despite DMIA's mandate in 2000. In the years immediately preceding 9/11, all consular watch-lists were made accessible electronically, making matching easier and more comprehensive (some, but not all, ports of entry had electronic access to watch-lists). Finally, the consular officers had little training in terrorist travel patterns or in identifying fraudulent documents that might have indicated terrorism risk of visa applicants (Eldridge et al. 2004, *passim*).

The vast majority of entrants to the United States, however, do not require visas (Eldridge et al. 2004, 70). Non-visa entrants include U.S. citizens who in this period were able to enter through oral declaration if allowed by inspectors (see above). U.S. legal permanent residents need the document of that status (the fabled "green card," though it is not green). Citizens of Canada were not required to present a passport or acquire a visa at this time. Citizens of Mexico fell into two groups: holders of Border Crossing Cards (a biometric identification card that allowed visits for 72 hours and 25 miles into the United States and that could be extended in time and space at U.S. ports of entry or consulates), and recipients of regular consulate-awarded visitor visas. Furthermore, persons from 27 "visa waiver countries" did not need consulate-awarded visas, but rather could apply for entry just with a passport; these countries, basically all prosperous, had low perceived rates of unauthorized migration for employment to the United States, though not necessarily the lowest risks in other regards, such as terrorism.

The U.S. government used its border security apparatus in surprisingly few ways to respond to clear evidence of terrorism before 9/11, including the first World Trade Center bombing in 1993 and the interdiction of Ahmed Ressam in 1999 by joint effort of U.S. and Canadian border authorities. In the latter case, the Canadian RCMP had monitored Ressam because of intelligence, and had notified U.S. border authorities of a possible bomb plot. U.S. officers, on alert, then identified Ressam because of his nervous behavior. But in general, attention to terrorism by INS and Customs was minimal, as documented by the 9/11 Commission Staff (Eldridge et al. 2004, *passim*). Small numbers of officers from these two agencies participated in Joint Terrorist Task Forces headed by the FBI, where their knowledge of immigration laws and documents and goods shipment were valued, but they had little impact on their home agencies. The INS repeatedly failed to implement its program to tighten background checks of foreign students and to monitor whether students maintained their status. Drugs, and to a lesser extent immigration, not terrorism, were on the mind of U.S. border agency management and the officers in the field.

On a number of occasions during this period, counter-narcotics and mass immigration enforcement actions were framed using the rhetoric of national security. During the 1980s and 1990s, this included the long-term detention of Haitians, some Mariel Cubans, and Central Americans (all groups being

pending or potential asylum applicants) (Dow 2008). The former two groups (often interdicted at sea) were kept in large-scale detention facilities, as were some of the latter (interdicted at the southern land border), but in the latter case many people were allowed to enter and stay inside the boundary of the United States but south of the Border Patrol's interior checkpoints that blocked movement out of the border region—effectively turning all of south Texas into an open-air detention camp (Koulish 1992). In that case, Central American refugees on the south Texas border in the mid-1980s were misleadingly labeled Marxist revolutionary threats by the Reagan administration.

Fundamentally, U.S. border security policies, and the practices in the field stemming from them, were driven by the politics of fear about drugs and immigration at the Mexican border (Heyman 1999b; Nevins 2002), except for the more contradictory ports of entry (Heyman 1999b, 2001). This peculiar framing is crucial for understanding U.S. policies and practices in the two decades leading up to 9/11, and their lasting influence even to the present day.

## Responses to 9/11: U.S. Border Security, 2001–2005

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Conventional scholarly and popular wisdom suggests that the tragic events of September 11, 2001, “changed everything” about U.S. border security policy (e.g., Zellen 2004). While subsequent policy developments do indeed indicate important shifts in the direction of U.S. border and immigration policy—particularly given the context of the Bush administration’s “global war on terrorism,” the nation’s primary foreign policy pivot from 2001 onward—it is important to remember, consistent with our general thesis here, that significant elements of *continuity* in U.S. border policy persist. Within this framework of change and continuity, we identify two key phases of policy activity that informed U.S. border security practices in the 2001–2005 period: (1) the initial border policy response to the terrorist threat that was largely an ad hoc and somewhat confused effort with a steep learning curve for U.S. officials; and (2) the subsequent consolidation, expansion, and reorganization of U.S. homeland security policies and agencies. Each phase will be taken in turn in this section with regard to the unilateral or, in some cases, bi- or tri-lateral context for border security in North America.

In this analysis, we follow Mabee (2007), Birkland (2006), Andreas (2003b) and others, suggesting these two phases fall within a key window for policy change and consolidation that opened in the wake of 9/11 and presented two major opportunities: (1) for brand new policy initiatives, and (2) to advance existing plans that predated 9/11, such as the Smart Border accords, but had not found particular traction in the earlier political environment.



## The Initial Policy Response

In the immediate panic and aftermath of the 9/11 attacks, historically tight U.S. border inspections effectively closed land ports of entry on both the southern and northern frontiers. These inspections were performed by a bolstered federal presence; U.S. Customs agents went on “level 1” alert after the attacks, checking every car, truck, and person attempting to legally enter the country. U.S. National Guard units were deployed to supplement civilian law enforcement officials at land and air ports of entry. The increased scrutiny had an immediate impact on cross-border flows: as Andreas (2003a) notes, in one case trucks were backed up for 36 kilometers at the Ambassador Bridge linking Windsor, Ontario, and Detroit, Michigan. Between the ports, the Border Patrol initially reported dramatically lower levels of apprehensions of undocumented migrants. While inspections eased somewhat in the days and weeks that followed the attacks, additional surveillance procedures focused on counter-terrorism amplified already-taxing border-crossing times. This had, and continues to have, important socio-economic impacts. Recent empirical research has probed the depth of the economic costs associated with these new security measures, concluding that the long-term impact of such screening adds significant transaction costs to trade (Olmedo and Soden 2005) and, according to one study, may be so severe as to force trade diversion (MacPherson et al. 2006).

Further north, the United States’ border with Canada, historically more porous than its frontier with Mexico, gained additional public and political attention and, eventually, resources in the initial response to 9/11, including a tripling of border agents. This was done in light of perceptions about the U.S.-Canadian border (many fed by the U.S. media), a history of terrorist cell activity in Canada, and that country’s relatively liberal refugee and immigration policies (Bell 2004). This new attention marked a significant departure from the legacy of “benign neglect” of that frontier, as it received little funding relative to the U.S.-Mexican border (Seper 2003).

In addition to these border-related measures in the initial period following 9/11, new security initiatives for America’s *interior* were also unveiled. Attesting to the severe, fear-driven public and political reaction to the 9/11 attacks, serious and overly broad mechanisms for mobility control were considered, including programs to curtail the admission of certain foreign nationals. Proposals in Congress, for instance, were floated to institute a six-month moratorium on issuing student visas. These efforts gained the most attention during the U.S. government’s broad round-up and detention—ostensibly for counter-terrorism purposes—of approximately 1,200 Arab and Muslim men in the weeks and months following 9/11. As Chishti et al. (2003, 7) explain in a detailed report for the Washington, D.C.-based Migration Policy Institute (MPI), this effort was ill considered

and ineffective. The report argues, “The U.S. government overemphasized the use of the immigration system” as a counter-terrorism tool, concluding that “arresting a large number of non-citizens on grounds not related to domestic security only gives the nation a false sense of security.” While this program was eventually discontinued, it is emblematic of the somewhat confused and ill-considered initial response to 9/11 on and within U.S. borders. Such efforts ultimately gave way in subsequent months and years to more deliberative and larger policy reform efforts, best exemplified in the creation of the U.S. Department of Homeland Security, discussed in the subsequent section.

### **The Creation of the U.S. Department of Homeland Security**

Plans to reorganize the troubled U.S. federal agencies that deal with immigration and border control circulated in Washington, D.C., well before September 2001. As early as 1997, for example, the U.S. Commission on Immigration Reform (popularly known as the Jordan Commission) proposed eliminating the Immigration and Naturalization Service (INS) and redeploying its functions to other agencies. The general consensus was that U.S. immigration policy administration was fractured and largely ineffective and, as noted above, inadequately organized for a counter-terrorism mission.

September 11, of course, gave a major impetus to reorganization plans as well as providing a means, as Mabee (2007, 386) argues, “[to] institutionalize new ways of framing security.” September 11, Mabee goes on to suggest, “not only led to a policy re-think, it has also included a bureaucratic shift within the U.S., showing a re-thinking of the role of borders within U.S. security policy.” That re-thinking was, and continues to be, broadly oriented toward the mission of counter-terrorism first and foremost, with immigration enforcement, counter-narcotics missions, and other transnational challenges placed in (officially) secondary priority positions for border security agencies. (The vast majority of day-to-day law enforcement tasks on the border for these agencies, however, entail dealing with these “secondary” priority missions that, as we demonstrated above, have long been the main focus on the border).

The 9/11 Commission and many critics attributed the main reasons why the U.S. government was unable to anticipate and prevent the terrorist attacks of September 11, 2001, to a general lack of preparation, imagination, and coordination of intelligence and law enforcement resources; this is the so-called failure to “connect the dots” (Hitz and Weiss 2004; National Commission 2004). In order to address this challenge, the U.S. government undertook its most significant reform of the executive branch in over 50 years.

This reform process can perhaps be best understood within the theoretical context of what is classified in the public policy change literature as



a “focusing event” (Birkland 1997, 2006). As such an event, 9/11 opened a unique and rather large window for homeland and border security policy reform in Washington, D.C. Change windows, Birkland postulates, are typically open for approximately two years following a focusing event such as a natural or manmade disaster. And, indeed, we can locate the major organizational and policy shifts that occurred in the wake of 9/11 in the late 2001–2003 period. These include, most importantly, the creation of the U.S. Department of Homeland Security (DHS) as well as new border-screening and legislative tools, discussed later in this section.\*

The story of the creation of the Department of Homeland Security is too lengthy to be retold here; authoritative accounts and critiques are available elsewhere (e.g., Chellino et al. 2008; Kettl 2007). However, a few notes on the agency’s creation and organization as they pertain to border security in the post-9/11 period are appropriate. The Homeland Security Act, signed into law on November 25, 2002, merged a complex web of 22 federal agencies and 180,000 employees to create a new agency with cabinet level status (the resultant agency, DHS, was itself reorganized in 2005). As noted above, responsibilities for border security were historically splintered over several federal agencies. Because, as Kettl (2007, 32) maintains, “Homeland security, at its core, is about coordination,” DHS’s genesis quickly brought the major federal players on border security into the same organization, at least formally. Most notably, U.S. Customs and the U.S. Border Patrol were brought together into the new Customs and Border Protection (CBP) Agency, which as an amalgamated organization, had responsibility for security activity at U.S. ports of entry *and* between them. Additional inspection-oriented agencies, such as the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), were integrated into DHS, all with the goal of creating “one face at the border” for unified counter-terrorism purposes. The transition to this has not been easy; scholars such as Waugh (2003), Carafano and Heyman (2004), and others have questioned the integration and unification of these agencies and the efficacy of the new, sprawling agency.

Concomitant with the creation of DHS was an immediate influx of new resources for U.S. border security. While U.S. border control activities, as noted above, enjoyed robust congressional support in the form of reliable and upwardly adjusted appropriations year to year since the early 1990s, the homeland security market “boom,” as some have called it, would only serve to further and significantly bolster the budgets of the U.S. border and immigration services. DHS budget figures, for instance, grew from \$17.5 billion in 2002 to \$38.7 billion in 2005 (United States Office of Management and Budget 2008). Within DHS, border-security-related components also grew

\* See The Homeland Security Act of 2002, P.L. 104-208.

but surprisingly not at the rate one might expect. The Border Patrol force, for instance, grew only 15% from 2001 to 2005 versus 42% in the last four years before 9/11 (TRAC 2006c). As noted above, however, the deployment pattern of security personnel shifted somewhat, with the number of CBP officials assigned to the northern border increasing rapidly during this period (TRAC 2006c). There was, however, continued specialized tactical support, behind the scenes, by JTF-6 (later, JTF-N) after that date, including counterterrorism missions after 9/11.

Beyond new human resources, as discussed below, the 2001–2005 period also saw the continued roll-out of *material* border security efforts, including surveillance technologies and fencing, as well as new enforcement procedures. These can also be seen as elements of policy continuity; border-fencing projects began in the early 1990s and Border Patrol tactical infrastructure appropriations funding only increased marginally in the 2001–2005 period (see Nuñez-Neto and Kim 2008, 21). However, the post-9/11 security environment was favorable for an *acceleration* of such efforts and made it easier for Congress to insert legal provisions into legislation to do so. The REAL ID Act of 2005, for example, included a major provision that allowed the Secretary of DHS to waive legal barriers (such as environmental review laws) in the construction of border barriers.\*

The post-9/11 policy window for border security reform did not close with the creation of DHS. This period also saw the passage of two important pieces of legislative reform packages: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (best known as the USA PATRIOT Act) and the Enhanced Border Security and Visa Entry Reform Act of 2002. The PATRIOT Act is wide ranging and has received extensive popular and scholarly attention (e.g., Esman 2007; Etzoni 2004; Paden and Singer 2003); a complete exposition is beyond the scope of this chapter. In brief, the Act significantly bolstered the federal government's law enforcement powers, particularly in the areas of surveillance, intelligence sharing, and detention of terrorism suspects. This extended to the immigration and border arena, especially regarding the review and potential admissibility of immigrants and visitors, new security measures (such as additional Border Patrol agents for the Canadian frontier), and a new deadline for machine-readable passports for Visa Waiver Program member states. Under provisions of the Act as well as existing laws, federal prosecutions of individuals classified as international terrorists significantly increased in the initial period following 9/11 but then interestingly retreated to pre-9/11 levels (TRAC 2006d).

\* Public Law 109-13, Division B.

Similar provisions to deal with cross-border mobility vis-à-vis the nation's counter-terrorism mission were included in the Enhanced Border Security and Visa Entry Reform Act of 2002.<sup>\*</sup> The Act mandated new security reviews for visa applicants to the United States, interoperable data sharing, the implementation of an integrated entry and exit data system at U.S. ports (Section 110), and other measures. In addition, the Act authorized new funding for 200 new border security personnel in each year from 2003 to 2006.

### **New Screening and Mobility Procedures: The Advent of “Smart Borders”**

As Mabee (2007), Flynn (2002), Naím (2005), Beck (1998), Coker (2002), Williams (2008), and other scholars have argued, the new security environment created by the threat of transnational terrorism is characterized by risks—unintended, indirect, and elusive challenges such as transnational crime and terrorism—and the management of these risks. While the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) concluded that none of the 9/11 al-Qaeda hijackers illegally crossed U.S. frontiers, the management of risk via the efficient and secure regulation of cross-border flows of people and cargo—through screening at, between, and before land, air, and sea ports of entry—quickly became a focus point for the nation's counter-terrorism policy. This risk paradigm suggests the need to reorient border security toward “filtering” functions to hedge against possible threats: facilitating the entry of legitimate people and goods while screening out illicit flows, such as terrorist entry. Security officials and policy makers speak of this concept of layered and technologically driven security under the general label of “Smart Borders” and, while acknowledged before September 11 (as noted earlier, the Smart Border concept predated 2001), this emerged as the preferred policy trajectory in the post-9/11 period in both the U.S. and indeed in other developed states (see Ackleson 2003, 2005; Andreas 2003a; Flynn 2002; Meyers 2003).

Many of the elements of this policy fall within the Smart Border Accords and later the Security and Prosperity Partnership of North America agreement signed by the United States, Canada, and Mexico (see Ackleson and Kastner 2006; Adelman 2002; Koslowski 2004; Meyers 2003). These initiatives involve bi- and in some cases tri-lateral cooperation on border management, security, trade, and other issues. Elements of both programs were proposed before the events of 9/11, but the counter-terrorism security focus following the attacks provided an impetus for negotiation and implementation on these issues.

<sup>\*</sup> Public Law 107-173.

Within and without these agreements, a variety of new screening initiatives and procedures for cargo and travelers were unveiled and implemented beginning in the 2001–2005 period. Over 11 million trucks and 16 million containers cross U.S. land borders alone each year.<sup>7</sup> To cope with the threat of a weapon of mass destruction potentially being smuggled within the massive number of incoming shipments to the U.S., the federal government began alternative efforts in this period to screen cargo in different ways, such as conducting intelligence, inspections, and pre-screening shipments far away from the physical frontier. The Container Security Initiative (CSI) introduced in 2002, for instance, uses technology and government-to-government cooperation in information-sharing to target and screen high-risk shipments; it now covers approximately 85% of all incoming containers (DHS 2007a). Also in 2002, the DHS announced the Customs-Trade Partnership Against Terrorism (C-TPAT), a public-private partnership that gives importers priority access to cargo processing when they guarantee their supply chain security (DHS 2004). The FAST (Free and Secure Trade) program, a bilateral initiative with Canada and Mexico, offers similar expedited access at ports of entry for trusted shippers.

In all of these initiatives, cargo inspections have continued the post-9/11 development of risk-based assessment methods (for instance, the Customs' risk-based Automated Targeting System [see below]), trusted shipper programs (and by implication, less trusted or distrusted shippers), layered security (inspections before entering the United States as well as at the port of entry), and use of advanced inspection technologies, including radiation screening.

Similar programs for “preferred” flows of travelers also were rolled out in this period, including the Secure Electronic Network for Traveler's Rapid Inspection (SENTRI) program, which expedites the entry of cleared individuals at land ports of entry, and on the northern border with Canada, the similar NEXUS program. Other air-security-related measures were also undertaken in this period but are beyond the scope of this chapter (see Koslowski 2004). While not without issues (smugglers, for instance, have been detected in SENTRI and NEXUS lanes), these efforts too can be understood as a risk-management approach to border security, a paradigm that became increasingly accepted in the post-9/11 period.

### **Visas, Watch-Lists, and Consular Operations**

From the perspective of interdicting al-Qaeda and similar transnational terrorist organizations, the most important response after 9/11 was a massive upgrading of attention to the awarding of visas, combined with the

<sup>7</sup> See McLaughlin (2003).

substantial (though not complete) unification of watch-lists used at both consulates and in the international travel system. Previous watch-lists were fragmented both in terms of sources of data (CIA, FBI, and Defense did not readily share data) and in terms of end users (INS and the Department of State used different watch-lists). Over the course of several years after 9/11, the Terrorist Screening Center was implemented. This organization receives and compiles information from intelligence-producing agencies, creates records about identifiable individuals, and supplies operational information (but not the underlying intelligence, which is often cloaked in security) to the offices where mobile people are awarded visas and then inspected before boarding airplanes and upon actually entering the national territory (that is, at ports of entry or if checked upon apprehension during an unauthorized entry) (Kean et al. 2005; GAO 2007b).

Furthermore, layered inspections, an approach already used in fragmentary ways before 9/11, gained additional importance. A first layer is the awarding of visas, although that does not apply to visa-waiver countries (such as Canada and much of Europe). A second layer is pre-inspection—examination of documents against watch-lists, and possibly questioning—before boarding an airplane or ship, if those means of transport are used. Under the Secure Flight program, a computerized risk-assessment algorithm (Automated Targeting System), based on computer searches of personal data, is used to deny entry to passengers (“no fly”) or to point for additional scrutiny (“selectees”) (similar terminology is used for domestic flights, but the publicly available information is that individual watch-lists are used but not algorithmic risk assessments).<sup>\*</sup> And finally, a third layer of inspection is the document check, the watch-list check, and the questioning at the actual point of border crossing. For international airports, Secure Flight mandated the transmission of a pre-arrival manifest to inspectors at the point of entry, who are then waiting with backgrounds and risk scores on the entrants (EPIC 2006, 2007a; Nakashima 2007; DHS 2007b). Similar risk assessment and layered security approaches have been applied to air and sea freight (Seghetti et al. 2005). The U.S. government examines all the paperwork on cargo entering the U.S. but does not physically inspect most of it, unlike the direct questioning that all entering people receive.<sup>†</sup>

<sup>\*</sup> The Automatic Targeting System will soon have access to a much larger set of data as the U.S. and the European Union near a wide-ranging agreement on sharing of private information, such as credit card transactions and travel histories (Savage 2008).

<sup>†</sup> In 2004, the Congressional Research Service reported that “in terms of customs inspections, approximately 22.6% of rail containers; 5.2% of sea containers; and 15.1% of trucks entering the United States were physically inspected” (Wasem et al. 2004, 34–35).

## **Developments in 2004: US-VISIT and the Intelligence Reform and Terrorism Prevention Act**

While outside of Birkland's two-year policy reform window following a focusing event, two additional congressional actions in 2004 regarding border security were important in the general evolution of post-9/11 security reforms: the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system and the Intelligence Reform and Terrorism Prevention Act.

The policy change window that followed 9/11 breathed new life into previously established but moribund border security initiatives. One of the most important of these is known as "Section 110," named for Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 110 was meant to implement an automated system to track visitors entering and leaving the United States and thereby identifying those that overstayed their visas. Recognizing the vulnerabilities exploited by the 9/11 hijackers, the PATRIOT Act and the Enhanced Border Security and Visa Entry Reform Act of 2002, discussed above, both included language mandating the then-INS to phase in these entry and exit checks as soon as possible. A new program announced by the DHS in January 2004, the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system, eventually replaced the old Section 110. US-VISIT seeks to automatically collect biometric information of individuals entering (and, ultimately, leaving) the United States through ports of entry. The particular biometrics used by US-VISIT are fingerprints and digital photographs. This biometric data is then used to authenticate individuals against known terrorist and criminal watch-lists, thereby strengthening U.S. border security by allowing a more authoritative analysis of individuals entering the United States and, if exit data can be captured, a sense of who *remains* in the country illegally. Congress mandated the entry-exit system be in place at ports of entry by the end of 2005, a deadline that has long been extended. This is due to the inherent problems in the nature of the US-VISIT system as well as structural problems that can be attributed to the dynamic nature of U.S. borders and the massive flows of individuals that cross them. These challenges, and others, are documented by Koslowski (2005), and they have delayed the full implementation of US-VISIT to this day.

Finally, the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) consolidated major policy reform by addressing several 9/11 Commission recommendations. The Act included language that advanced the US-VISIT program, sought the development of a unified registered trusted-traveler program, established identity card standards and provisions regarding so-called "breeder document" standards (such as birth certificates), authorized 2,000 additional border patrol agents from FY2006 to FY2010, as



well as hiring 800 new Immigration and Customs Enforcement Investigators per year in that period.\* IRTPA also mandated the testing of a number of ground surveillance technologies along the northern Canadian border. Quite significantly for U.S. counter-terrorism policy, the Act established a new Director of National Intelligence to unify and oversee the fragmented intelligence community. Finally, and perhaps most controversially, the Act included a provision to deal with a major weakness in U.S. border security policy: the passport exception traditionally made for citizens of Canada, the United States, and Mexico traveling within North America. Through its section 7209, IRTPA effectively set an end to this practice, prompting the government to develop the Western Hemisphere Travel Initiative (WHTI). The U.S. government has currently implemented WHTI for air ports of entry and plans to do so for sea and land ports by June 1, 2009. WHTI requires citizens of the United States, Canada, and Mexico to use a passport (or other approved identity document) to enter the United States when arriving from any part of the Western hemisphere. WHTI has proven highly controversial within many border communities concerned about the potential negative economic impacts resulting from reduced cross-border traffic as well as increased border crossing times that are inevitable with the new required document inspections (Abelson and Wood 2007; Willis and LaTourrette 2008). It does close a major gap in border security—the lack of any required verification of U.S. citizenship, a status that conveys automatic entry to the country.†

### **Reversion to the Mexican Border: U.S. Border Security, Late 2005–Present**

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During the 2006–present period, important post-9/11 initiatives have continued. These include the continued integration of legacy border and other security agencies into the Department of Homeland Security, as well as continued use and strengthening of identification systems and their application at consulates and international airports. Air and sea cargo security has been partially reformed, as discussed below. Overall, some but not all components of a highly specific, intelligence-based approach to terrorism/terrorist materials interdiction have been implemented. However, U.S. border policies have, in their main thrust, largely reverted to law enforcement against

\* Public Law 108-458.

† Deceptive oral declarations of citizenship have long been an important tactic for unauthorized migrants in crossing through ports of entry while avoiding detection by the state. The change in policy, then, will also close a migration loophole, aside from its possible effect on security from terrorism. As in other tactical changes with comparable implications, this policy does not address the broader causes and solutions to issues of mass unauthorized migration.

unauthorized mass migration across the U.S.-Mexican border. This has taken place especially at the level of political rhetoric and dramatic public actions, such as border fence-wall legislation and well-publicized “operations” by the executive branch, in which national security is equated with patrolling of the southern land border.

The Border Patrol, with its concentration on people entering without inspection by land, especially from Mexico, is the favored agency in this political climate. The U.S. Border Patrol grew in the four years after 9/11, as we have noted, but its rate of growth accelerated dramatically after 2005 (resembling, but indeed surpassing the 1990s in this regard). The Patrol, which had 11,106 agents in September 2005, had grown to over 16,000 agents in May 2008, an increase of 44% in less than three years (calculated from figures in TRAC [2006c] and DHS [2008a]). Plans call for an increase to 20,000 officers by the end of fiscal year 2009, nearly doubling the force in four years. For comparison, a November 2007 GAO report indicates that U.S. ports of entry had seen an increase of approximately 1,000 officers since 2005, as discussed below (GAO 2007b, 29). This rapid expansion, though obviously favorable to the Border Patrol in sheer resource terms, has presented serious challenges, including possible reductions in quality of accepted recruits, shortening of the training period, and shortages of experienced officers in the field (the latter factor in turn impacting field training and quality of supervision, as well as overall operational skill levels) (National Border Patrol Council 2008; GAO 2007a).

The number of Border Patrol officers assigned to the northern border grew rapidly from 2001 to 2005, though always a relatively small percentage by comparison to the Mexican border, as discussed above. This rate of growth in the northern border slowed after 2005, though it remained positive (from 980 officers in September 2005 to 1,128 in May 2008) (DHS 2008c). As a percentage of the overall Border Patrol, the northern border shrank in this period, from 8.8 percent to 7.1 percent (calculated from above figures), though still higher than the 3.4 percent around 9/11.

The operational approach of the Border Patrol has remained similar to that of the 1990s. Timothy Dunn (n.d.) points out that in the 2004 Border Patrol strategic plan, terrorism is added as the first priority, but operationally this is envisioned as being carried out through the same main corridor, frontal deterrence tactics against mass migration as in the post-1993 period. Dunn (n.d.) and Núñez and Heyman (2007) also found heavy street-level patrolling of settled immigrant populations of the borderlands region, especially in small settlements away from the main corridor foci. Robert Lee Maril (2004), in partially post-9/11 ethnography of the Patrol, also found continuity of the 1990s frontal enforcement tactics, and reported little role of counter-terrorism activities among working officers. However, Dunn (n.d.) found some potentially counter-terrorism-related practices, most notably field officer access to



databases with watch-lists with terrorist-connected individuals and (much more commonly) wanted criminals. Changes or continuities in operational tactics at the northern border have not been well documented.

This build-up of enforcement is not particularly aimed at terrorism. Vanishingly few DHS prosecutions since 9/11 have involved terrorism charges or even the wider domain of national security charges (TRAC 2007). In dramatic contrast, enormous resources since 2005 have been devoted to prosecuting people purely on the basis of unauthorized migration. Operation Streamline, for example, began in December 2005 and has expanded to segments of the southern border through 2008 (though still covering only a small fraction of the length of the border). Standard Border Patrol practice involves offering the vast majority of Mexican border arrestees a voluntary departure, which means almost immediate return to Mexico and no record of having been deported. Operation Streamline involves setting up criminal charges for unauthorized border entrants—for the majority who have no previous formal deportation, a misdemeanor entry without inspection charge involving a short period of prison time, followed by a formal deportation. For the smaller set of previously deported arrestees, the charge is a felony re-entry after deportation, with a series of important legal penalties that would follow a conviction. The thinking is that the prison time and legal penalty will serve as an individual deterrent to future entry; anecdotal evidence (all we have on the matter) is mixed.

The main limitation of Operation Streamline is that it requires much higher levels of post-arrest law enforcement resources: U.S. attorneys, public or pro bono defense lawyers, federal courthouse space, U.S. marshals (for prisoner transport), prison beds, and so forth. Due to these logistical demands, it is unclear that Operation Streamline can be expanded beyond short segments of the border or small percentages of arrestees in heavy-activity segments. As with other such initiatives (frontal massing of Patrol officers, for example), short-segment operations arguably displace flows along the border rather than actually halting them (see McCombs 2007, 2008; Moreno 2006; Roebuck 2008; TRAC 2008).\*

A significant expansion in the U.S. immigration detention system is closely connected to the overall mass immigration emphasis in U.S. border control, and in particular to initiatives such as Operation Streamline that use imprisonment as a putative deterrent to unauthorized migration. Immigration and

\* Although we have chosen not to address interior immigration enforcement in this chapter dedicated to border operations, the reader should be aware that interior enforcement has followed similar patterns to those described in the main text: a shift away from low volume, targeted enforcement (e.g., deportation of imprisoned aliens) toward mass operations, notably workplace raids. See the 2006 ICE Comprehensive Interior Enforcement Strategy (DHS 2006) and quantitative evidence of this shift in immigration prosecutions in 2008 (TRAC 2008). For an overview of this topic, see Coleman (2007).

Customs enforcement detained over 311,000 people for immigration violations in 2007, an increase from 209,000 in 2001 and 237,000 in 2005 (note that the figure has grown throughout this period, but the rate of increase is higher since 2005) (Chishti and Bergeron 2008; Konet and Batalova 2007).<sup>\*</sup>

In addition to the Border Patrol and closely related detention operations, there has been a return to large-scale military units being assigned to support roles at the Mexican border. As readers will recall, the military withdrew from front-line tactical support (frontal surveillance, for example) after the Redford shooting in 1997. There was, however, continued specialized tactical support, behind the scenes, by JTF-6 (later, JTF-N) after that date, including counter-terrorism after 9/11. In early 2006, the New Mexico and Arizona governors assigned small numbers of National Guard troops to police-support duties near the Mexican border. In June 2006, this was federalized, beginning the assignment of 6,000 National Guard (at peak) to this border. This action was justified as an emergency response to support the Border Patrol until it had grown sufficiently to take over the ancillary duties carried out by the Guard; and indeed, the National Guard was largely withdrawn from the border in mid-2008 (leaving aside whether there really was an emergency).

The Guard did not participate directly in civil-border law enforcement. Partly, it carried out logistical tasks, such as road and barrier construction. Its most common role was ground-level surveillance, using forward-looking radar and direct visual observation. Surveys of migrants in Mexico during the period of National Guard assignment and the current massive Border Patrol build-up indicate little impact of these enormous deployments on unauthorized border entry (Cornelius et al. 2008).

Meanwhile, the reconfigured JTF-N (previously JTF-6) supported this remilitarization of the southern border. As we have pointed out, terrorism became part of the mandate of JTF-N after 9/11, part of the wider (and at the policy level, questionable) concept of unified transnational threats, combining terrorism, arms, narcotics, and unauthorized migration. Only the broadest aspects of JTF-N's operational activities are public knowledge, due to its high level of security and secrecy. Apparently, its most important role is supplying advanced intelligence and surveillance products from the military to law enforcement agencies. Interestingly, it coordinated Stryker (an advanced light-armored vehicle) training maneuvers near the border in 2006–2007, either for the impressive presence of armored units or the surveillance equipment carried on board, or both (Dunn n.d.).

<sup>\*</sup> On the detention system in general, see Dow (2004), Kahn (1996), and Welch (2002), and with regards to conditions and legal processes in the system, see United States Department of Homeland Security, Office of the Inspector General (2008) and Human Rights First (2004), respectively.

The Secure Fence Act of 2006 authorized the Department of Homeland Security to build 700 miles of pedestrian fence and vehicle barriers along the U.S.-Mexican border (as noted above, there was already approximately 62 miles of solid wall and advanced fence along this boundary). Because supporters tend to call these barriers “fence” and opponents call them “wall,” it is worth clarifying that the pedestrian barriers, made of extremely strong but open mesh, blurs the distinction between wall and fence. The REAL ID Act of 2005 allowed the Secretary of Homeland Security to waive all laws and regulations that might have impeded the construction of the fence, and both fence planning and actual construction will take extensive use of seizure of private land by eminent domain. This is highly controversial along the border, and is being tested in the courts at the time of writing. Meanwhile, 70 miles of new fencing were completed in 2007, although the Government Accountability Office and the Congressional Research Service raised questions about the remaining construction costs and the lifetime maintenance costs of this project (Nuñez-Neto and Kim 2008, 20–27; GAO 2007e, 11–14). More pertinent to the question of border security, it is not clear just how effective advanced border fencing is at stopping unauthorized entry (it may displace flows to lower security-fenced sections of the border and ports of entry, as well as being potentially degraded by tunnels and cutting) (Nuñez-Neto and Kim 2008, 13–18). Worthy of note, also, is that the fence is not being built on the Canadian border.

The November 2005 Secure Border Initiative (SBI) of the DHS came to include physical barriers, but its core has been the notion of covering the Mexican border with an advanced surveillance system, sometimes referred to as a “virtual wall” or “SBInet.” This project envisions a system of high-resolution cameras, radars, and motion detectors. These devices would feed data into a centralized computer platform that models likely movement of the targeted pedestrian or vehicle, and also discards irrelevant data (such as animals). This model output is then to be transmitted directly to field units that would intercept the mobile target (Heyman field notes on Boeing display, El Paso 2006). A pilot project in Arizona was accepted by the DHS in April 2008, and then immediately discarded as a basis for creating and installing the future SBInet, apparently because of serious operational flaws (Rotstein 2008). The GAO reported failures in software integration, communication systems, and operational usability by field officers (GAO 2008b). The problems identified in the pilot are to be addressed in future efforts. The northern border has received additional surveillance tools, such as cameras to monitor remote areas, but again it is striking that the ambitious SBInet approach has not been discussed in terms of this border.\*

\* The 2005 REAL ID Act mandated that the DHS implement advanced surveillance systems along the southern as well as northern borders; previously, the Intelligence Reform and Terrorism Prevention Act of 2004 had mandated surveillance measures along the northern border.

The patrolling of land borders, especially the U.S. border with Mexico, has received the main public emphasis and a great deal of resources in the period since late 2005. However, border security (especially against terrorism) necessarily involves visas and passports, consulates, and pre-screening of people and goods before entering the United States, as well as the various ports of entry themselves. During the 2006–present period, important post-9/11 initiatives have continued. These include the continued integration of legacy border and other security agencies into the Department of Homeland Security. The centralized Terrorist Screening Center and consolidated, electronically accessible watch-lists continue to be available at consulates, at ports of entry, and to Border Patrol units. Homeland Security officers are now stationed at some consulates, to assist in identifying high-risk visa applicants, although it is not clear that research on terrorist travel patterns has had a meaningful effect in consulates or in pre-screening at airports. Higher degrees of document security (passports, visas, border crossing cards) have been implemented (but much of REAL ID, discussed below, has been substantially delayed). Air and sea cargo security is partially reformed, as discussed below. Overall, some but not all components of a highly specific, intelligence-based approach to terrorism/terrorist-materials interdiction have been implemented.

Land and air ports of entry continue to have serious security and operational problems, as reported by the Government Accountability Office (GAO) in 2007 (Hsu 2007; GAO 2007b). While inspectors turned away over 200,000 inadmissible entrants and contraband violators at ports in 2006, investigators estimate that they missed another 20,000, for a failure rate of approximately 9 percent. Inspections (examination of documents, physical inspections, questioning of applicants for entrance) were applied inconsistently, and programs to assess field units lacked upward accountability. Ports were understaffed according to the government's staffing model by 7 to 25 percent, depending on specific locations and functions. In subsequent congressional hearings, port officials, union representatives, and business leaders pointed to staffing shortages, overwhelming workload, outdated facilities, poor training, and lack of full document standardization as resulting in delays, inadequate security performance, low morale, and high turnover (Peters 2008). Field observations at the port of El Paso show statistically significant differences among inspectors in time of inspection, including some runs of inspections that were so short as to suggest potential security flaws (Dudley Ward et al. 2008).\*

\* Many border inspectors have paid close attention to fine details of individual behavior in inspectorial encounters. Recently, the idea of formalizing these insights into behavioral profiling has been mooted for ports of entry, checkpoints, airports, etc. It is unclear how much this formal behavioral profiling is being done in practice in border security settings.

As noted above, additional technological systems to perform inspections at ports were a priority for post-9/11 border security policies. These systems include radiation screening devices and cargo imaging technologies. As of 2007, the DHS reported 884 radiation portal monitors were installed at land, air, and sea ports of entry (Chertoff 2007). While screening a very high percentage of inbound cargo for radiation, the current detectors use older technology; in 2006, the DHS announced plans to invest \$1.2 billion in next-generation nuclear-detection equipment at U.S. ports of entry. This plan was studied by the GAO and found to have limitations in terms of screening reliability (Hsu 2007). Cargo imaging systems installed at ports of entry, such as the gamma-ray-based “VACIS” portable and fixed systems, perform non-intrusive scans of cargo, detecting anomalies for physical inspection rather than actual contraband. However, due to the screening time required, non-intrusive inspections are not yet performed on 100% of inbound cargo.

Air and sea cargo inspections have continued the post-9/11 development of formal risk-based assessment (Customs’ risk-based Automated Targeting System, for example), trusted shipper programs (and by implication, less trusted or distrusted shippers), layered security (inspections before entering the United States as well as at the port of entry), and use of advanced inspection technologies, including radiation screening. The SAFE Port Act of 2006 codified a number of these programs for sea ports. The Coast Guard has been praised for the effectiveness of its risk-based approach to sea-port security (focusing on the public risk posed by the port itself). However, Government Accountability Office concerns with Customs and Border Protection at sea and air ports include the basic fact that not all sea and air cargo is inspected, that pre-screening at foreign ports depends on non-U.S. governments and commercial actors, that trusted shipper programs are voluntary and rely on non-transparent and non-testable assumptions about shippers, and that inbound shipments are not part of the layered security approach (GAO 2007c, 2007d).

It needs to be said that the flaws and limitations in land, sea, and air port operations may well be caused by the inability of Customs and Border Protection to keep up with the constant growth in international trade and the recovery of international travel after 9/11. Ports also face inherent contradictions among politically compelling interests—both facilitating legitimate movement and interdicting various goods and people—which may mean trading off a pure security approach for other considerations.

The year 2007 saw the (apparent) final denouement of the long story of US-VISIT. Non-immigrant visitors (who are also non-Canadians and not Mexican bearers of a border crossing card) register their entry into the coun-

try, including biometrics (fingerprints), at all ports, land, sea, and air.\* These people are also required to register their exit at air and sea ports. But the exit check at land ports was abandoned in 2007, due to apparently insurmountable gaps between the huge volume of land exits and port capacity (lanes, registration equipment, personnel). That is, entry registration is comprehensive (for the specified population, not for all border crossers) but there is a major hole in tracking exits. It is also not clear that the system has ever been capable of one-to-one matching needed to identify people who have entered but not exited during a given period. Nor is it clear that the United States has the internal enforcement capacity to trace and arrest the huge volume of visa violators (estimated at 4 to 5.5 million people; Pew Hispanic Center 2006), though it might be possible to trace select individuals. This means that the concept of security and migration control via complete knowledge of entries and exits has had to be abandoned (Koslowski 2006; GAO 2008a).

REAL ID, legislated in 2005, but still in (much delayed) implementation as of the time of writing, aims to upgrade and standardize state-created identification documents, especially drivers' licenses. The law includes a set of provisions for security in the production of and physical characteristics of these documents, including photographs. Previous legislation had laid out similar regulations governing birth certificates (Intelligence Reform and Terrorism Prevention Act [IRTPA] of 2004). In addition, the REAL ID Act required states to verify an applicant's legal status in the United States, as well as to verify the applicant's social security number (Garcia et al. 2005; Tatelman 2005).

The overall improvement of underlying documents such as birth certificates and drivers' licenses improves security of knowledge of individuals presenting themselves for inspection at borders, as well as applying for other documents, although overlapping actions such as the Western Hemisphere Travel Initiative (requiring passports) largely renders their border functions moot. At the same time, unauthorized migrants are put in the situation of having to be unauthorized and unidentified drivers, arguably a serious problem from the point of view of public safety. The underlying problem is that the United States relies heavily, perhaps too heavily, on drivers' licenses as a form of identification in travel security situations, which is not the fundamental function of such documents, which is instead road safety. As with much that has transpired since late 2005, security against terrorism has been intimately mixed with mass immigration law enforcement and a negative attitude toward immigrants more generally.

\* US-VISIT allows entry registrations to be checked against watch-lists, a standard mode of entry inspection, though this is not the envisioned goal of the program.



## Conclusions

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Some U.S. border security measures clearly respond to 9/11 and the challenge of transnational terrorism. Perhaps the single most obvious weakness before 9/11, fragmented, poorly developed, and incompletely implemented watchlists, have been significantly improved, at least in terms of their organizational architecture. The unification of the Department of Homeland Security has addressed the chaotic fragmentation of border-related agencies, even if it still is incomplete on the ground. Intelligent approaches to security include smart border methods of differential scrutiny and layered approaches to repeated inspections, physically and of the data trail, increasing the chance of noticing possible problems. Awareness of the possible threats to civilian populations extends widely among the people who staff the U.S. movement control system, which is perhaps the most important change of all from before 9/11.

In spite of that, the policies and practices of U.S. border control have continued and even amplified the national obsession with Mexico and Mexicans, and mass immigration more generally, that has characterized this country at least since the late 1970s (and arguably much earlier—see Ngai 2004). The overall concentration on the southern land border rather than the northern land border or air or sea borders, the extraordinary expansion of the Border Patrol and relative neglect of inspections at ports of entry, the explosion of mass immigration prosecutions and the corresponding expansion of the detention prison system, and the walling off of the southern border literally and electronically all point definitively to this conclusion. The chronology does likewise: the refocusing on diverse threats after 9/11 giving way in late 2005 to massive escalation on the Mexican border.

A central issue is the conceptualization in U.S. politics of “border” (Andreas 2000; Heyman 1999b; Nevins 2002). We cannot understand the U.S. case without recognizing that to speak about “the border” in a political setting is always to point southward, no matter what actual geographies and practices “border security” might rationally entail. This obsession with the Mexican border peril is what we might call the “downward” limitation of U.S. border security: that it is overly specified in terms of a reasonable assessment of trans-boundary flows and risks. The corresponding “upward” limitation of U.S. policy brought on by the political meaning of “border” is also pervasive and important: that border security of any sort is a politically appealing but overly narrow approach to complicated issues of terrorism against civilians. Even effectively securing the boundaries of the country may be a limited, perhaps even misleading approach to security against terrorism in comparison to other domains of action (such as broader political changes around the world).

Leaving aside the political obsessions of the United States, however, it shares with other nations a fundamental existential dilemma of borders: they involve contradictory functions of both facilitation and interdiction of movement in a complex and incompletely knowable world of risks (Ackleson 2005). The U.S. response to this existential dilemma matters deeply, for its own people, the people of its neighboring countries, and the entire world in which it is such an important political, economic, and social actor.\*

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\* Due to topical focus and space limitations, we have foregone discussing several other important aspects of the U.S. border system, topics on which sharply critical remarks might be made. These include corruption in the U.S. border apparatus (Heyman and Campbell 2007), secrecy and difficulty in holding agencies of the government accountable (especially the new Department of Homeland Security), individual civil liberties (e.g., American Civil Liberties Union 2006, 2007) and collective civil rights, especially of profiled and/or rounded up and detained communities (Brotherton and Kretsedemas 2008; Chishti et al. 2003; but also see Carafano and Rosenzweig 2005).



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**The European  
Union**

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**II**

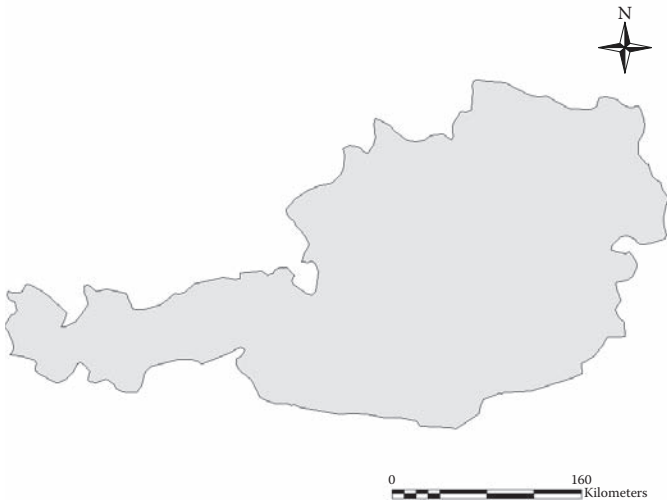


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# Protecting the Borders in a Global Society

## An Austrian and American Perspective

# 3



MAXIMILIAN EDELBACHER  
PETER C. KRATCOSKI

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### Contents

Introduction	78
Defining Terrorism and Development	83
Counter-Terrorism Strategies	83
Linkages Between Terrorism Activity and Other Types of Criminal Activity	85
Financing Terrorism by Hijacking, Kidnapping, and Robbery	85
Financing Terrorism by Fraud, Counterfeiting of Currency and Documents, and Identity Theft	86
The Use of Technology to Finance Terrorism	87
Financing Terrorism by Exploiting the Transportation and Financial Sectors	88
Financing Terrorism by Smuggling of Humans and Goods	89
Financing Terrorism by Money Laundering	90
Global Cooperation in Protecting Borders	91
The Efforts of the United Nations in Securing Borders	92

Protecting the Borders of Austria after 9/11	93
Austria's Involvement in the European Union	94
Europol	94
Organizational Changes in Austrian Security Forces	97
Development of a Global Grand Strategy to Protect the National Borders (the Case of the United States)	99
The Application of the World Systems Theory as the Basis for a Global Response to International Crime and Terrorism	100
International Agreements Pertaining to Justice Matters after 9/11	102
U.S. Department of State and Department of Justice	104
Internal Security after 9/11	107
Factors Inhibiting the Effectiveness of Global Measures Used to Protect National Borders	110
Future Trends in Defending the Interests of Nations in a Global Society	113
References	115

## Introduction

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Throughout history, all political entities, whether they were cities, city-states, or nations, have had to be concerned with protecting their borders from external threats. These threats might take the form of military invasions, the entrance of criminal elements, or migrations of poverty-stricken peoples seeking a better standard of living. The leaders built massive walls, constructed fortifications in strategic locations, and maintained standing armies for the sole purpose of providing security from the external threats. Examples of such attempts to protect borders include the Great Wall of China; the cities of Rome and Paris, which were completely surrounded by stone walls; and the recent fortifications and security infrastructures deployed along the Canadian and Mexican borders by the United States. The original sites for many of the fortified seaports and walled cities that would eventually become large centers of commerce, with trade and industrial development, were generally determined by the natural barriers that surrounded these areas, which provided protection against external threats. Preparations focused on protection from external threats, whether they took the form of invading armies, criminals and outlaws, or other undesirables (such as vagabonds, migrants, and the poor). Invaders might come by foot, by sea, or on horseback. If a proper location had been chosen for a city or state, attempts at large-scale invasions were highly visible, and the likely point where invaders would attempt to enter was predictable. Officials assigned to protect the homeland sought to accumulate the manpower and equipment needed and to develop the most appropriate strategies for providing security (see Box 3.1).

**BOX 3.1 THE DEVELOPMENT OF AUSTRIA: THE MODERN REPUBLIC OF AUSTRIA DATES BACK TO THE 9TH CENTURY**

For many centuries, the leaders of the government had to balance the need to secure the borders and to maintain public order with the need to protect the citizens' rights to personal freedom (Edelbacher and Norden 2000). Edelbacher and Famler (2005, 5–6) note that the *ius polittiae* (sovereignty) was based on the medieval corporative order existing in the territory that is now Austria. This principle was a “comprehensive right that governed the organization in all aspects of life at the discretion of the sovereignty.” The predominant function the police served during this period of absolute rule of the sovereign was to maintain public order. Police power was almost absolute, and it was used predominantly at the discretion of the monarch. During the Enlightenment and political liberalism of the 19th century, the role of the police and other security agents changed. According to Edelbacher and Famler (2005, 5–6), “The idea that warding off dangers should be the most important and unique task of the police gained acceptance in the 19th century. ... When the first Republic was founded, federalists and centralists disagreed over whether the police power was to be assigned to the federal government or to the provinces. The final decision on this matter and the position that was incorporated into the Federal Constitutional Law stated that the general security police should be assigned exclusively to the federal government to maintain public law and order.” Currently, Austria has a parliamentary representative democracy. The Austrian Federal Constitution was established in 1920 and amended in 1929. Austria consists of nine *Bundesländer* (federal provinces); political and legislative powers are divided between the federal government and the nine *Bundesländer*. Austria is one of six European countries that have declared permanent neutrality and one of the few that include the concept of everlasting neutrality in their constitutions.

The territory of Austria consists of 84,000 square kilometers. It has a population of 8.3 million people, with more than two million living in Vienna, the largest city and the capital of the country. More than one million inhabitants of Austria are foreign born. As noted by Edelbacher and Famler (2005), Austria is a relatively small country in terms of territory and population; however, it plays a very important role within Europe when considering strategies for the protection of the continent and other countries of the world from terrorism and international crime.

(continued)

Because of Austria's geographic situation, the country has a special role as an intermediary between eastern and western Europe. This international position is confirmed by the fact that Vienna is the third seat of the United Nations. As a member of the European Community, Austria is obligated more than ever to protect the borders of member states from non-EC members.

Austria, located in the middle of Europe, shares common borders with eight other countries. Edelbacher (2001) notes that Austria has always been a juncture for communication and transportation links between the trade and cultural centers of Europe. It has been a prime target for those countries interested in expanding their territory, and Austria has had to defend its borders from invaders several times throughout its history. The most recent takeover of Austria by foreign powers was by Germany in 1938 under the Nazi regime. According to Edelbacher (2001, 122),

Since the removal of the "Iron Curtain," the major issues for police in Austria have been illegal immigration, trafficking in human beings, increased crime generally and organized crime particularly, drug trafficking, trafficking in arms, environmental crime, corruption and bribery, international financial fraud, money laundering, white collar crime, computer crime, illegal car trafficking, extortion through protection rackets, prostitution, gambling, art theft, truck thefts, and professional burglaries.

In today's global society, the traditional methods used by Austria to prevent and control international crimes and foreign invasions are no longer effective. Threats to the security of a particular nation or many nations originate simultaneously from many sources, and crime has become international in scope (Edelbacher and Famler 2005). Austria has had to focus on the international threats to its security long before 9/11, but perhaps it was this event that made leaders of nations throughout the world realize that the security of their countries is vulnerable and that the resources, personnel, and technical knowledge of many nations working cooperatively are required to combat the types of crime and terrorism that have emerged in contemporary life and become international in nature.

In this chapter, we focus on the national and international cooperative efforts that have been developed in Austria to counter crime and terrorism after 9/11 (see Box 3.2). The United States will be used to illustrate the need for a global response to terrorism even for those countries that have been able to protect themselves in the past. Both strong, powerful nations and nations that have little international influence and are struggling to survive economically must be included in the global strategies to combat crime and

**BOx 3.2 TERRORiST in CiDEn TS in A USTRiA**

If terrorist activity is broadly defined as any organized activity that is directed at disrupting public order, creating a climate of fear, and destroying property and human life, Austria qualifies as having experienced a number of such terrorist activities. Often the targets of the groups were so limited that the goals of the terrorist groups and their activities did not receive international media attention. Exceptions to this were the 1985 airport attack by three terrorists that resulted in the hijacking of a Tel Aviv flight from Vienna, and the arrests in 2007 of four al-Qaeda members for posting video materials pertaining to terrorism on the Internet. In 2008, the first Islamic terrorist case was brought to court.

A large portion of the activity that can be construed as related to terrorism occurs in the capital city of Vienna and is not directed toward the Austrian government or the people of Austria. Austria often becomes directly or indirectly involved in terrorist-related activities as a result of its being on the crossroads of international travel, communications, and commerce. For example, in 1999 Kurdish activists seized the Greek and Kenyan embassies in Vienna. The goals of this group were to bring attention to the alleged discrimination and inequalities the Kurds living in various European countries were experiencing. The number of Islamic fundamentalists who have migrated to Austria has increased considerably in recent years. Most of these come to Austria as refugees or guest workers, but some belong to extremist groups and are capable of engaging in terrorist activities. Several activist groups representing both Serbs and Albanians who had emigrated from the former Yugoslavia to Austria created conflict in the city of Vienna for a time, and in some cases the groups blamed Austria for the breakup of the former Yugoslavia. Right-wing extremist activity is connected to anti-Semitism and neo-Nazism, and some groups have overtly expressed fear and hatred toward the new immigrant groups coming into Austria. However, in general Austria is not the center of a great deal of terrorist activity. The major effects of 9/11 on Austria relate to the increases in all types of international crime. Often the proceeds of these crimes are used to finance the activities of terrorist organizations (Edelbacher and Famler 2005, 8–18).



terrorism, because the criminals perpetuating these acts seek to exploit the most vulnerable nations within the global society (Onwudiwe 2002). Austria, a member state of the European Union since 1994 (see below), serves as an excellent example of how a nation combines its resources with those of other nations to protect their national borders from a common threat.

Various types of international cooperative ventures, including treaties, conventions, pacts, and other types of agreements, have existed for many centuries. These include bilateral agreements between two nations; regional agreements, such as the Schengen Treaty and the European Union; and global agreements, including the conventions and treaties originating with the United Nations (see the Introduction).

Prior to 9/11, bilateral agreements pertained to such matters as extradition of criminals or cooperative efforts to secure the borders of two countries from drug trafficking or smuggling of firearms, contraband, or humans. Many agreements, particularly those related to the exchange of information, were of an informal nature (Das and Kratcoski 2001). Regional agreements focused on law enforcement and the protection of the borders, and most of the international agreements and cooperative ventures pertained to preventing, curtailing, or eliminating various forms of international crime. Global agreements might focus on matters related to the actions of governments during wartime. For example, a conference held in 1949 pertaining to the treatment of the armed services personnel and civilians during wartime led to the conventions that now serve as the cornerstone of the present-day Geneva Conventions. The 1949 conventions addressed the treatment of the wounded and sick in the armed forces, the treatment of the wounded and sick at sea, the treatment of prisoners of war, and the treatment of civilians during wartime (Niemann 2005).

After 9/11, there was a change of focus in the agreements related to the prevention of terrorist activity. For example, in the United States, the USA PATRIOT Act was passed by Congress and the Department of Homeland Security was created. Lum et al. (2006, 2) noted that “in the U.S. alone the non-defense costs of homeland security have increased from \$9 billion in 2000 to \$32 billion in 2005.” Shortly after 9/11, most Western nations passed new domestic laws directed toward preventing terrorism and also established agreements with other nations in an effort to collaboratively combat internationally mobile terrorist groups. The goals for these agreements had originally been to combat international crime; however, with 9/11 came an expanded focus that included the new mission of combating terrorism (Kratcoski and Das 2003). After it was established through research that most terrorist groups had intricate connections to various forms of crime, including money laundering and the corruption of government officials, the strategies and international agreements developed by nations to combat terrorism had to become more encompassing (Ward et

al. 2006; Sedgwick 2008; Plywaczewski and Plywaczewski 2008). Thus, the connections between crime and terrorism will be described, and the methods used to combat these problems at the borders will be discussed.

The post-9/11 changes made by the Austrian government to improve border security will be discussed in detail. In addition, various post-9/11 changes that were made by the U.S. government to improve the security on its borders, particularly those that require considerable international cooperation, will be presented to illustrate why it is necessary for all nations, even those that are large and powerful, to engage in international cooperative ventures for the purpose of protecting themselves from external threats to their security. Some European countries had experienced domestic and transnational terrorists' attacks before 9/11 and had established internal and external measures to provide security to their citizenry. Austria, as a charter member of the European Union, contributes to the larger security unit, and the effects of European Union membership on Austria's methods to combat crime and terrorism are included in our discussions. The United States, in contrast, had generally felt secure from external threats because of its more isolated location and friendly relationships with bordering countries. Domestic terrorism was perceived as the major threat to its national security, but after 9/11 it has sought stronger global alliances in the fight against international terrorism. The factors that may inhibit the effectiveness of border protection, terrorism prevention, and international crime control, including national sovereignty, insufficient manpower, equipment, training of personnel, and corruption, will also be considered.

## **Defining Terrorism and Development**

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### **Counter-Terrorism Strategies**

An act defined as "terrorism" is considered criminal in most of the penal codes of the countries of the world. However, it is often difficult to define what a terrorist act is, and the specific context (political, religious, revolutionary, nationalistic, state violence, etc.) in which the act is manifested must always be considered (see the Introduction, and Yungher 2008). As discussed in the Introduction of the book and illustrated in most of the contributions to this text, the United Nations, the European Union, and most individual nations have attempted to establish a definition of terrorism that would be acceptable to all nations that might be affected by terrorist activity. For example, the U.S. Federal Bureau of Investigation (FBI) defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of a political or social

objective” (Freeh 2001, 2). However, the U.S. Department of Defense and the U.S. State Department use different definitions (see Hoffman 2005, 38). Mueller (2003) states that a criminal definition of terrorism should include six ingredients. They are

- Potential/perpetrator. Any person or agency, other than a government’s aggressive activity against another government.
- Victim. Any place or person, including innocent targeted groups.
- Methods. They are chosen for maximum impact, including destruction, with minimal effort. The selection of symbolic targets is important.
- Purpose. The purpose of terrorism is generally to instill fear and terror.
- Goal. It usually is to force a change of governmental policy toward a goal favored by the terrorists. There are usually short- and long-range goals.
- Motive. Usually the overarching motive of terrorists is to portray an aura of invincibility and capacity to strike unimpeded anywhere in the world.

Yungher (2008, 5) offers a more succinct approach in noting that terrorism “is *always* a strategy, *never* a goal.” Mueller (2003, 5) suggests five areas a government must address to develop effective counter-terrorism programs to protect its borders. They are

- Remove the underlying causes of terrorism.
- Increase internal and external security to make it more difficult for terrorist groups to hit their targets.
- Improve international global intelligence.
- Perfect a global justice network, including respect for the newly created International Criminal Court.
- Respond by military action, unilaterally or multilaterally.

Many of the counter-terrorism measures that were developed by various countries after 9/11 addressed one or more of the five areas listed above. Counter-terrorism strategies developed included programs that addressed immediate needs such as improving border security, intelligence gathering, and even military action.

Several of the other areas that needed to be addressed, such as removing the causes for the terrorism, have no short-term solutions (Deflem and Maybin 2005). One of the immediate effects of the 9/11 event was to stimulate research and writing on the causes and control of terrorism (for example, Lum et al. 2006). This research revealed the complex nature of terrorism and the difficulty of eliminating the causes of terrorism. However, an understanding of the causes of terrorism, the factors motivating the terrorist leaders, and the

methods used to carry out terrorist activities are a prerequisite to developing viable counter-terrorism programs.

### **Linkages Between Terrorism Activity and Other Types of Criminal Activity**

Terrorism activists engage in a variety of criminal activities to pursue their general goals. As noted by Joyce (2005), Lum et al. (2006), and Taylor et al. (2006), terrorist activity is often accompanied by other criminal acts, including robbery, theft, counterfeiting, money laundering, kidnapping, fraud, and trafficking in drugs, weapons, and humans. Terrorist organizations also rely on sympathetic contributors for financial support. For example, the Irish National Revolutionary Army allegedly received millions of dollars from sympathetic followers living in the United States, as well as having obtained their funding through illegal activities (White 2009).

Sedgwick (2008, 8) reported that U.S. Department of Justice research has determined that international organized crime groups and terrorist groups are connected in some way through their involvement in the following types of crimes:

- Energy and strategic materials markets
- Smuggling and trafficking of goods and people
- Money laundering
- Fraud
- Cyber-crime
- Terrorist operations and foreign intelligence

Sedgwick (2008, 11) emphasized that there is a movement toward a “symbiotic relationship” between organized crime and terrorism. Often, both organizations use the same methods, engage in similar types of crimes, and have developed a regular relationship through the buying and selling of goods and services.

### **Financing Terrorism by Hijacking, Kidnapping, and Robbery**

In the 1960s and 1970s, hijacking of airplanes, robbery, and kidnapping of business leaders and government officials were used by terrorist organizations. German (the Baader-Meinhof Group) and Italian terrorists (the Brigadi Rossi—see Italy in Chapter 6) threatened the financial stability of the institutions in their countries by kidnapping a number of prominent victims (White 2009). As White notes, generally the victims of the terrorist groups were assassinated. In Austria in 1977, a very prominent businessman

was taken hostage by Austrian and German terrorist organizations, and an enormous ransom was paid to the terrorist organization (see Box 3.3).

### **Financing Terrorism by Fraud, Counterfeiting of Currency and Documents, and Identity Theft**

Currency counterfeiting, document forgery, and document theft are examples of crimes frequently committed by terrorist groups. In a world characterized by anonymity and impersonality, in which officials increasingly rely on documents to establish a person's identity, the possession of a complete set of documents is the only way a person can officially establish that he or she exists (Europol OCTA 2007). These documents give the bearer certain rights, entitlements, and services. Counterfeited, forged, or fraudulently obtained documents are useful for all criminal activities, as they help hide the real identity of the perpetrator. Organized crime groups and terrorist

#### **BOX 3.3 TERRORISTS ROB BANKS TO FINANCE TERRORISM**

In 1976 two armed bank robbers, a man and a woman connected to a German-based terrorist group, robbed a bank in the city of Vienna. They held 15 employees and 10 customers at gunpoint and were successful in obtaining a large sum of money from the bank. On trying to evade the police, the robbers engaged in a gun battle with the police. A police officer and the woman robber were wounded.

The woman was apprehended by the police. During her trial it was determined that the perpetrators were members of the RAF, a terrorist organization located in Germany, and they were using the funds obtained from robbing banks and other illegal activities such as insurance fraud to finance terrorist activities. The terrorist group had created a handbook that included instructions on how to cheat insurance companies. The woman was convicted and sent back to Germany to serve a prison sentence.

In 1999, the Austrian police confronted and arrested two men who were planning to rob a supermarket in Vienna. The two were also identified as being members of the German-based RAF terrorist organization. After an investigation, it was determined that the terrorists had robbed other supermarkets in Vienna. These terrorists were convicted and returned to Germany to serve their sentences. (Edelbacher and Famler 2005; Report of the Austrian Ministry of the Interior and the Austrian Federal Police 2007).

groups often use the identities of persons who have died—a form of identity theft (Europol OCTA 2007). The appropriate identification documents are forged with ease.

### **The Use of Technology to Finance Terrorism**

The development of wireless communication has not only removed transnational borders, but it is also increasingly facilitating cross-border crime committed via the Internet. While facilitating the committing of traditional crimes such as theft, fraud, and trafficking in drugs and humans, it has also assisted in the development of new forms of crime such as spoofing, phishing, and hacking. Spoofing (Europol OCTA 2007) refers to a situation in which a person or program successfully masquerades as another by falsifying data and thereby gains an illegal advantage. Phishing (Europol TE-SAT 2007) is an attack perpetrated through the mass e-mailing of a message designed to appear from a legitimate source. The message contains some suitable pretext for fraud, such as a bank requesting that the recipient update his online banking account information. Hacking (FRONTEX 2005, 2006) refers to electronically breaking into databases, where financial or other personal data is copied. This data is subsequently fraudulently used. For example, in Austria (Report of the Austrian Ministry of the Interior and the Austrian Federal Police 2007) the use of the Internet, electronic banking, and sophisticated communication methods allows criminals to operate freely and without being physically present. If the appropriate international agreements and laws are not in place, it is very difficult, if not impossible, for the countries being affected by these illegal activities to investigate and prosecute those who are producing and distributing illegal materials (see, for example, Fichtelberg 2008).

In Austria and elsewhere in the world, organized criminal groups and terrorist groups use electronically transmitted communications systems for financial transactions, to transfer criminal proceeds as discreetly as possible, and to secretly communicate information pertaining to their activities. According to a report by the European Union Organized Crime Threat Assessment (2007), the use of technology as a facilitating factor provides terrorist organizations with the advantage of anonymity. In addition, the opportunities for organized crime to enhance its resources are increased because of the improvement in performance and computing power of the new computers, the incorporation of various functionalities into devices, and the deficiencies in the technical equipment and the laws and procedures available to the authorities who are attempting to combat organized crime and terrorism (see Box 3.4).

### **BOx 3.4 STATISTICS ON THE ILLEGAL TRANSPORTING OF PERSONS AND GOODS IN AUSTRIA AND EUROPE**

A report given at the European Security Conference (2008) revealed that there are about 300 million people crossing the 1,792 border points of the European Union each year. It was estimated that 80 million people live in Europe illegally. The Schengen Information System reported that there were 2,500 international arrest warrants in the system in 2008 (bmi.gv.at 2008). A report from the Austrian Ministry of the Interior on money laundering revealed that the number of investigations completed by the prosecutors' service increased by more than 200% between 2004 and 2007 (www.polizei.gv.at 2008).

Another report to the Ministry of the Interior on the number of felony offenses reported relating to drug trafficking revealed that there was an increase from 2006 to 2007 of slightly less than 10% (www.polizei.gv.at 2008). The total amount of crime detected and reported in Austria peaked in the year 2004 and steadily declined until 2006. Between 2006 and 2007, the total amount of crime recorded increased by 10% (www.polizei.gv.at 2008).

In Austria, the amount of crime related to illegal crossing of borders of persons or the trafficking of drugs, weapons, and goods generally fluctuates from year to year. This may be due to special events that occur in Austria or in countries that share borders with Austria. For example, there was more crime detected and reported during the 2008 European Soccer Championship games than normal. A political upheaval in a country bordering Austria or another European country may lead to more people crossing the border either legally or illegal (www.polizei.gv.at 2008).

### **Financing Terrorism by Exploiting the Transportation and Financial Sectors**

The opening up of the borders throughout the world has led to fewer controls on the transporting of goods and people crossing national borders. This has resulted in more opportunities for people and goods to cross borders illegally.

Other countries of the world may experience increases in crimes just as Austria and countries of the European Union experienced when there was a relaxation of the border controls after these countries entered into a major international trade agreement, for example, the North American Federated Trade Agreement (NAFTA), in that more commodities and people are being transported via land, air, and sea across the borders of the countries participating in the agreement. Because of the complexities of the transport sector



of the economy, with business corporations contracting and subcontracting with other companies, many of them headquartered in other nations, the difficulties of monitoring the flow of goods and people crossing national borders and entering a country by way of land, sea, or air are tremendous. The opportunities for organized crime and terrorist organizations to use these weaknesses in security have increased. The differences in vetting procedures and the complexity of the subcontracting procedures often lead to opening the door for crime and terrorist groups to infiltrate the transport business organizations. In Europe and the United States, billions of tons of freight are loaded and unloaded yearly.

According to Pate (2005), the ports are highly vulnerable for criminal and terrorist activity because the security at these entry/exit ports is much lower in quantity and quality than that found in airports.

### **Financing Terrorism by Smuggling of Humans and Goods**

The global nature of organized crime and terrorism has resulted in new forms of smuggling of goods and human beings (see Bales 2005), with the end result being that it is much more difficult for national security agents to stop or even reduce these crimes. The most favored goods smuggled by these criminal groups are those that are not generally available on the open market, such as drugs, cigarettes, alcohol, jewelry, and clothing (Europol TE-SAT 2007). Also, stolen vehicles, counterfeit products, and chemicals are smuggled into countries in which the demand for the products is high. Many of these goods may be available to consumers, but the cost is so prohibitive because of the high import duty taxes imposed by the receiving nations when the products are purchased from legitimate sellers that consumers are quite willing to deal with those who have the products at a lower cost. Many times the consumer is not even aware that the goods have entered the country illegally or that they are counterfeit.

Criminal organizations invest considerable funds to develop the safeguards needed to avoid detection (Europol TE-SAT 2007). Growing trade volumes, increasing movement of people, and advanced technology have made it more difficult for countries to secure their borders against smuggling and illicit commerce. Pate (2005) reports that only a small fraction of the millions of containers and vehicles that are moving across national borders can be inspected and controlled by security agents. Smuggling occurs by way of air, land, and sea. Organized crime units select those countries that are likely to make the most profit to smuggle their goods (Europol OCTA 2007). Drug trafficking is one of the most profitable activities promoted by organized crime in Austria. Heroin is smuggled from Asia to Europe, and the South American cocaine cartels sell huge quantities of cocaine. In Austria, smuggling and sale of hashish, marijuana, and synthetic drugs has become

a huge problem, and the widespread abuse of heroin and cocaine creates a demand that is filled by organized crime (Edelbacher 2001, 125).

### **Financing Terrorism by Money Laundering**

Counter-intelligence on terrorist activities reveals that a significant number of terrorist and criminal groups are involved in the money laundering process. In an attempt to comply with the new regulations, most countries' governments have imposed stronger regulations on their banking systems, but the criminal organizations and terrorist groups have found ways to channel their illegally obtained financial resources into financial institutions where the illegal source of the money will be hidden. For example, in Austria the number of investigations reported to the Prosecutor's Service increased from 2,050 in 2004 to 2,227 in 2007, and the number of cases investigated that ended with a prosecution increased from 100 in 2004 to 229 in 2007. The number of prosecutions that ended in convictions and sentencing nearly doubled during this time period, attesting to the improvements in the Austrian system. During this same period the amount of money seized increased from 27.9 billion euros in 2004 to 113.9 billion euros in 2007 (Austrian Ministry of the Interior 2008).

The European Union implemented the Money Laundering Guideline in 2008. The guideline asks for stricter responsibility in regard to the transfer of money. Each transfer of 10,000 euros must be reported, and the guideline recommends a higher liability for non-compliance. This would include both banks and all other financial institutions (European Union 2007).

Developing and refining appropriate international standards on terrorist financing was a high priority after 9/11 (Speech by Chief of MONEYVAL 2005). The director of MONEYVAL noted that the new disclosure regulations adopted by the banking systems of most countries make it easier for law enforcement agencies to "follow the money trail" when completing money laundering investigations. However, the most challenging problems confronting investigative agencies are related to uncovering the original sources of the illicitly obtained monies that were transformed into licit property and money and were then used to finance illicit activities such as terrorism.

As noted earlier, international terrorists use trafficking of drugs (see UNODC 2006), humans (see Bales 2005), and weapons (see Farah and Stephen 2006) as a major source of income. Many times the same trafficking routes that are used to traffic drugs and humans from Asia to Europe and North America are used to traffic arms, other military equipment, and money from the United States to Europe or Asia. These goods and money are then used to support terrorist operations. When national security agencies disrupt the financial links between organized crime and terrorist groups and collect sufficient evidence to prosecute the suppliers of funds, their bankers,

their couriers, their recruiters, and their contributors, they have been successful in disrupting the operations of the terrorist groups to the extent that they will no longer be able to wage a large-scale terrorist operation (Speech by Ambassador Henry A. Crumpton 2005).

### **Global Cooperation in Protecting Borders**

Benyon (1997, 107) notes that international cooperation by the police and governments of various nations can take place on three different levels. The macro-level is made up of constitutional and international legal agreements, and the harmonization of national laws and regulations. The meso-level is concerned with the operational structures, practices, and procedures of the police and other law enforcement agencies. The micro-level involves the investigation of specific offenses and the prevention and control of particular forms of crime.

Das and Kratcoski (2001) reported that global agreements are made at the macro-level and can be illustrated by the treaties that are signed by the members of the United Nations. Multi-lateral agreements that involve reciprocal cooperation and exchanges of information by a number of countries are generally made at the meso-levels. The countries involved in these agreements to cooperate on law enforcement problems are generally located contiguous to each other. For example, Austria is surrounded by a number of countries, all of which belong to the European Union. As a member state of the European Union it shares information, resources, and personnel with the other 26 member states under the Common Foreign and Security Policy of the European Union.

Countries that share common borders tend to develop agreements that focus on day-to-day problems, such as drug trafficking, smuggling, and internationally organized crime, that have a detrimental effect on the security of their countries. Edelbacher (2001) notes that Austria signed the Schengen Agreements of 1985 and 1992, which reduced border controls between Austria and other Schengen countries, and the Maastricht Agreement of 1992, which required European members to adopt similar procedures in granting asylum, the protection of external borders, immigration, drug trafficking controls, judicial cooperation, and cooperation to prevent and control terrorism and to develop general strategies to prevent international crime. Micro-level agreements generally address a specific crime problem and often are bi-lateral, involving only two countries. Much of the international cooperation between the police that exists at the micro-level has been developed through informal interactions and customary practices between the police, who have worked out effective ways to solve policing problems from on-the-job experiences. These agreements are not generally formalized in written documents. For example, in Austria, the police presidents meet regularly

with police leaders and liaison officers from many countries on such matters as conducting investigations, sharing intelligence, establishing task forces related to specific transnational crimes, the training of police, and the sharing of resources (Edelbacher 2001).

### **The Efforts of the United Nations in Securing Borders**

The projects stemming from the Crime Prevention and Criminal Justice Branch of the United Nations increased tremendously after 9/11. The civil unrest and internal conflict that occurred in many countries in Europe and Africa, and the blatant violations of human rights that were committed by political and military leaders and the members of resurgent groups, resulted in the United Nations becoming more involved in developing standards for human rights. Deliberation at the United Nations Congresses of Crime Prevention and Control, held every five years at the UN Center in Vienna, resulted in the launching of several UN commissions, including the Commission on Crime Prevention and Criminal Justice and the Commission on the Trafficking of Narcotics and the Trafficking of Humans. The United Nations program on Crime Prevention and Criminal Justice, established in 1981, conducts training seminars, assists in UN peacekeeping missions, and cooperates with many police training centers, including the Middle European Police Academy and International Law Enforcement Academy, located in Budapest, Hungary (Das and Kratcoski 2001). Proposals coming from developing countries or countries in which the governments and justice systems have been disrupted through internal conflict that are requesting assistance in developing their justice and legal systems are given a high priority by the UN. Many of the peacekeeping and training missions involve police officers recruited from a number of countries.

The United Nations Police (UNPOL) is administered under the United Nations Department of Peacekeeping Operations. Police officers from Austria and officers from the United States have participated in United Nations peacekeeping missions. Carpenter (2008) reports that the UNPOL mission consists of three phases. The first is to provide security for the citizenry of the country. Often when a UNPOL unit is called in to assist, the country is in a state of crisis (Kosovo, Afghanistan, Somalia, and Sierra Leone, for example). The internal conflict is so extensive that the country is bordering on civil war.

The UNPOL unit serves as an interim police force until some type of stabilization of the behavior of those causing the conflict occurs. UNPOL assists in keeping order, maintaining crowd control, patrolling, making arrests, holding law violators in detention, and quelling rioting and terrorist activity. At times, a unit may be assigned to protecting United Nations facilities and personnel. During the second phase, after a degree of stability has been

reached, the UNPOL assist in reforming and rebuilding the police agencies and other justice agencies. During this phase, new legislation is passed and the judicial and justice systems are reformed and restructured.

The UNPOL assists in the recruitment and training of new police administrators and officers. During the third phase, the police and justice officials are able to function without the assistance of the UNPOL, and it withdraws. Carpenter (2008, 6) notes that the problems and challenges facing the UNPOL are increasing and becoming more complex, and there will be a need for more police leaders, managers, and specialists as well as line officers in the future if UNPOL hopes to fulfill its mission. The United Nations–formed police units have increased from 2,000 in 1995 to 16,900 in 2008 (Carpenter 2008, 6). The UN police have been recruited from 92 countries, with the average country contribution being 103 officers (Carpenter 2008, 21).

The United Nations works closely with Interpol and Europol in sharing information and intelligence on a wide range of crimes, including those committed by terrorist groups, organized crime units, money laundering and credit card fraud, and the illegal trade of radioactive materials (Erokhine 1997). Schmid (2003) noted that the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly in 1985 specifically focuses on the rights of victims of international crime and terrorism. In this document, the member states were directed to develop national and international laws that would assure justice for the victims of crime and abuses of power by government officials. Member states should adopt measures “to implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress” (Schmid 2003, 69). According to Schmid (2003, 33) some of the rights requested for victims in the Declaration have been adopted by member states.

## **Protecting the Borders of Austria after 9/11**

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The territorial size of Austria is rather small, 84,000 square kilometers, but it is located in the center of Europe and thus serves as a major trade route for Europe and parts of Asia and Africa (Edelbacher 2001, 121). Factors that affect the economic and political stability of any of the countries bordering Austria will generally have direct repercussions for Austria. Edelbacher (2001, 122) states: “The stability of six of Austria’s eight neighbors is threatened by political or economic uncertainties. On the one side are the struggling states of Eastern Europe and on the other side the affluent Western states.” As the Eastern European countries became independent and began their process of democratization, they

had enormous difficulties with mass unemployment, since their heavy industrial bases were generally obsolete and they had not yet obtained the high technology or trained workers needed for such technology. Many residents migrated to Austria, either legally or illegally, to obtain a higher standard of living.

More than one million of the slightly more than eight million Austrian inhabitants were born outside of Austria, and a large proportion of these immigrants adhere to the Muslim religion. The assimilation of these recent immigrant groups and the need to protect the general population from crime and terrorism are major challenges facing the government at the present time. Austria is experiencing a changing population and an increasing crime rate, particularly in the larger cities (Kratcoski and Edelbacher 2007). Some of this increase in crime is connected to organized crime and drug trafficking. In addition, Austria is a tourist country. There are more than 200 million people crossing Austrian borders every year (Edelbacher 2001). The Austrian Police and Customs Service engage in special actions to increase the protection of the Austrian borders. Many of these ventures are in cooperation with neighboring countries. The police and customs agents who patrol internally use special routes, and cars and goods are checked by special measures when there is some suspicion of illegal entry or smuggling.

## **Austria's Involvement in the European Union**

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Austria became a member of the European Union in 1994. Since the beginning of 2008, Austria is no longer a border country of the European Union. Now it is surrounded by other member countries that have the primary responsibility for protecting the borders of the European Union member states.

### **Europol**

Plywaczewski and Plywaczewski (2008, 1) note that Europol is the European law enforcement organization that aims at improving the effectiveness and cooperation of the competent authorities in the member states in preventing and combating terrorism, unlawful drug trafficking, and other serious forms of international organized crime. They observed that Europol is not a police force. Its principal tasks consist of gathering, collating, and analyzing information and intelligence and exchanging this information between the member states of the European Union (Fichtelberg 2008).

Even though information sharing is the major task of Europol, some of its other activities have gained more attention, particularly after the threat of terrorism to the countries of Europe became more pronounced. Europol

now assists member states with investigations, provides assistance and advice on the way member nations can use their resources efficiently and effectively, and helps member nations in developing crime prevention methods and in training of police in technical, investigative, and forensic methods (see Fichtelberg 2008).

The Common Foreign and Security Policy of the twenty-seven member states of the European Union directs the military and civilian crisis management missions of the European Union (White 2008). Those interventions that are administrated under the European Security and Defense Policy (ESDP) address the role of the European Union's assistance in such matters as policing, rule of law, crisis management, and supporting democracy (White 2008). The role of EUJUST LEX, using the mission in Iraq as an example, involves training senior police administrators, judges, prosecutors, and prison managers in the administration of justice according to the rule of law. Promoting mutual respect, developing collaboration, and using methods of policing that ensure human rights will be maintained are given a high priority in EUJUST LEX missions. Other goals associated with the EUJUST LEX mission in Iraq include promoting cultural awareness, partnership and teamwork, building positive cooperative relationships and staff development, exhibiting exemplary behavior, and having the appropriate visibility to gain the trust of the people (White 2008, 10).

EUROJUST, another of the programs under the European Union, was developed to facilitate the execution of the numerous international mutual aid agreements existing among the member nations. This program reduces the formalism involved in transnational legal investigations and prosecutions, and as a result the number of successful investigations and prosecutions relating to cross-border crimes has increased.

FRONTEX is the European agency that has the task of coordinating and managing the operational aspects connected with protecting the external borders of the member states of the European Union. FRONTEX was created in 2005 and established temporary headquarters in Warsaw, Poland. In addition to its primary task of coordination of field management of external border protection, FRONTEX is involved in the recruitment and training of national border guards, assisting member states with technical and operational procedures, and conducting research on determining what types of border controls and surveillance are likely to be effective in reducing the amount of illegal immigration, terrorist activities, and other forms of crime that cross the borders of the member states of the Union. According to its director, Ilkka Laitinen (2006, 6), FRONTEX is a key player in the implementation of common EU policy for Integrated Border Management, and its activity promotes the gradual development and effective functioning of the EU Integrated Border Management System. The activities are intelligence driven, and its effectiveness is based on its highly motivated and professional staff.



As a member state of the European Union, Austria has contributed personnel and resources to the programs mentioned above. Austria has also benefited from these programs. For example, during the European Soccer Championship games held in Switzerland and Austria in 2008, an estimated 2.4 million persons attended the games. There were almost 9,000 police officers active at the games, and 850 uniformed German officers, dressed in the uniforms of their own country and having full executive powers, were active in Austria. In Austria, 574 persons were arrested and 479 persons were physically hurt as a result of fights at the matches (AVUS Group 2008).

In addition to the investigative and information agencies and programs mentioned above, there are numerous task forces and specialized offices that assist the member states of the European Union in the protection their borders. The European Anti-Fraud Office is predominately concerned with protecting the financial interests of member states by investigating fraud and corruption that may occur within the member states (Plywaczewski and Plywaczewski 2008).

The Task Force on Organized Crime in the Baltic Sea focuses on completing investigations of crimes in which the organized crime organizations in the Baltic Sea region are known to engage, such as illegal immigration, trafficking in women and children, trafficking in drugs, environmental crimes, and trafficking in such goods as stolen weapons, vehicles, and heavily taxed items. The Task Force is organized to facilitate both joint and parallel investigations and intelligence analyses by the Expert Groups and Project Groups, which are attached to the task force (Plywaczewski and Plywaczewski 2008). The work of the Financial Activities Task Force (<http://www.fatf-gafi.org> 2008) is directed toward establishing standards that will identify the methods used by criminal and terrorist groups to launder money and develop methods to inhibit the money laundering schemes of these criminal organizations.

There are many other international cooperative ventures designed to protect the national borders of the countries of Europe. For example, in 2000 Forum Salzburg was founded. Edelbacher (2008) describes it as a “partnership for security for the countries of Austria, Slovakia, Slovenia, the Czech Republic, Hungary, Bulgaria, Poland, and Romania. The goal of this ad hoc task force is to build a strong partnership among the countries mentioned above to prevent trafficking of humans and the smuggling of goods and drugs in the Balkan area.” Austria is also involved in the Schengen Information System established in 2007. This system, which includes all members of the European Union, provides information exchanges on persons and their goods when criminal activity is suspected. The databases collected about one million searches, and in 2008, 2,500 international arrest warrants against persons were in the system (bmi.gv.at 2008).

Regardless of the specific tasks of the agencies, task forces, or programs, they all require that the personnel who staff these programs, as

well as the police officers who perform the normal day-by-day policing functions within their country, take a new perspective toward police work, realizing that the tasks and the problems associated with policing have changed. For example, the Middle European Police Academy (MEPA) was created in 1994. In 1991, the former Hungarian ambassador to Austria and the former police president of Vienna agreed to create the Austrian-Hungarian Police Academy. This quickly evolved into a multi-national academy, with eight countries from middle Europe participating. Austria contributes to the Middle European Police Academy by providing faculty and students. The college is open to students from eight central European countries (Edelbacher 2001). In addition to the practical police courses, those who attend also receive foreign language instruction. The directors of the police training center emphasize cooperation and exchange of ideas with national and international educational institutions and training centers. Developing liaisons with officers from other countries and establishing avenues for information exchanges are several of the important benefits the officers who attend the Middle European Police Training Academy receive.

As a member state of the European Union, Austria has contributed funds, personnel, and other resources to the mutual aid agreements that originated within the European Union. For example, Austrian police have participated in European Union peacekeeping missions and various types of international training programs, and Austria has sent selected officers to participate in the various special task forces under the jurisdiction of the European Union ([www.polizei.gv.at](http://www.polizei.gv.at) 2008).

Not all of the programs described above are directed at terrorism or have the specific goal of improving the border protection of the nations, but the general effect of these programs is to strengthen the national security of those countries of the continent of Europe.

## **Organizational Changes in Austrian Security Forces**

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After 9/11, the safety of the people and the security of the borders became the two main goals of the Austrian Police and Customs. The various security agencies within the European Union, particularly FRONTEX, assumed a large portion of the control of the Austrian borders. Since Austria no longer was required to assume the responsibility for curtailing the flow of illegal immigration and goods after FRONTEX took charge, the Austrian Police became more focused on internal crime problems. Prior to FRONTEX assuming control of the borders, approximately 50,000 illegal immigrants were stopped at the Austrian border yearly, but the number fell to less than 10,000 in 2007. Austria enacted very strict laws for asylum seekers, and as a

result the number of asylum seekers has been decreasing dramatically. For example, the number in 2004 was 24,634, while in 2005 it was 22,461 (www.polizei.gv.at 2008).

One measure taken by the Austrian government to strengthen the internal security of Austria was to merge the gendarmerie and the federal police into one organization. Prior to this change, the federal police operated in the fourteen larger Austrian cities and the federal gendarmerie operated in the more rural areas. The federal gendarmerie and the federal police were administered under the Secretary of the Department of the Interior. In 2005, these two separate police units merged and became the Federal Police of Austria. According to Edelbacher (2005, 32–33), the police organization became more militarized and less service oriented.

The long-range effects of this change have not yet been determined. Edelbacher believes the changes have had adverse effects and actually reduced the security and protection of the citizens because a large portion of the resources and personnel was now directed toward curtailing the threat of international terrorism at the expense of providing adequate internal security and services to the people. Edelbacher states (2005, 6): “The consequences (of the merger of the police) are that the community and the citizens of Vienna and Austria are neglected by the services of the law enforcement agencies. ... Crime is on the increase, less crime is solved, the number of officers is reduced, streets and homes become insecure, and the overall feeling of security and safety of the people has diminished.” Edelbacher stated that one consequence of the merger will be that the citizens who live in the larger cities will have to rely more on private security agencies to provide them with the safety and security that in the past was provided by the public police.

The Austrian Police and Customs are primarily responsible for the security at the airports and harbors along the Danube River. After 9/11, higher-level security standards were put in place at all international airports, and passengers traveling to foreign countries are carefully screened by the police and customs agents. After the merger of the Austrian Police and Austrian Gendarmerie in 2005 and the creation of one unified Police Service, border protection is now the responsibility of the police. On special occasions, the Austrian Military will assist the police in protecting the borders for the purpose of reducing the risks of illegal immigration, terrorist activity, and other types of crimes. The European Soccer Championship held in Austria during June of 2008 was an example of such a recent occasion.

As a member state of the European Union, Austria is a participating country in the Schengen Agreements. These agreements are the main cornerstone for protecting the borders of the European Union. The provisions of these agreements specify that European Union citizens and non-European Union citizens will be subjected to different levels of security checks as they pass through any of the European Union member states. European Union

citizens are allowed to cross at special entries into other European Union countries. They are issued special passports and their movement is not strictly controlled. Non-European Union people who enter and pass through any of the member states are subjected to more security checks (these agreements apply to all EU members).

Similar to OSCE and the Council of Europe, Austria is dedicated to preventing, suppressing, and combating all forms of crime in Austria, including organized crime and terrorism, using methods allowed by the laws of Austria. As a member state of the European Union, and because of its strategic location within the continent of Europe, Austria plays a key role in the European Union security programs previously described in this chapter. The more successful these and other international programs are in achieving their goals of protecting their borders against terrorism and international crime, the more secure Austria will be.

Another reason for Austria being important in the post al-Qaeda international scene is the fact that the Crime Prevention and Research Branch of the United Nations is located in Vienna. Some of the most important documents and commissions have come out of the United Nations. Austria has also participated in the United Nations Police (UNPO).

## **Development of a Global Grand Strategy to Protect the National Borders (the Case of the United States)**

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In this section, the strategies developed by the United States to protect its borders will be contrasted with those of Austria. As noted, Austria throughout its history had to be concerned with border protection because, being centrally located, it was vulnerable to invasion by armies from European countries and from the armies coming from Asia. The United States, on the other hand, being geographically isolated from those countries that might threaten its security, devoted more resources to internal security. In Austria, international agreements and mutual aid treaties have existed for centuries. For the U.S. the political ideology pertaining to its position in the world and need for assistance from other countries was generally, “We can take care of ourselves.” Of course, this all changed in the latter part of the 20th century, when countries realized that national borders and geographic locations cannot be defended from terrorism and criminal activity. Thus, the strategies of the United States and Austria became similar.

Prior to 9/11, the methods used by the United States to protect its borders were piecemeal and were developed as needs and circumstances dictated (see *The 9/11 Commission* 2002, 35). A number of factors, including its political ideology and form of government, which emphasize giving

power to the individual states rather than the national government, and its territorial location, which resulted in few prevailing threats to the homeland, resulted in a response to threats to national security that would develop as a threat was perceived. Except in times of war, there was no need for a grand strategy in which the military, law, economic resources, political system, and technological resources were directed toward protecting the nation's security and way of life (The 9/11 Commission 2002, 361).

Following World War II, as a result of an increase in perceived threats to the nation, the number of international treaties, unions, and agreements the United States entered into increased tremendously. Many of these were global, such as becoming a member of the United Nations, and others were bi-lateral, established to combat a specific problem or to promote the interests of the U.S., as described earlier in this chapter. Such events as the terrorist attacks and taking of hostages at the Olympic games in Munich in 1972; the hijacking of civilian aircraft, which peaked in the 1980s; and evidence of terrorist groups being trained in Cuba, Algeria, Libya, and other Middle Eastern countries resulted in more efforts and resources being directed toward gathering intelligence and developing strategies to curtail international terrorism (see Kratcoski and Das 2003). International as well as national criminal activity was perceived as a major threat to U.S. national security, and the wars on drugs, on organized crime, and on violence were launched. There still was no national grand strategy in which state, local, and federal agencies cooperated and coordinated efforts to win these wars.

The September 11, 2001, terrorist attack on the World Trade Center in the U.S. led to a dramatic shift in the focal point of U.S. national security. King and Sharp (2006, 7–8) noted that “on international, national and local levels, the focus of cooperative intelligence ventures has shifted from serious crime to terrorism prevention.”

### **The Application of the World Systems Theory as the Basis for a Global Response to International Crime and Terrorism**

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World systems theory (Onwudiwe 2002, 1–27) can be used to illustrate why it is imperative for nations to engage in cooperative international agreements if they are to be successful in combating international crime and terrorism within their borders. This theory is based on the notion that all nations participate in a world economy (Onwudiwe 2002, 10–14). Each nation is part of the larger system of nations and thus dependent on all other nations in some way.

In regard to crime and terrorism, the criminal and terrorist activities that occur in one country will have an effect in some way on all of the other

countries. The specific outcome will vary, depending on a number of factors, including the amount of wealth and resources a particular country possesses. For example, in a very poor country that has a weak political structure the activities of terrorist and criminal organizations may have the overall effect of destroying the economy and disrupting the political structure. In the world economy, all nations are not equal in power and resources, and often the stronger nations exploit the weaker nations. In an attempt to explain how the imbalance of power among nations can affect a nation's response to international terrorism, Onwudiwe (2002, 1–27) referred to nations as controlling, semi-controlling, and exploited.

*Controlling nations* are at the core of the world system because they have considerable wealth and resources. They have the power (i.e., wealth and resources) to exploit the less powerful, poorer nations. However, these controlling nations will often assume a protectorate position with weaker nations, because it is in their best interests to have these weaker nations independent rather than under the control of a nation that advocates a different political ideology. Since weak nations are vulnerable to the influence of criminal or terrorist groups, the strong nations benefit when they offer the weak nations economic support and assistance in the development of their legal, political, and criminal justice systems.

The *semi-controlling nations* have some power to exploit other weaker nations, but are themselves vulnerable to exploitation from the stronger, more powerful nations. Generally, these countries are willing to join in mutual aid international agreements because their leaders are aware that in times of world crises they will benefit from whatever assistance is provided by the core nations of the world system, but will not be excessively burdened with the demands from other nations for resources and manpower. Austria, being a relatively prosperous country but not an extremely powerful country, provides a good example of a *semi-controlling country*. Austria has opened its borders to thousands of people who were escaping from countries in the midst of civil war and offered relief. In prosperous times, peoples from various countries with poor economies were able to find employment in Austria. However, when it appeared that the protection and economic opportunities being provided to those who were not Austrian citizens was having a negative effect on the standard of living of the Austrians, the position of the government regarding the amount of assistance and opportunities Austria could provide to the peoples of poorer, less developed countries changed (Edelbacher 2001, 124).

The *exploited nations* are generally those that are in the process of development, both economically and politically. These countries are generally poor in terms of economic wealth. Many times, the majority of the population lives in poverty. Their governments are often unstable and the leaders are corrupt. Generally, there is considerable discontent and internal conflict,

and as a result these countries are very vulnerable to being exploited and infiltrated by organized crime and terrorist organizations.

A major part of the master strategy the United States and most other countries developed after 9/11 against international terrorism was to contribute huge amounts of financial aid and resources, including human resources, to the development and stabilization of those countries defined as vulnerable to exploitation (Onwudiwe 2002, 14–17). The general notion of a world approach to preventing international terrorism is that the richer, powerful nations must assist the weaker nations in becoming self-sufficient. This process starts with the weaker nations entering into agreements with the stronger nations, who will provide economic, technological, and at times military assistance. Theoretically, the developing nations are not giving up their national sovereignty, but the powerful nations providing the assistance expect the poorer nation to reciprocate with political support.

Eventually, these poorer countries will become self-sufficient as their economies improve and their governments become stable. The powerful nations benefit by improving their world images, developing new avenues for trade, and securing permanent political allies. Generally, heads of state do not cite world systems theory when explaining to their constituents the reasons for instituting the strategies and programs used to respond to terrorist threats and improve the security of their countries. However, based on the evidence generated from the specific responses to terrorism and the overall improvement of border security of many countries, it would appear that a world systems theory is either explicitly or implicitly guiding the directions taken by these countries.

In the case of Austria, its security is tied in with that of the European Union countries, as well as with other powerful countries not in the European Union, including the Republic of Russia, and through various countries in other continents, represented through the United Nations. The United States, having obtained a powerful-nation status, has generally taken the position that providing assistance to developing nations that are following political ideologies similar to those of the U.S. is strengthening its national security.

### **International Agreements Pertaining to Justice Matters after 9/11**

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The United States has a long history of engaging in international agreements pertaining to law enforcement and justice matters. Generally, these agreements consisted of exchanges of information, providing mutual assistance, or



cooperating on a particular criminal case or some ongoing criminal-related problem. The U.S. Department of State, Department of Justice, U.S. Armed Forces, and several other federal agencies have established liaison offices. The law enforcement officers interact with representatives of justice agencies from other countries directly or through electronic communications. The agreements pertain to such matters as cooperation in investigations, providing assistance in training of police, providing equipment to countries in need, and exchanging information (Marenin 2007).

The 9/11 Commission Report documented several of the major deficiencies in the U.S. strategies to protect the national borders and gave a number of recommendations pertaining to measures to strengthen border protection. The Report emphasized that a combined military and law enforcement response would be needed. Several of the specific recommendations given in the report are to

- Identify and prioritize actual and potential terrorist sanctuaries and develop strategies to eliminate activities at these sanctuaries
- Develop international cooperative agreements for preventing the spread of terrorist activity
- Send a strong message that the U.S. is committed to moral leadership and will defend its ideals abroad
- Assist countries with their economic, technological, and educational development; political reform; and law enforcement
- Target terrorist money. Identify terrorist financiers and freeze their assets
- Target terrorist travel. Develop strategies to reduce illegal entry
- Increase and improve cooperation and communications among local, national, and international law enforcement agencies
- Develop a layered security system. Share intelligence nationally and internationally
- Develop a “biometric” entry-exit screening system. This system tracks an international traveler from entry into the U.S. to exit from the U.S.
- Assure that civil rights are protected. Balance the need to protect against terrorist threats with the protection against violation of civil rights; and include the private sector in the strategies and cost relating to terrorist prevention (The 9/11 Commission 2002, 361–398).

In response to the growing threat to U.S. security brought about by an increase in international crime and terrorist activity, the U.S. State Department and the Department of Justice expanded the scope of their existing programs and developed new programs to combat the threat to the security of the homeland. Many of the recommendations of the 9/11 Report

were incorporated into a grand strategy. A description of the programs that are part of this strategy follows.

### **U.S. Department of State and Department of Justice**

The U.S. Department of State and the U.S. Department of Justice have established long-standing traditions of forming mutually beneficial international agreements with various countries of the world (Das and Kratcoski 2001). The Bureau of Diplomatic Security of the U.S. Department of State has established liaison offices with the law enforcement agencies in all of the countries having American embassies or consulate offices. The function of the Bureau of Diplomatic Security is to provide protection and security to U.S. diplomats and their families, the personnel attached to the embassies, and to U.S. property. In order to perform these tasks effectively, it is necessary to gain the support and cooperation of the law enforcement officials of the countries in which the embassies are located. (Das and Kratcoski 2001). Several U.S. embassies (for example, Libya, 1981; Beirut, 1983; Sudan, 1998; and Kenya, 1998) were targets of terrorist organizations before and after 9/11. The type of information that can only be obtained from local police and citizens is often invaluable in preventing such attacks.

There is some evidence to suggest that the formal and informal relationships the Bureau of Diplomatic Security personnel and other federal law enforcement agencies have made with law enforcement agencies in the host countries have prevented a number of terrorist attacks that were in the planning stage (Dampousse et al. 2001).

The Federal Bureau of Investigation (FBI) established Legal Attaché Offices (Legats) in a number of countries throughout the world. The activities of the agents attached to these offices (FBI 2007, 1) consist of

- Coordinating international investigations with their colleagues;
- Covering international leads for domestic U.S. investigations;
- Linking U.S. and international resources in critical criminal and terrorist areas to better ensure the safety of the American public here and abroad. The rules for joint activities and information sharing are generally spelled out in formal agreements between the U.S. and the Legat's host country; and
- Coordinating FBI training classes for police in their geographic areas. The training is wide ranging, including such specialties as counter-terrorism, cyber crime, forensic techniques, and human trafficking.

After 9/11, the number of Legal Attaché Offices was increased. According to official FBI data, there are currently more than 50 offices located in countries throughout the world (FBI 2007). Although the number of Legal Attaché

Offices has grown since 9/11, the organizational structure and goals of the Legal Attaché Offices did not change after 9/11. Rather, they became more focused on matters pertaining to terrorist organizations and activities than they were in the past.

Research completed by the Office of Justice Programs of the U.S. Department of Justice reveals that the connection between organized crime and terrorism has strengthened since 9/11. The National Institute of Justice report, "Methods and Motives: Exploring Links between Transnational Organized Crime and International Terrorism," suggests that the interaction between organized crime organizations and international terrorists' organizations is becoming regular and permanent. The U.S. Department of Justice has also supported and helped to finance efforts to combat international organized crime. Critical to the success of such efforts is information sharing. The National Information Exchange Model creates standard definitions of crimes and criminal activities, merges criminal intelligence, provides analysis, and disseminates information to the criminal justice agencies involved in combating organized international crime. The Regional Information Sharing System provides

- Investigative support and training;
- Analytical services;
- Specialized equipment;
- Secure information sharing technology;
- Encrypted e-mail and communication capabilities; and
- An automated system that enables access by the private sector and non-law enforcement agencies (Sedgwick 2008, 10–11).

A U.S. Department of State document, "Trafficking in Persons Report 2007," reveals that, in spite of the Trafficking Victims Protection Act of 2000 and the national and international efforts of U.S. law enforcement agencies and the global efforts of law enforcement agencies throughout the world, human trafficking, and particularly trafficking of women and children in the United States and other countries, has not decreased. The connections between organized crime organizations and terrorist organizations and the threat this criminal activity poses to the security of the United States have been recognized.

Currently, there are forty task forces composed of local, state, and federal law enforcement agencies and non-government service organizations in operation at locations throughout the United States (see U.S. Department of State "Trafficking in Persons Report 2007" for a listing of these task forces). These task forces provide both investigative and law enforcement services and offer assistance to victims who were trafficked for criminal purposes. In addition to the programs mentioned above, the U.S. provided outreach,

training, and investigative assistance on matters pertaining to human trafficking to 90 countries in 2007 (Sedgwick 2008, 5–6).

The Drug Enforcement Administration (DEA) Foreign Offices has special agents located in 86 countries (DEA website 2007, 1). These agents cooperate with foreign law enforcement agencies by conducting investigations into the criminal activities of drug traffickers. The tasks of the agents include

- Assisting foreign police in gathering intelligence, the investigation of narcotics-related crimes, and interviewing of witnesses;
- Participating in international forums to provide international law enforcement cooperation;
- Assisting foreign countries in the development of their criminal justice agencies by providing equipment and technical assistance; and
- Providing international training for the police agencies of the host country (DEA 2007, 1).

As with other U.S. federal agencies, the role of the DEA broadened after 9/11. It carefully monitors the activities of organizations suspected of being involved with terrorism, with the goal of preventing terrorists from entering or operating in the United States. The DEA, aware of the existence of organized criminal groups that focus on drug trafficking, includes curtailing the activities of drug traffickers as another major goal (Hill 2005, 58). Cooperation and assistance from the law enforcement agencies of the countries in which the DEA has established offices is vital to these efforts.

Another program housed in the Department of Justice is the International Criminal Investigative Training Assistance Program (ICITAP). This program, coordinated with the U.S. Department of Justice's Overseas Prosecutorial Development, Assistance and Training Office, is designed to provide law enforcement assistance and training to developing countries who accept a democratic form of government and who are supportive of U.S. foreign policy (Kratcoski 2001, 462). Ducot (2008, 4) states that "ICITAP works with foreign governments to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism." Currently, ICITAP has 17 field offices attached to U.S. embassies and has funded programs in 46 countries located in various parts of the world. Beinhart (2008), the assistant director of ICITAP programs who established field offices in various countries in Africa, noted that the training provided must be tailored to the skills and needs of the police officers of the host country. He emphasized that the training must be hands-on and skill-development based. Some of the topics covered in the basic training are the importance of the first police responder, documenting the crime scene, fingerprinting, arresting a suspect, traffic stops, and crowd control. Other parts of the training, such as

developing internal monitoring capacities, are more specialized. To date, no systematic evaluation of the effectiveness of ICITAP's involvement in the training and assistance given to those countries trying to establish a just system has been completed. ICITAP officials contend that the success is measured by the increase in the number of countries seeking assistance and the overall success is measured by the country maintaining a democratic form of government that provides for human rights and individual security. Beinhart (2008, 5) notes that "[r]espect for human rights and human dignity is interwoven throughout all ICITAP training." According to Ducot, ICITAP is furthering the mission of the U.S. Department of Justice to combat international crime and terrorism and to strengthen the security of the United States as well as other countries through

- Helping to strengthen the rule of law and law enforcement capacity in foreign countries; and
- Building effective partners with the law enforcement and justice agencies of foreign countries by providing technical assistance, training, and expertise (Ducot 2008, 9).

### **Internal Security after 9/11**

The U.S. response to 9/11 was multifaceted. It included an expansion of international agreements, relying on assistance from INTERPOL and EUROPOL, and internally passing new legislation, such as the USA PATRIOT Act, creating the Department of Homeland Security, and restructuring the intelligence-gathering units of the Central Intelligence Agency and the Departments of Justice, Treasury, and Defense (Kratcoski 2008).

The purpose of the legislation titled the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists Act, referred to as the USA PATRIOT Act, enacted by the U.S. Congress, was "to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes" (U.S. 107th Congress 2001b, 1). This Act expanded or revised some of the provisions of existing laws and provided law enforcement and investigative agencies with new tools to use in their investigations of terrorist organizations. Each of the ten titles of the Act addresses a specific area of security or intelligence gathering, including domestic security, the collection of electronic evidence, the regulation of banking activities suspected of financing terrorist activities, provisions to increase the security of the U.S. borders, the detention of "suspected" terrorists, the sharing of intelligence by federal law enforcement agencies, adding new laws to curtail terrorist activity, providing standard definitions of domestic terrorism, the criminalization of cyber-terrorism, the authorization of searches of suspected

terrorists' electronically transmitted messages, clarifying definitions of electronic surveillances, providing funding for training, and giving the federal government the temporary authorization to enter into specified contracts with state and local governments to assist in providing security on U.S. military installations.

Title III of the USA PATRIOT Act is often referred to as the International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001. It authorizes the president of the United States to direct U.S. officials to cooperate with officials of other countries, either informally or through mutual assistance treaties and international agreements, to ensure that foreign banks and other financial institutions maintain records of transactions and report on any person or organization suspected of engaging in money laundering. Another section of Title III pertains to the duties, powers, and organizational structure of the Financial Crimes Enforcement Network. This Network maintains a government-wide data access service. In accordance with legal requirements and policies, it is authorized to analyze and disseminate data pertaining to criminal activity of concern to federal, state, and local agencies, to support ongoing criminal investigations pertaining to financial crimes, and to research trends and methods used in money laundering and other financial crimes (U.S. 107th Congress 2001, Section 361).

The U.S. Congress authorized the creation of the Department of Homeland Security (DHS) in 2003. Twenty-two existing agencies were united and integrated into the DHS structure, and many other federal agencies were directed to engage in cooperative relations with the Department of Homeland Security for the specific purpose of enhancing U.S. national security. The mission of the DHS includes

- Transportation—Protecting air, sea, and land transit systems that transport people and goods into the U.S.;
- Domestic terrorism—Expanding the tasks of Customs agents and refocusing the role of federal agencies such as the FBI, ATF, and DEA;
- Protecting the infrastructure—The Transportation Department, Coast Guard, and other infrastructure agencies were organized under the DHS structure;
- Defending against catastrophic threats—Counter-terrorism planning; developing liaisons with national security agencies such as the FBI, CIA, and State Department; and developing more extensive contacts with international information and security agencies such as Interpol, Europol, and the United Nations;
- Responding to natural and human-made emergencies—The Federal Emergency Management Agency (FEMA) was brought under the DHS, and multi-jurisdictional emergency task forces were created;

- Developing intelligence and warning systems—Homeland security alert codes were developed, and the level of alert is communicated to the public based on the amount and quality of the information received concerning terrorist threats to the homeland;
- Improving border and transportation security—Several federal agencies were combined or restructured to increase the security at all points of entry into the U.S. The Sky Marshals were activated and port security was enhanced; and
- Training—The Federal Law Enforcement Training Center (FLETC), which trains the personnel of most of the federal law enforcement agencies, was brought under the DHS structure, and new courses on terrorism were added to the training program. Other training endeavors coordinated by the DHS include the simulation of terrorist attacks, the use of volunteers in crisis situations, and the coordination and cooperation of interagency involvement in responding to natural and human-made disasters (Source: <http://www.dhs.gov/xabout/structure/>).

In spite of the new legislation, the creation of a new department, the development of new programs to combat terrorism, the establishment of numerous international agreements directed toward crime prevention and combating terrorism and crimes related to terrorism, and the expenditure of billions of dollars on programs directed toward protecting the national security, there are not many indicators that the country is no longer vulnerable to terrorist activity, either domestic or foreign.

A research study on the effectiveness of counter-terrorism strategies (Lum et al. 2006) revealed that there is an absence of high-quality scientific evaluation research on the effectiveness of counter-terrorism measures to reduce terrorist activity and the harm created by such activities. Based on a thorough and systematic analysis of the research on this subject in which scientific methods were rigorously followed, the authors concluded that the available evidence suggests that “in the U.S. alone the non-defense costs of homeland security have increased from \$9 billion in 2000 to \$32 billion in 2005. In light of the uncertain effectiveness of counter-terrorism measures, the cost-effectiveness of this expenditure is open to debate.” Lum et al. (2006, 2) suggest that there is an urgent need to commission more research and evaluation on the effectiveness of counter-terrorist measures to determine if policies, strategic planning, and programming are producing the desired results. A 2008 report by the Government Accountability Office (Yen 2008, A8) that assessed the Customs-Trade Partnership Against Terrorism (C-TPAT), a program under the auspices of the Department of Homeland Security, suggests that there are serious gaps in the security at the 326 airports, seaports, and designated land borders through which cargo from other nations comes



into the United States, either as a final destination or in transit. The C-TPAT was established after 9/11. It requires importers of goods to the U.S. to submit a security plan that meets U.S. Customs and Border Protection's minimum standards and, in return, these importers would receive reduced scrutiny of their cargos by Customs. A security problem exists because some companies are receiving the benefits of reduced scrutiny without having submitted their security plans, thus opening the door for terrorists to smuggle weapons and other contraband into the country (Yen 2008).

### **Factors Inhibiting the Effectiveness of Global Measures Used to Protect National Borders**

In a global society, it is impossible for a single nation such as Austria, or even a superpower such as the United States, to protect its borders without cooperation and assistance from other countries. Often, even with cooperative agreements and treaties between nations in place, the measures taken to curtail crime and terrorism are still not effective. Several of the factors that may inhibit effective cooperative measures to curtail the spread of international crime and terrorism are as follows:

*Issues Pertaining to National Sovereignty.* National leaders are very reluctant to give up any right of the country to rule and determine its own destiny. Of course, nations will become a part of a cooperative union when it becomes apparent that the survival or quality of life of their people will be negatively affected if this step is not taken. Using the European Union as an example, the movement toward the centralization of political and executive leadership of the Union is very slow, and often meets with resistance from one or more of the leaders of the member states of the European Union. (Edelbacher and Norden 2005, 7). Kurki (2001, 331) noted that a number of United Nations Conventions addressing matters relating to arrests, police powers, and due process rights have been adopted by the member nations, but others relating to criminal trials, punishment of criminals, and human rights have met with resistance by some nations. According to Hopfel and Angermaier (2005, 320–321) the International Criminal Court, established by multi-lateral treaty in 2002, “is premised on the principle of complementarity, which allows the Court to give due deference to states that are willing and able to prosecute international crimes, while at the same time ensuring that these crimes do not go unpunished when political or practical considerations render their prosecution unfeasible for an individual state.” Hopfel and Angermaier (2005, 332) contend that for various reasons, including the failure of states to agree on a common definition of some crimes, for example, terrorism, or because some crimes become highly political, “the ICC may not be the best way to combat international crimes with a strong transnational character, such as drug trafficking or trafficking in human beings.

Here it is more effective to strengthen the cooperative mechanisms between states and to facilitate training programs and proper resource allocation within the states.” This suggestion seems to be illustrated by the manner in which the United States has responded to the threat to its security posed by various international crimes, including terrorism.

*Lack of Resources.* The lack of technological and human resources in some of the poorer nations that join in cooperative ventures against crime and terrorism can be a serious inhibiting factor. This limitation is often overcome when wealthier nations offer resources to the countries lacking such resources. Examples of this type of assistance include the training provided by the International Criminal Investigative Training Assistance Program, located in the U.S. Department of Justice, and FRONTEX, the integrated management of external border support teams of the European Union. In FRONTEX, the pooling of technical resources of the member states resulted in the opportunity for those countries sharing border control responsibilities, even the poorer countries, to have access to state-of-the-art equipment, the Schengen Agreements, and other programs of the European Union or the United Nations, such as peacekeeping missions that Austria participates in as a member of both organizations.

*Decentralization of International Crime and Terrorism.* After 9/11, terrorists and organized criminals learned very quickly that they could improve their effectiveness by decentralizing their activities. These new forms of organization make it very difficult for nations, even if they have joined in cooperative efforts, to successfully destroy and control terrorist activities. For example, the evaluation report of Lum et al. (2006) revealed that retaliatory attacks such as the U.S. attack on Libya in 1986 and attacks by Israel on the PLO actually led to an increase in the number of terrorist attacks, particularly against the United States, the United Kingdom, and Israel. As previously mentioned, both Austria and the United States took decisive steps to counteract these moves of terrorist groups and increased the security of their borders. In the case of Austria, the entire police system was re-organized. The two distinct units of the police were blended into one with the purpose of unifying the command, improving the intelligence and communications, and placing equal emphasis on internal and external security. In the U.S., the Department of Homeland Security was created, and more funding and resources were devoted to combating terrorism and related crimes.

The leaders of the International Association of the Chiefs of Police (IACP 2005, 3) noted that the National Strategy for Homeland Security in the United States did not have sufficient input from state and local law enforcement agencies. This organization took the position that “hometown security” is “homeland security,” and if every local and state policing agency were included in the national security the local police could play a critical

role in preventing terrorism and protecting the homeland. It was also suggested in this report that the cutback in federal funds for programs such as the Office of Community Oriented Policing Services and the Local Law Enforcement Block Grant Program has reduced the state and local policing agencies' effectiveness in preventing terrorism (IACP 2005, 5).

*Private and Government Corruption.* As a result of the globalization of the world, many countries that have been poverty stricken for centuries finally have a share in the wealth. In order to obtain this wealth, these countries must accept foreign trade and investments. In many countries, having leaders who are corrupt is a given (Millard 2003). The strong link between organized criminal groups, terrorist organizations, and corrupt political and corporation leaders opens the door for all forms of criminal and terrorist activities. Once the terrorist and criminal groups obtain a foothold in a country, they may use a number of criminal and terror tactics to maintain their base of power. For example, in Ciudad Juarez, Mexico, it was reported that the leaders of drug cartels were sending a message to government leaders, the police, prosecutors, and judges that "if you do not leave us alone you will die." In the report, it was mentioned that Mexican citizens assume that many of the police, government officials, and soldiers are corrupt, and the facts confirm this suspicion. Those who are honest often lack the resources and training to successfully fight the powerful drug cartels and have the additional worry of not being able to trust some fellow officers who may be in alliance with the drug lords (Stevenson 2008, A5). The United States has attempted to address the problems mentioned above in different ways. For example, the White House Office of National Drug Control Policy (U.S. Department of Justice 2005, 51) has established a crop eradication program in Afghanistan. Considerable efforts and funds have been invested to convince farmers to plant crops other than the poppy, which is currently the cash crop of that country. If the efforts are successful, a major source of income, much of it used to finance terrorist activities, will be eliminated. The Office of Counter Narcotics (2008) assists in the coordination of the efforts of the various U.S. law enforcement and intelligence agencies that are working to eliminate the narcotics trade, particularly when the relationship between narcotics trafficking and the financing of terrorism can be established.

*National and International Cooperative Ventures to Curtail Crime and Terrorism.* These efforts often fail because they lack focus and a common mission (Joutsen 2005). The success or failure of international cooperative ventures is influenced by national concerns and political issues, the social and cultural traditions of the nations, and the individual characteristics of those coordinating and leading such ventures. As Joutsen (2005) noted, the police regularly share and exchange intelligence, operational and legal assistance, and investigative operations, but the importance of the information is not understood or disagreements among the participating agency leaders on

how the information will be used does not contribute to the accomplishment of the goals of the operation. Lemieux (2008) used data provided by the Drug Enforcement Administration and the U.S. Department of Justice related to 61 major operations pertaining to international investigations of drug trafficking completed between 2000 and 2008 in which 58 countries participated to assess why some international cooperative ventures are successful and others fail. The large majority of the international police investigations and operations included in his research pertained to Columbia and Mexico. However, 22 of the interactions involved 11 European Union countries.

In general, the data revealed that successful operations were associated with the number of countries involved in the operation, the duration of the investigation, and the “professionalization” of the police cooperation. The more countries involved in the investigations, the greater the number of arrests made and the larger the amount of drugs that were seized by the police participating in the operations (Lemieux 2008, 10). The organizational socialization and transfer of knowledge between the various police units worked best when the teams were cooperating on an investigation over a long period of time; when they possessed common professional traits related to education, training, and investigative skills; and when they were dedicated to performing at the international best-practice level (13).

## **Future Trends in Defending the Interests of Nations in a Global Society**

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There are many similarities as well as differences in the strategies and methods Austria and the United States developed to protect their borders. This chapter was not written to make a comparison of the two countries, but to show that regardless of what has been done in the past by these countries to protect their borders, the future of will require a world system strategy if they are to be successful.

Samuelson (2008), commenting on a report completed by the Commission on Growth and Development, noted that the panel identified five common areas through which poor, developing countries of the world have obtained some success in moving their peoples out of dire poverty. These five areas identified were political stability and governments committed to economic growth, strong trade and a commitment to attract foreign investment, high rates of saving and investment, maintaining economic stability by government budgeting and keeping inflation under control, and a willingness of the government to keep its hands off the control of industry. The Commission report concludes by noting that globalization works. In order to advance economically, countries must cooperate and compete on a world market, accepting

technology, ideas, and know-how from others. The conclusions of this report pertaining to the development of economic stability and growth can also be applied to the security of nations against transnational crime and terrorism.

The security of nations such as Austria and the United States will not be ensured by building walls to keep out unwanted immigrants (see Winterdyk and Sundberg 2006), by using metal detectors in airports to reduce hijackings, by fortifying government buildings and military installations, or by passing legislation that interferes with the civil rights of the citizens (Das and Kratoski 2001, 25). To win the battle against terrorism, rich, powerful countries such as Austria and the United States must engage in efforts to assist those countries that are poor in obtaining economic and political stability. If economic and political stability is achieved in a country and citizens are treated fairly and with dignity by the government, the major reason for terrorist activity will be eliminated (Onwudiwe 2002). The leaders of those countries that share common values and can see the benefits of joining forces in combating crime and terrorism, acts that threaten the welfare of their citizens, must be willing to share their resources, training, and personnel with others who are less privileged.

Austria's and the United States' recognition of the need for a global response to terrorism that encompasses a world system strategy has been illustrated in the policies and programs adopted by both countries previously discussed in this chapter. For example, both countries have strengthened their ability to protect their borders against crime and terrorism by passing new legislation, developing new cooperative agreements with other nations, sharing their resources with less privileged nations in need of assistance, participating in crime and terrorist prevention programs under the auspices of global organizations such as the United Nations and Interpol, sharing information and intelligence pertaining to international crime and terrorist activity, and sharing new technologies geared to the detection of terrorist activities.

Lipton (2008, A6) notes that the United States has long been the top arms supplier to the world. The U.S. State Department estimates \$96 billion in sales of weaponry by U.S. military contractors to foreign countries during 2008. Lipton further notes: "About 60 countries get annual military aid from the United States, 4.5 billion dollars a year, to help them buy these American weapons." According to officials of the Department of State, the drastic increase in the sale of weapons to other countries of the world over the past several years will build a more secure world, since it "will tighten military alliances and combat terrorism." In addition to providing economic, technological, and policing assistance and sharing information, the Austrian and American governments have completed numerous research studies that produced commission reports on the causes of various types of international crimes that are related to terrorism and the methods recommended to control such activity.

The sovereignty of Austria and the United States has been maintained, regardless of the number and types of international mutual aid agreements, treaties, or conventions these countries have signed with other countries of the world. Thus, the primary responsibility of these countries to protect their borders still remains within their governments. To illustrate this point, two major changes made in the United States after 9/11 directed toward improving internal security of the borders were the passage of the USA PATRIOT Act and the creation of the Department of Homeland Security. In Austria, a major change after 9/11 was the integration of the Austrian Police and the Austrian Gendarmerie into one organization, the Austrian Police Service.

In summary, a recommendation for the United States that was presented in the 9/11 Commission Report could be applied to other nations that are allies with the U.S. and are equally concerned with combating crime and terrorism. The Report (2002, 376) states: "The U.S. government must define what the message is, what it stands for. We should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors."

The recommendation cited above attests to how important it is for the government of any country developing a strategy to combat terrorist organizations to set a high standard of moral leadership and to show that it has something better to offer, a better way of life, to the people of those countries most likely to be influenced by the messages presented by the leadership of terrorist organizations.

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# National Borders, Surveillance, and Counter-Terrorism Tools in France before and after 9/11

# 4



BRUNO DOMINGO

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## Contents

Introduction	122
Overview of French Law Enforcement: Qualified Authorities and Agencies	126
Terrorism, a Problem Too Complex to Produce Unambiguous Policies?	126
French Counter-Terrorism Intelligence and Judiciary Organizations and Policies	133

Monitoring Border Protection and Security	138
Before September 11, 2001: Reactions to the Attacks and Adaptation of the French Model to an Open Europe	140
After September 11, 2001: Reinforcing Counter-Terrorism Tools in an Open World	146
Reacting to the 9/11 Attacks	146
Reinforcing the Prevention Security Capacities	148
Reinforcing European and International Cooperation	153
Conclusion	155
References	156

## Introduction

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The terrorist attacks in New York (September 11, 2001), Madrid (March 11, 2004), and London (July 7, 2005) constituted major events for the Western world and its citizens. Since then, terrorist events have tended to mobilize the efforts of the international community, national intelligence agencies, law enforcement agencies, and most military organizations. However, contrary to the reactions elsewhere around the world, France did not radically modify its model of prevention and repression of terrorism or its border protection system (which were principally constructed during the 1980s and 1990s) after 9/11. In fact, the French government simply reinforced its existing “tools” in the context of global terrorism. Specifically, these reforms resulted in an extension of police and justice powers to carry out investigations, and in the progressive development of proactive strategies (information gathering, the creation of new databases, establishing public-private partnerships with air companies, the use of biometrics, CCTV, etc.). The border security strategies also changed in reaction to the new security agenda, including new measures of surveillance and protection against terrorism (Diard and Dray 2008) but also against illegal immigration.

Today, the international terrorism incidents by al-Qaeda occupy a central position in the hierarchy of the threats perceived by the French political authorities (*La France face au terrorisme* 2006). For example, the declarations of Ayman Al-Zawahiri (1951–)\* or those of the GSPC (al-Qaeda for the Maghreb Islamique) showed that the country remains a potential target. The preventive actions and the regular dismantling of terrorist cells by the French police are a testimony to the presence, in the nation, of groups being able to cause damage at the national or European level.

\* Al-Zawahiri is often referred to as the “lieutenant” to Osama bin Laden. In February 1998, he issued a joint fatwa with Osama bin Laden under the title “World Islamic Front Against Jews and Crusaders.”

Following the 2005 London attacks, a new law on the fight against terrorism and border security (January 2006)\* as well as a *White Paper on Internal Security and Terrorism* (March 2006) had been adopted by the French government in order to increase the mobilization and the powers of police and intelligence agencies, but also to define new integrated strategies (*La France face au terrorisme* 2006). These new initiatives illustrate the persistent interest of the French political authorities to supplement their tools of prevention and repression of terrorism (Bonelli 2008). This tendency had been confirmed with the adoption, in June 2008, of the *White Paper on Defense and National Security*, which defines the general framework for the years to come and which also considers terrorism as a potential threat (*Livre blanc sur la défense et la sécurité nationale* 2008). This document takes into account the transnational character of the terrorist threats and the weakening of the territorial criterion as a mode of protection. For example, it promotes the idea of a continuity between internal and external security and announces the development of a “strategy of national security” that brings together (without amalgamating them) the policies of defense, interior security, foreign politics, and economic affairs (*Livre blanc sur la défense et la sécurité nationale* 2008). The first purpose of this document is to defend the population and the nation. Its second purpose is to ensure the contribution of France to European and international security, while its third purpose is to protect the values of the republican pact existing between the French citizens and the State (that is, the promotion of democracy and freedom, solidarity, and justice). Taking into consideration that terrorism is at the same time a domestic and an external threat, the *White Paper* underlines the necessary adaptation of the national responses and capacities in particular in the field of intelligence. It defines a new strategic function of “knowledge and anticipation,” which is added to the four functions already identified in the precedent *White Paper on Defense* (1994) (“prevention, dissuasion, protection, and intervention”). The *Paper* states that the funding in favor of intelligence should then double, in particular for the space-observation equipment. Finally, the new French *White Paper on Foreign and European Policy 2008–2020* underlines the necessary linkage between French intelligence capacities and the national diplomatic network to prevent and combat terrorism (Juppe and Schweitzer 2008, 107).

The inscription of global terrorism on the French agenda is not a sufficient reason to explain all the border policy reforms implemented since the mid-1980s. So the French border security reforms need to be understood in a broader perspective, including illegal immigration and European construction concerns. First, France is part of the European Union, which implies internal free movement for goods and persons (also see other European

\* Law no. 2006-64 on the fight against terrorism and border security. JORF January 24, 2006.



contributions in this volume). Legally, France can now no longer instigate systematic checks at its own borders except when its security is immediately and directly endangered (see the Epilogue). For example, after the 2005 London bombings, France re-activated its border controls within the safeguard clause of the Schengen Agreement. But it was not the first time since the 1980s, and these controls were first focused on new security issues such as illegal immigration, football hooligans, and transnational anti-globalization demonstrations. And later we will show that many provisions had been progressively adopted since the Schengen Agreement to reinforce identity checks and vehicle inspections in the border zone with the first objective being to combat illegal immigration and not principally terrorism. Second, since the mid-1990s, the French and European political debate had been strongly focused on domestic problems of criminality and on illegal labor immigration matters (Mucchielli 2008). The construction of the EU and the focus on interior security debates also impacted the new framing of the French model of border security. Third, acts of terrorism were well known to the French government and police agencies. In fact, France had been attacked many times during the 1980s (Bigo 1991) and the 1990s (see Box 4.1) by nationalist and Islamic groups and had largely modified its counter-terrorism tools before the attack on the New York twin towers.

Hence, if the 9/11 attacks have had an international impact, they cannot be considered as the only origin of the transformation of the French border control strategies. It is the position of this author that there is a strong link between the two periods (before and after 9/11) in the French context. That is, the terrorist attacks of 9/11 were influential in prompting French politicians to introduce new strategies of protection at the national but also at the European level (compare this position with that presented by Italy in this collection). Therefore, in terms of France, we can assume the fact that the attacks in New York accelerated the adoption of new anti-terrorist laws and provoked the reinforcement of police and customs powers. But we will also see later that many provisions focusing on illegal immigration matters had already been set up within the scope of the Schengen Agreement before the New York events.

In the following analyses, we will first focus on the variety of public authorities and organizations that play a role in preventing or fighting terrorism and in implementing border security strategies in France. I will then describe the numerous intelligence services and border control administrations, focusing on the major organizational reforms engaged since the 1980s. After providing a descriptive and operational overview of how France is set up to address potential terrorist threats, the chapter will focus on the main transformations of the French protection policies in the context of the terrorist attacks of the 1980s and 1990s and of the setup of the Schengen and European security area. Finally, I will shift the focus to examining the

#### **BOx 4.1 THE 1995 ATTACKS in PARIS AND n EAR Ly On**

In 1995, France had been the target of a series of attacks supported by the Algerian GIA (Groupe Islamique du Salut). On July 11, 1995, in Paris, Iman Abdelbaki Sahaoui, co-founder of the Algerian Front Islamique du Salut (FIS), and its secretary were killed in the mosque of the rue Myrha. On July 25 at 5:30 PM, a bottle of gas exploded in the Parisian RER train at the Saint Michel–Notre Dame station (eight died and one hundred fifty were wounded). On August 17, a bomb hidden in a waste bin close to the Place de Charles de Gaulle exploded and wounded sixteen. On August 26, a bomb was discovered on the railway close to Lyon. On September 3, a pressure cooker filled with nails exploded during the market of Richard Lenoir Boulevard in Paris close to the Bastille (four were wounded). On September 4, a bottle of gas was found in the public toilets close to a school. On September 7, in Villeurbanne, near Lyon, a booby-trapped car exploded close to a Jewish school (eleven were wounded). By this time the Vigipirate Plan had been activated. On October 6, a bomb hidden in a waste bin exploded in Paris close to the Maison-Blanche subway station (eighteen wounded). Finally, on October 17, at 7 AM, another bomb exploded in the RER C between the Musée d'Orsay and Saint-Michel stations (about thirty people were wounded).

Many perpetrators of these attacks were not found. Others were identified and several were prosecuted. For example, Khaled Kelkal, who participated in the attacks of August 26 and September 7, was killed on September 29, 1995, during a shootout with the national Gendarmerie. Boualem Bensaïd and Smaïn Aït Ali Belkacem were arrested at the end of 1995. They were convicted in 2002 for the attacks of July 25 and October 6 and 17. According to the Algerian police force, Ali Touchent was killed in Algeria in 1997 (he was also suspected of being an Algerian spy close to the military). Rachid Ramda, the financial coordinator (which he denied), was arrested in the United Kingdom on November 4, 1995. However, he was not extradited until December 2005 after what many described as a series of controversial delays and perhaps even sympathetic and lenient gestures toward Islamic terrorists. Ramda was finally prosecuted in October 2007. He was given a life sentence with a guarantee that he serve a minimum of 22 years before becoming eligible for parole.

*For more details, see the chronology by the French weekly newspaper l'Express: [http://www.lexpress.fr/actualite/societe/justice/chronologie\\_496289.html](http://www.lexpress.fr/actualite/societe/justice/chronologie_496289.html).*

French counter-terrorism policies and border protection strategies that were initiated in the aftermath of 9/11. The chapter will conclude with a more global questioning about how France initiated new preventive strategies at the national, European, and international levels, and included both public and private actors.

## **Overview of French Law Enforcement: Qualified Authorities and Agencies**

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The French model of counter-terrorism and border security finds its origin in the slow (and not always rational) process of public administration building in France. It appears nowadays extremely fragmented (Madelin 2007) with a great plurality of authorities and agencies that take part in the fight against terrorism and in the protection of the national borders. The French model of counter-terrorism includes the political level, generally around interdepartmental coordinations, but also a multitude of departments (defense, interior, economy and treasury, justice, immigration, and national identity) and agencies, as well as many opposing frames (internal vs. external, administrative vs. judiciary, police vs. military, and intelligence vs. judiciary). The cooperation and competition between (too many) agencies and the will of the political authorities to meet the needs of its citizens' demands (and with the fact that fear has also constituted a political resource) combine to explain the actual complexity of the French system.

## **Terrorism, a Problem Too Complex to Produce Unambiguous Policies?**

“Terrorism” constitutes a phenomenon whose complexity makes it difficult to operationalize (see the Introduction). In France, terrorism has been categorized as an internal threat (the terrorism of the separatist type: Corsican and Breton, for example), as an external threat (such as the actions of the Taliban in Afghanistan), as an internal and external threat (such as Basque terrorism, which is organized at the same time within the French and Spanish states), and finally as a “hybrid” threat with a transnational character (the Islamic terrorism and some extreme left- or right-wing groups, for example, are both organized on a transnational ideology and recruit national citizens and foreigners to commit violent acts in order to destabilize political authorities) (Crettiez and Sommier 2006). The threats can be defined as targeting France or French interests abroad, including expatriate citizens and tourists.

Therefore, within the French context, the unanswered question is whether terrorism is an “external threat” (in the charge of the military) or a “domestic

security” concern (in the charge of the police and criminal justice system). The challenge is to determine which preeminent organization to mobilize (military, police, or customs) when countering a terrorist incident. For the first time, the recent law no. 2006-64 of January 23, 2006, on the fight against terrorism and border security, establishes a more precise list of police and gendarmerie forces especially in charge of the prevention and the repression of terrorism (see Box 4.2).

As will be discussed later in this chapter, France has been the target of terrorism both at home and abroad, and while some have described France’s counter-terrorism strategy as one of the most effective in Europe, the acts of terrorism are nowadays largely considered to represent a military threat. The French Code of Defense underlines that the goal of “defense” is to ensure at any time, in all circumstances, and against all aggressions the security and the integrity of the national territory, as well as the safety of the citizens (Article L 1111-1, Code de la Defense). Thus terrorism forms part of the national French defense policy, which is defined within the Council of Ministers (*Conseil des Ministres*) chaired by the President of the Republic. The more precise decisions are adopted by the Council of Defense (*Conseil de Défense*), which brings together a more restricted number of ministers particularly concerned with this question. From this point of view, international terrorism can be considered as a threat to defense, more especially because its origins can be located abroad. The level (effective or potential) of violence of certain attacks against Western nations also consolidated the cognitive link between “act of terrorism” and “act of war” (Chocquet 2008).

At the international level, the American speeches on the “war against terrorism” had also legitimated the categorization of terrorism as a military threat (for example, the American involvement in the Second Iraq War [also known as the Second Gulf War] in 2003 has been built on the defense of this thesis). As a result, many countries no longer hesitate to develop and implement preventive military strategies and international “police” operations. Nevertheless, initiatives to integrate counter-terrorism into military strategies are a recent phenomenon in France; such initiatives began in the early 1980s. The 1994 *White Paper on National Defense* officially recognized, for the first time, that some forms of terrorism could be considered defense threats (Long et al. 1994). If the *White Paper* underlines that terrorism “is a non-direct military threat,” it also considers that it is “new vulnerability” that could “threaten the security or the integrity of the country, the citizens’ lives and the French international policy” (17). The *White Paper on National Defense* concludes that terrorism has to be considered a “defense concern” for the years to come. The 9/11 attacks reinforced the linkage between terrorism and war. So, after 9/11, France decided to engage troops in Afghanistan, but not in Iraq two years later (see Box 4.3).

**BOx 4.2 POLICE AND GENDARMERIE FORCES  
ESPECIALLY IN CHARGE OF THE PREVENTION AND THE  
REPRESSION OF TERRORISM AFTER THE LAW ON THE  
FIGHT AGAINST TERRORISM AND BORDER SECURITY**

Article 33 of law no. 2006-64 (January 23, 2006) on the fight against terrorism and border security underlines that an interministerial text<sup>†</sup> should determine which services from the National Police and the National Gendarmerie are especially in charge of the prevention and repression of terrorism. These services are then authorized to implement the new provisions of the law: access to the technical data relating to the telephone and electronic exchanges of the people suspected in taking part in a terrorist action (Article 6); access to the data collected through the international trips (except within the EU) (Article 7); access to the data collected through the automated systems of control of vehicle number plates, which also permits the taking of a photograph of the drivers (Article 8); access to specific data files (passports, drivers' licenses, vehicle number plates, immigration data, etc.) (Article 9); and protection of Police and Gendarmerie officers' identity during the lawsuit involving terrorism (Article 12).

1. National Police services:

*Prevention of terrorism:*

- 1) Coordination unit on counter-terrorism (*Unité de coordination de la lutte antiterroriste*, or UCLAT) within the General Direction of the National Police.
- 2) Groups, sections, and units in charge of terrorism matters within the Paris *Prefecture de police* (especially within the intelligence department).

*Prevention and repression of terrorism:*

- 1) Services and units especially in charge of the fight against terrorism within the Central Department on Interior Intelligence (*Direction Centrale du Renseignement Intérieur*, or DCRI).
- 2) The following services: sub-directorate on counter-terrorism from the Central Directorate of the Judiciary Police (*sous-direction antiterroriste—SDA—de la Direction Centrale de la Police Judiciaire*); two specific divisions in charge of organized and financial crime within the Central Directorate of the Judiciary

Police: the *division de coordination et d'analyse* and the *division des supports opérationnels*; the territorial implantations of the judiciary police (the *directions interrégionales et régionales de la police judiciaire*).

2. National Gendarmerie services:

- 1) The following services and units belonging to the Gendarmerie sub-directorate of the judiciary police: the counter-terrorism office (*bureau de la lutte anti-terroriste*) and the technical service for judiciary researches and documentation (*service technique de recherches judiciaires et de documentation*).
- 2) The research units (*les sections de recherches*).

3. The “central offices,” which belong to the National Police or to the National Gendarmerie:

- 1) Central Office for the Fight against Organized Crime (*Office Central de Lutte Contre le Crime Organisé*, or OCLCO). [National Police within the Central Direction of Judiciary Police].
- 2) Central Office for the Repression of Large Financial Crimes (*Office Central pour la Répression de la Grande Délinquance Financière*, or OCRGDF). [National Police within the Central Direction of Judiciary Police].
- 3) Central Office for the Repression of Illegal Immigration and Labor (*Office Central de Répression de l'Immigration Irrégulière et l'Emploi des Étrangers Sans Titres*, or OCRIEST). [National Police within the Central Direction of Border Police].
- 4) Central Office for the Fight against Criminality Related to Communication and Information Technologies (*Office Central de Lutte Contre la Criminalité Liée aux Technologies de l'Information et de la Communication*, or OCLCTIC). [National Police within the Central Direction of Judiciary Police].
- 5) Central Office on Environmental and Public Health Offenses (*Office Central de Lutte contre les Atteintes à l'Environnement et à la Santé Publique*, or OCLAESP). [National Gendarmerie].

\*See “arêtes” of March 31, 2006, and of June 27, 2008, for the implementation of Article 33 of the law no. 2006-64 on the fight against terrorism and border security.

### **BOX 4.3 FRANCE AND THE FIGHT AGAINST TERRORISM ABROAD: THE AFGHANISTAN AND IRAQ CASES**

In the aftermath of 9/11, France supported the Bush Administration in attacking the Taliban regime in Afghanistan. But in 2003 when the United States decided to engage the war against the Saddam Hussein regime, French President Jacques Chirac was opposed to a military intervention in Iraq. Furthermore, French Prime Minister Dominique de Villepin delivered a very successful discourse against the war at the United Nations. But, despite the opposition of some members of the Security Council of the United Nations (not only France, but also Russia and China), the United States and the United Kingdom decided to engage a new war against Iraq, which was suspected of possessing weapons of massive destruction (at present, we know that the American and British armies discovered no WMD in Iraq).

In 2007, a new French president was elected: Nicolas Sarkozy. He affirmed the will of France to return in the integrated military structure of NATO, which General de Gaulle had decided to leave in 1966. During the NATO summit of Bucharest (April 2008), he decided to add several hundred French soldiers to the 1,500 already present in Afghanistan. But, in August 2008, ten French soldiers died during an ambush organized by the Taliban in Afghanistan. This event created a strong debate in French society on the question of withdrawal of the troops. This controversy was amplified by the newspaper *Paris Match*, which published a photo report on the Taliban who killed the French soldiers. In September 2008, the French National Assembly, however, approved the maintenance of the French troops in Afghanistan (343 votes against 210), with the purpose of continuing the fight against terrorism abroad.

But France has been targeted by various internal separatist groups (such as Corsican and Basque) and, historically, terrorism is much more considered a domestic problem than a military concern. Moreover, separatist terrorism continues today to be a focal concern for the police. For example, a cell of young militants of the National Liberation Front of Corsica—United Combatants (*Front de Libération Nationale de la Corse – Union des combattants*, or FLNC-UC)—was dismantled in April 2008. Seven young militants (from 18 to 27 years old) were arrested for a series of attacks perpetrated on the Corsican island against public buildings in 2007 and 2008 (the gunfight at the court of Ajaccio, the launching of a grenade inside the prefecture, the shooting of a rocket at the gendarmerie of Aspretto). But the most violent



event directed against the French government had been the assassination of Prefect Érnignac in 1998 (see Box 4.4).

The Spanish and French Basque country has also been the object of nationalist claims on behalf of the Euskadi Ta Askatasuna (ETA: “Basque Country and Freedom”). Many ETA militants had recourse to armed violence and used French territory as a sanctuary to flee Spanish police repression during the pro-Franco period and after the advent of the Spanish democracy. Today the cooperation between the French and Spanish police is particularly strong. ETA militants regularly are arrested on French territory and ETA cells are dismantled within the framework of the cooperation with Spain. For example, on October 3, 2004, a police operation around Salies-de-Béarn facilitated the arrest of the supposed political leader of the ETA, Mikel Albizu Iriarte, and of his partner, Soledad Iparragirre Genetxea—this in spite of the fact that France has not been a direct victim of an ETA attack for a number of years. Nevertheless, on December 1, 2007, two Spanish civil guards were murdered on French territory (see Box 4.5). In September 2008, the Spanish Supreme Court declared the Basque Nationalist Action Party illegal. This was regarded as a resurgence of Batasuna, the political

#### **BOX 4.4 THE ASSASSINATION OF PREFECT ÉRNIGNAC IN CORSICA**

On February 6, 1998, the Prefect of Corsica, Claude Érnignac, who represented the government at the local level, was assassinated in Ajaccio. Corsica, an island in the Mediterranean, is one of the 26 regions of France, more specifically, a “territorial collectivity” (*collectivité territoriale*).

A Beretta, which had been stolen five months earlier and used to hold two gendarmes hostage in Pietrosella (South Corsica), was found at the scene of the crime. On June 2, 2003, the prosecution of eight men supposed to be members of the commando having assassinated Claude Érnignac was organized in Paris. On July 11, the Special Court pronounced its decisions. A few days earlier, on July 4, 2003, the supposed assassin of Prefect Érnignac, Yvan Colonna, was arrested in a sheep fold on Corsica. He was condemned to perpetual criminal reclusion, or a life sentence, on December 13, 2007. The police investigation involved in finding the criminals had been very complex. The whole process gave rise to a strong rivalry between different police services and necessitated the setting up of two parliamentary boards of inquiry.

*For a global view, see the Internet site of the French information radio “France Info” ([http://www.franceinfo.fr/spip.php?article35280&theme=9&sous\\_theme=11](http://www.franceinfo.fr/spip.php?article35280&theme=9&sous_theme=11)).*

#### **BOx 4.5 THE KILLING By THE ETA OF TWO SPANISH CIVIL GUARDS ON FRENCH TERRITORY**

On December 1, 2007, two Spanish civil guards (Spanish police with military status) were killed in the parking lot of a cafeteria near the town of Cap Breton, France (Chambraud and Garicoix 2007). The two civil guards were members of a special unit, the Group of Operational Support (GAO), in charge of intelligence missions. They were taking part in an operation of surveillance jointly with French police. Raul Centeno, 24 years old, was killed instantly, while Fernando Trapero Blazquez, 23, died in Bayonne Hospital a few days later. After a run of four days, a man and a woman were stopped by the gendarmes in the town of Châteauneuf-de-Randon in Lozere. The ETA had not made attacks in France since 1976. The general consensus is that the encounter between the Spanish civil guards and the militants of the ETA near the cafeteria of Cap Breton was accidental.

party connected to the ETA and prohibited in Spain since 2003. In France, Batasuna still exists as an association (and not a true political party). Under the pressure of the Spanish government, the French political authorities are evaluating today the possibility of dissolving this organization (Bozonnet and Mandraud 2008).

Since the beginning of the 1980s, the French government has had a complex relationship with the extreme left-wing Italian activists who had taken refuge in France but who were still considered terrorists in Italy. In 1985, the President of the Republic, François Mitterrand, announced that French justice would not extradite the militants from organizations such as the Red Brigades who gave up their violent activities (except for authors of blood crimes). But the “Mitterrand doctrine” was progressively abandoned. For example, on June 3, 2008, French authorities authorized the extradition of Marina Petrella (a former member of the Red Brigades), who was condemned to life imprisonment in Italy in 1992 for complicity in the murder of a police chief in Rome in 1981. Marina Petrella had taken refuge in France since 1993 but was arrested in 2007. Nevertheless, the President of the Republic, Nicolas Sarkozy, announced on October 12, 2008, that France would not extradite Mrs. Petrella, because of her health problems.

As illustrated above, terrorism is not only an international concern for French political authorities but also an internal problem linked to the political cohesion of the country, which continues to be contested by some separatist groups. Furthermore, terrorism is also integrated in the agenda of the Interior Security Council (*Conseil de Sécurité Intérieure*), chaired

since 2002 by the French president, whose mission is to define the political orientations of internal security policies. The new French Penal Code, adopted in 1994, includes a relatively broad definition of terrorism. Many acts can be related to a terrorist crime if they are realized intentionally in relation to an individual or a collective enterprise and have as a goal to seriously disturb law and order by intimidation or terror. This includes voluntary attacks against the life or the integrity of citizens; abductions and sequestration; diversion of aircraft, ships, or any other means of transport; thefts and extortions; destruction, degradation, and damage; data-processing infringements; and infringements regarding armed groups and those groups that the French penal code forbids or bans, as they are deemed a threat to the democratic government.

The internal or external dimension is not taken into consideration when defining terrorism as a crime. Rather, the French tradition promotes a counter-terrorism model based on judicial repression even if, within the framework of military international coalitions, French soldiers periodically participate in the international “war against terrorism” under American leadership. The new *White Paper on Defense and National Security*, adopted in June 2008, confirmed the hybrid nature of terrorism in the French context. Under the actual French legislation, it comes under the jurisdiction of both the Conseil de Défense (external security and defense of the national territory) and the Conseil de Sécurité Intérieure (domestic security). In July 2007, President Sarkozy initiated the creation of the Council of Defense and National Security (*Conseil de Défense et de Sécurité Nationale*), which will soon amalgamate the Conseil de Défense and the Conseil de Sécurité Intérieure. The purpose is to build a single political entity thereby allowing the president to simultaneously decide on internal and external dimensions of security threats. The concepts of “external” and “internal” security are progressively replaced by a “global security” framework (Bauer 2008).

## **French Counter-Terrorism Intelligence and Judiciary Organizations and Policies**

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French counter-terrorism policies are often based on intelligence strategies. Some interdepartmental committees (*comités interministériels*), chaired by the Prime Minister, are involved here. The Interdepartmental Committee on Intelligence (*Comité Interministériel du Renseignement*, or CIR) permits the coordination of all the French intelligence agencies. Restricted meetings are also regularly organized by the Prime Minister’s principal private secretary. In addition, there is also the important role of coordination carried out by the Secretariat General of National Defense (*Secrétariat*

*Général de la Défense Nationale*). The Secretariat is a specialized service of the Prime Minister that works in close connection with the presidency of the Republic. Its role is to help the Prime Minister in managing security concerns in their interdepartmental dimensions. Since the attacks of September 11, 2001, it has occupied a privileged position to coordinate the various qualified ministries. It is anticipated that, in the near future, it should be transformed into a General Secretariat for Defense and National Security (*Secrétariat Général de la Défense et de la Sécurité Nationale*) in order to reinforce the link between internal and external security policies (Figure 4.1).

At the ministerial level, some intelligence services belong to the Ministry of Defense (*Ministère de la Défense*). One of the most famous is the General Directorate of External Security (*Direction Générale de la Sécurité Extérieure*, or DGSE). It is charged with the responsibility to seek and exploit information in the interest of the national security abroad, to detect and stop the activities of espionage directed against the French interests, and to prevent their consequences. The Directorate for Military Information (*Direction du Renseignement Militaire*, or DRM) is another agency that is dedicated to inform the heads of the armies about military concerns. Finally, the Directorate for the Protection and the Security of Defense (*Direction de la Protection et de la Sécurité de la Défense*, or DPSD) informs the Minister of Defense on concerns related to sensitive installations, materials, and staff security. All these intelligence and operational agencies belonging to the Ministry of Defense can deal with terrorists concerns.

The Ministry of the Interior (*Ministère de l'Intérieur*) also integrates some political interdepartmental coordination and some intelligence agencies

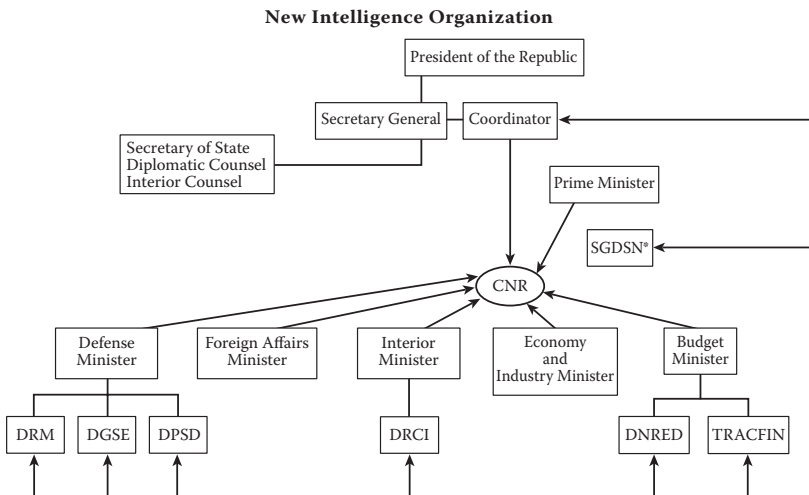


Figure 4.1

qualified on terrorism matters. The French Minister of the Interior chairs the Interdepartmental Committee on Counter-Terrorism (*Comité Interministériel de Lutte Anti-Terroriste*, or CILAT), which brings together many ministries concerned with counter-terrorism strategies. Within this Ministry, the Unit of Coordination and Fight Against Terrorism (*Unité de Coordination et de Lutte Anti-Terroriste*, or UCLAT) belongs directly to the head manager of the National Police Force (*Police Nationale*). It consolidates all information provided by the French intelligence services, sends and receives liaison officers within the framework of the international cooperation, and has satellite offices in some states of the EU and in the United States. UCLAT manages the implementation of the *Plan Vigipirate*, which is both a preventive and an emergency plan to respond to terrorist threats. The Ministry of the Interior recently eliminated two of the intelligence service agencies whose operational objectives overlapped and to varying degrees competed with each other in a counter-productive manner: the *Direction à la Surveillance du Territoire*, or DST, and the *Direction Centrale des Renseignements Généraux*, or DCRG.\* There had been a confused distribution of responsibilities between the DST and the DCRG. The terrorist threats were dealt with jointly by these two services, with the DST charged with the handling of the external character of threats and the DCRG with the aim to keep a watch on the foreign communities living in French territory. Because of the external and internal expression of Islamic terrorist threats in recent years, there has been increased competition between the two agencies (Gayraud and Sénat 2006). In response to these tensions and with the purpose to reorganize the French internal intelligence system, in September 2007 the Minister of the Interior, Michele Alliot-Marie, announced the creation of a new Central Directorate on Interior Intelligence (*Direction Centrale du Renseignement Intérieur*, or DCRI), joining together the missions previously supported by the DST and the DCRG and amalgamating these two services. The range of responsibilities of this new agency is relatively wide (e.g., counter-espionage, counter-terrorism and protection of institutions, protection of scientific and economic resources, economic intelligence, analysis of social problems and movements). It officially started its activities in July 2008.

\* The DST and the DCRG were managed within the Ministry of Interior by the head of the national police (*Police Nationale*), which is organized on the basis of a series of central directorates and of territorial services. Until recently, the DST was in charge of counter-espionage, counter-terrorism, and the protection of the economic and scientific resources. It carried on its activities in French territory (contrary to the DGSE, which intervenes abroad) to seek, prevent, and fight against the activities inspired, engaged, or supported by foreign actors and able to threaten the security of the country. The DST's detailed organization was classified "secret defense." Its agents were responsible for criminal investigations, have judiciary powers, and can carry out arrests. The second service of information of the Ministry for the Interior was the DCRG, which was in charge of researching and centralizing information useful to the government. These last years, the RG's jurisdiction included terrorism, urban riots, and the underground economy.

The new *White Paper on Defense and National Security* (June 2008) also planned a series of important reforms in the field of intelligence. The reforms include the creation of the National Council on Intelligence (*Conseil National du Renseignement*, or CNR), the nomination of a National Coordinator for intelligence, the creation of an intelligence academy, and the adaptation of technological tools. In addition, until October 2007, no intelligence agency was accountable to the Parliament, but only to the ministerial government. In 2007, a new legislation reinforced the parliamentary control on the activities of these agencies.

Within the Ministry of the Interior, the National Police Force (*Police Nationale*) also includes a Criminal and Judiciary Police Department (*Direction Centrale de la Police Judiciaire*, or DCPJ), which is in charge of the prevention and repression of specialized, organized, or transnational forms of criminality. Today, the DCPJ includes a counter-terrorism office (the *Sous-Direction Anti-Terroriste*, or SDAT) in charge of the fight against national and international terrorism, including its financial aspects. This office is composed of two specialized divisions, both of which have a national jurisdiction: the National Division for the Repression of International Terrorism (*Division Nationale pour la Répression du Terrorisme International*, or DNRTI) and the National Division for the Repression of Separatist Terrorism (*Division Nationale pour la Répression du Terrorisme Séparatiste*, or DNRTS). These divisions are composed of several groups of investigation specialized in the various types of terrorism as well as a brigade of financial investigations. The DCPJ also includes some central offices (*offices centraux*) in charge of preventing and fighting against special forms of criminality, of which some can be related to terrorism.<sup>7</sup> Finally, the National Gendarmerie also has an office dedicated to investigations and judicial struggle against terrorism.

Within the Department of the Treasury, several services are specialized in the fight against terrorism. The National Customs Intelligence and Investigations Service (*Direction Nationale du Renseignement et des Enquêtes Douanières*, or DNRED) collects and analyzes customs information related

<sup>7</sup> The "central offices" of the DCPJ (*Direction Centrale de la Police Judiciaire*) that could deal with some specific dimensions of terrorism offenses are the Central Office on the Fight against Organized Crime (*Office Central de Lutte Contre le Crime Organisé*, or OCLCO), the Central Office for the Repression of Major Financial Crime (*Office Central pour la Répression de la Grande Délinquance Financière*, or OCRGDF), and the Central Office on the Fight against Criminality Related to Communication and Information Technologies (*Office Central de Lutte Contre la Criminalité Liée aux Technologies de l'Information et de la Communication*, or OCLCTIC).

The "central office" of the DCPAF (*Direction Centrale de la Police Aux Frontières*) that could deal with some specific dimensions of terrorism offenses is the Central Office for the Repression of Illegal Immigration and Labor (*Office Central de Répression de l'Immigration irrégulière et l'Emploi des Etrangers Sans Titres*, or OCRIEST).



to the financing of terrorism and the international flow of goods. Since 1990, the cell TRACFIN (Treatment of the Information and Action against the Clandestine Financial Circuits) collects information from economy agents and from other ministries. Afterwards, the agency transmits the cases to the Attorney General, who can decide to launch police investigations. The new agency FINATER (Financing Terrorism) was created in October 2001, after the 9/11 attacks, to prepare and relay the treasury orientations in the fight against the financing of terrorism (*La France face au terrorisme* 2006). It intervenes in particular to freeze the financial resources of terrorist groups.

Within the Ministry of Justice, the Directorate of Criminal Affairs (*Direction des Affaires Criminelles et des Grâces*) works on organized crime, terrorism, and money laundering. This office contributes to the legislation of laws on anti-terrorism. As well, the office is instrumental in recommending penal policies to the French magistrates. One of the purposes of the agency is to engage in open dialogue and close cooperation with the UCLAT and the SGDN. The French judiciary system is also organized in a specific way as regards terrorism. Until the beginning of the 1980s, terrorist affairs were prosecuted and judged by a special court, the *Cour de Sûreté de l'Etat*. In 1981, the new French president, François Mitterrand, decided that terrorists' acts had to be judged as ordinary crimes. So, in 1982, this special court was abolished and terrorist acts judged by the ordinary criminal courts. But the continuation of violence by some extreme left-wing groups (in particular Action Directe) conduced the new government to strengthen judiciary powers. Consequently, in 1986, special rules of penal procedure had been adopted in terrorism matters, allowing the police and the magistrates to use specific powers of investigation and sanction. Moreover, a new special criminal court was then set up. Indeed, if terrorism is not regarded as an act of war coming under the responsibility of military courts, it is nevertheless from now on subjugated to particular procedures. Today this new special court (but non-military) is located in Paris and hosts only professional magistrates (seven in the first instance, and nine during the appeal process). The court does not use any lay jurors, in an effort to avoid possible pressures on the court members (which had been the case during the judgment of the members of the extreme left-wing group Action Directe). Therefore, the court is presided over only by professional judges considered sufficiently trained to deal with terrorist affairs.

It is also important to point out that the government has operational forces that are specifically trained to react to a serious crisis or hostage taking. The first one is the National Gendarmerie Intervention Group (*Groupe d'Intervention de la Gendarmerie Nationale*, or GIGN), which was responsible for freeing the hostages detained by four Algerian terrorists at Marignane Airport, near Marseilles, in December 1994. The second is known as RAID



(Research Assistance Intervention Dissuasion), which is an elite force from the National Police and which has a similar role.

In summary, the arguments above show that terrorism is viewed as both an internal and an external threat within the socio-political context in France. The French counter-terrorism organizations and policies have evolved rather slowly over the years. The plethora of qualified services represents today a complex, bureaucratically heavy infrastructure (Bigo et al. 2008). This is largely attributable to the fact that each organization developed its own sphere of power. It is also interesting to consider that the border control dimension is not the main area developed by the French authorities. Since the early 1980s they have set up a counter-terrorism model first based both on intelligence and judiciary repression. The border control strategies were not privileged during the 1980s and 1990s, because of the setting up of an open Europe. This political agenda influenced the French decisions not to harden border controls. But since 9/11 and the 2005 London bombings, new border control strategies have been set up, some of which are similar to those introduced in the United States (see Chapter 2).

## Monitoring Border Protection and Security

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The French military plays a role in border security. It is in charge of the “operational defense of the national territory” (*Défense Opérationnelle du Territoire*) defined by the Code of Defense. Although the National Gendarmerie does not have a single specialized unit in charge of border security, it nevertheless intervenes through its territorial units (*Brigades Territoriales de Gendarmerie*), which are scattered throughout the country and can monitor the borderland zones (land, air, and sea ports). In addition to the Brigades Territoriales, there are three specialized units belonging to the Gendarmerie that participate in the control of maritime and air transport security in their civil and military dimensions (Dieu 2002). Thus, the Gendarmerie of the Air (*Gendarmerie de l’Air*) is in charge of the administrative, judiciary, and military police on the bases and installations of the military Air Force. The Gendarmerie of Air Transports (*Gendarmerie des Transports Aériens*) contributes to civil aviation security and to the protection of the aerodromes and other civil aeronautics installations. Finally, the Maritime Gendarmerie (*Gendarmerie Maritime*) takes part in the maritime defense of the territory under the direction of the Navy (Lizurey 2006).

Within the Ministry of the Interior, the Border National Police (*Police aux Frontières*, or PAF) is a central branch of the National Police Force. The PAF specializes in the prevention and the repression of illegal immigration. It monitors the transborder circulation of persons and is in charge of the coordination of the fight against illegal immigration. Another key function of the PAF is

to verify that persons entering French territory have their identity documents and (if relevant) visas. It manages and implements operational coordination between the different services (police, gendarmerie, and customs) on illegal immigration concerns (such as the exchange of information, the development of technological means to verify the veracity of travel documents, and the coordination of investigations). The PAF ensures the centralization of information in the fight against illegal immigration, identifies fraud documents, and also contributes to transport security. Finally, the PAF manages the institutional and operational international cooperation on illegal immigration concerns (specialized liaison police officers abroad; multinational patrols on the rail network). Since 2007, the PAF is placed under the authority of the Minister for Immigration, Integration and National Identity, for the execution of the missions concerned with the fight against clandestine immigration.

French Customs (*Direction Générale des Douanes et des Droits Indirects*, or DGDDI) belongs to the Treasury. The DGDDI has a broad set of responsibilities in border surveillance and security. They include, among other elements, the recovery of taxes for the national and EU budgets; management of the French international trade statistics; help to companies for developing their import/export activities; the respect of any embargoes; the combating of commercial fraud and smuggling; anti-narcotic and anti-counterfeit actions; prevention of terrorism by checking imported goods; participation in aviation and maritime security; and the detection of marine pollution.

Customs services are organized into two branches: the Commercial Operations Services (*Opérations Commerciales*) whose units, the Customs Offices (*les Bureaux de Douane*), are in charge of the collection of taxes on imported/exported goods in the EU, and the Surveillance Services (*la Surveillance*), which is organized into territorial “brigades” composed of uniformed and armed custom officers. There are several types of brigades in charge of the control of the transborder flows of goods and of travelers (and their luggage). They include the Brigade for External Surveillance (*Brigade de Surveillance Extérieure*, or BSE), which are non-mobile units that intervene on the line of the French-EU external borders (with Andorra and Switzerland for the land borders, but also in ports and airports connected to non-EU countries). Contrary to the BSE, the Brigades for Interior Surveillance (*Brigades de Surveillance Intérieure*, or BSI) are mobile units able to realize controls throughout the whole of French territory. Finally, the Customs Coastguards (sea surveillance) and the Customs Air Units (land surveillance by air) complete the customs surveillance system. The customs officers have very broad powers to inspect goods and travelers’ luggage, as well as all vehicles. They can conduct identity checks (in a 60-kilometer border zone established by the French Customs Code) and can retain illegal immigrants for a few hours

**Box 4.6 PAF An D FRENCH CUSTOMS:  
MAJOR RESULTS in 2007**

The PAF employs 11,482 personnel for the control of migratory flows, the safety of transport, and the fight against clandestine immigration. The focus on the fight against illegal immigration has been very strong since 2002. The number of expelled illegal immigrants grew from 10,067 in 2002 to 23,186 at the end of 2007. It is expected to reach approximately 28,000 in 2008. The number of arrests also increased significantly between 2002 and 2007, reaching 103,356 in 2007. French Customs employs 19,000 people, who are in charge of taxes and border checks. In 2007 French Customs noted 102,000 infringements and made the following seizures: 50 tons of drugs, 14.6 million counterfeit goods, 1,202.6 tons of tobacco, 6,000 weapons, and 25,000 protected animals and plants.

before remitting them to the border police (PAF) as long as it is within the 20-kilometer Schengen agreed-upon border zone (see Box 4.6).

### **Before September 11, 2001: Reactions to the Attacks and Adaptation of the French Model to an Open Europe**

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If the 9/11 attacks had any repercussions for France, we must consider that they did nothing but reinforce the reforms carried out in the 1980s and 1990s. Indeed, France already had a relatively satisfactory counter-terrorism system to face the new threats emerging in the post-9/11 world (*La France face au terrorisme* 2006). Whereas the United States essentially discovered the material and psychological effects of terrorist attacks on their own soil, France had unfortunately already experienced many such attacks committed by internal or external terrorist groups. As noted above, since the 1970s, France had been exposed not only to separatist terrorism (Corsican and Basque), but also to the violent attacks of extreme left-wing groups. In the 1980s, France had also been a victim of violent acts on its territory because of the Middle East context, and in the 1990s because of the political problems in Algeria. The attacks in 1986 led to a reinforcement of the legal powers of the police and the courts. Following the attacks, the government adopted the law 86-1020 of September 9, 1986,<sup>1</sup> which created particular penal procedures by which to handle terrorist incidents, but without clearly inscribing “terrorism” as

<sup>1</sup> Law no. 86-1020, September 9, 1986, on repentance, fighting against terrorism and State safety aggressions. JORF September 10, 1986.

a specific crime in the French Penal Code. Nevertheless, this law created a new Title XV in the Penal Code, titled “offenses in relation to an individual or collective enterprise with the goal to seriously disturb the law and order by intimidation or terror.” This law also included a number of innovations intended to counter terrorism. For example,

- Creation of a special court composed of professional judges in Paris
- Possibility to prolong police custody 48 hours overtime (so a total of 96 hours as regards terrorism at this time)
- Possibility to proceed to searches, house inspections, and seizures without the approval of the persons
- Aggravation of punishment
- Exemption of penalties for repented persons who permitted the prevention of acts causing potential injuries or death
- Reduction of penalties for the offender(s) or accomplices who assisted in identifying other offenders and/or accomplices
- Punishment of those who admit to engaging in a terrorist act

Specific funding was also created for the victims of terrorism in France and for the French national victims abroad. It had been extended in 1990 to the victims of other offenses and became the Guarantee Funds for the Victims of Acts of Terrorism and Other Offenses. Since 2006, it takes into account all victims, whatever their nationality (see law no. 2006-64 of January 23, 2006, on the fight against terrorism and border security).

While the legislation created new penal provisions to better fight and deter political violence, the law fell short in articulating the meaning of “terrorism” as an autonomous crime. It was not until 1994, within the overall reform of the French Penal Code, that terrorism was recognized as a specific crime. Since then, a certain number of offenses can constitute acts of terrorism when they are realized in relation with an “individual or collective enterprise having for a goal to seriously disturb law and order by the intimidation or terror” (see Article 421-1 of the Penal Code).<sup>\*</sup> These regulations had been regularly supplemented by new legal provisions. For example, the 1995 law “orientating and programming security” (*loi d’orientation et de programmation pour la sécurité*) also called “Loi Pasqua” from the name of the French Minister of the Interior) states that “the protection of the country against terrorism and the attacks against the fundamental interests of the Nation” constitutes a top

<sup>\*</sup> The new 1994 Penal Code also integrates a new specific offense for “ecological terrorism” (e.g., by polluting the land, the air, or water).

priority.\* In its prolongation, the law of February 8, 1995,<sup>†</sup> lengthens the possible period for proceedings and increases the penalties for criminal (30 years) and correctional (20 years) terrorist-type offenses. The law of July 22, 1996, “on the reinforcement of the repression of terrorism”<sup>‡</sup> introduces the “criminal conspiracy in relation to a terrorist enterprise” (“*association de malfait-eurs en relation avec une entreprise terroriste*”) as a new offense. This reform has proven to be very useful for the magistrates when they want to prevent the action of groups (and not only individuals) suspected of preparing terrorist attacks (Bonneli 2008). The law of December 30, 1996, “on provisional detention and night inspections”<sup>§</sup> reinforced some police powers of investigation and prevention. The law of December 29, 1997, “facilitating the judgment of terrorists’ acts” permitted the courts to sit in any other place than the usual “in exceptional circumstances and for security reasons.” Therefore, it can be seen that the legal reforms that were introduced a number of years prior to 9/11 had already served to ensure that specific legal tools were in place to enable French authorities to better investigate and prosecute terrorists. In addition, France fortified the powers of its police and the severity of punishments to react to the attacks. It also created new offenses in the Penal Code and extended the possibilities to investigate in a preventive approach.

In parallel, France engaged in significant reforms with regard to border checks within the Schengen (1985) and the European single market (1993) framework. These European agreements abolish the routine inspections on goods and persons that were usually realized by the police and the customs officers at the internal borders of the EU. These inspections had been transferred to the EU external borders. As a consequence, the French land borders are today principally European internal borders (except with Switzerland and Andorra). Nevertheless, France still has EU external borders disseminated throughout the whole country, through its ports, airports, and railway stations that are connected to foreign Schengen countries.

Following the adoption of the convention for the implementation of the Schengen Agreement (signed in 1990 and put into effect in 1995) and in reaction to the transfer of the systematic border checks at the EU external borders, France decided to obligate all immigrants to announce themselves through a “self-declaration of entry to the territory” (see circular of March 15, 1995—official bulletin of the Ministry of the Interior, no. 95/1). It shows the

\* Law no. 95-73, January 21, 1995, law for orientating and programming security. JORF January 24, 1995.

† Law no. 95-125, February 8, 1995, on the organization of jurisdictions and civil, penal, and administrative procedure. JORF February 9, 1995.

‡ Law no. 96-647, July 22, 1996, reinforcing the repression of terrorism and adopting provisions on judicial police. JORF July 23, 1996.

§ Law no. 96-1235, December 30, 1996, on provisional detention and night inspections. JORF January 1, 1997.

will of French political authorities to preserve an information database on the flow of people entering into France. The convention for the implementation of the Schengen Agreement also promoted a “safeguard clause” for the nations that would want to reintroduce routine inspections at their EU internal borders. But this clause can be implemented only in a very restrictive sense, in the event of a threat to national security or to preserve internal law and order. For example, this safeguard clause was implemented by France at its Belgian and Luxembourg borders to mark its disapproval of the Netherlands’ drug policy, but also when European sporting meetings (such as football competitions) implied massive movements of supporters. France required the re-establishment of controls at its borders on October 19, 2002, to prevent the effects of a nationalist demonstration in Bayonne, but also more recently following the terrorist attacks of London in July 2005.

In addition to the above-mentioned reforms, France also reinforced the possibilities of carrying out identity checks within its border zones (but not on the border itself) (see Article 78-2 of the French Code of Penal Procedure). Law no. 93-992 of August 10, 1993, on identity checks enabled police officers to conduct identity checks within a 20-kilometer zone near the border with Schengen states and also at major transportation terminals (ports, airports, and railway and bus stations) that handle international traffic. In 2008, about 134 seaports, 110 airports, 59 rail stations, and 17 bus terminals were part of these provisions (see Council of the European Union 2008).

As with the police officers and the militaries of the Gendarmerie Nationale, customs officers can also conduct identity checks in the 20-kilometer border zone. Customs officers can also detain illegal immigrants but for a short period (3 hours maximum) in order to hand over the suspected illegal to the border police (Article 67 quarter of the French Custom Code). They have to immediately inform the Attorney General. Law no. 97-396 of April 24, 1997, also reinforced police powers by enhancing their capacities to conduct inspections on vehicles circulating on the public roads and highways in order to seek illegal immigrants (Article L611-8 of the French Code on the entry and the residence of foreigners in France). So within the 20-kilometer border zone, senior police officers can make “summary inspections” of trucks or buses with the authorization of the driver or with the instructions of the Attorney General. These “summary inspections” are intended to primarily detect and deter the entry of illegal immigrants into French territory. It is important to note, however, that the new police powers do not apply to searching private vehicles. Customs officers have greater capacity to make “deep” inspections (inspections, searches in the luggage, retention of the vehicle) by examining all types of vehicles (trucks, buses, and also private cars) through their “*pouvoir de visite*” (Article 60 of the Customs Code) in order to fight fraud.



Another innovation of the convention on the implementation of the Schengen Agreement is the creation of cross-border powers for police officers, which include cross-border surveillance (Article 40) and cross-border hot pursuit (Article 41). Senior police officers from the National Police and from the National Gendarmerie can implement these powers for a series of serious crimes listed in the Schengen Agreement.\* But bilateral agreements between France and each one of its neighbors were necessary to determine the specific conditions of implementation of these new powers. For example, on its Belgian and German borders, France imposed no restrictions (about the duration and about the precise nature of the serious crime) on the foreign police agents starting a cross-border hot pursuit into French territory. But at its borders with Spain, Luxembourg, and Italy, the hot pursuit is for the moment limited to a zone of 10 kilometers within French territory (Council of the European Union 2008, 37). The foreign police officers who cross the French border in implementing the hot pursuit must immediately alert the French authorities and do not have the power to stop and interrogate the persons pursued.†

French customs officials can also implement all these transborder powers but in a more restrictive approach (for example, only concerning the illicit trade of narcotics and psychotropic substances, the trafficking of weapons and explosives, and the illicit transport of toxic and harmful waste). But French customs had also legislated their own tools intended to facilitate transborder cooperation beyond those provided under the Schengen Agreement (Domingo 2005). The European agreement on customs cooperation (the Naples II Agreement signed in 1997) permits customs officers to implement “hot pursuits beyond the borders,” “transborder observations,” “undercover

\* For the “cross-border surveillance” (Article 40 of the Convention implementing the Schengen Agreement): murder, manslaughter, rape, arson, forgery of money, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of the laws on arms and explosives, willful damage through the use of explosives, and illicit transportation of toxic and hazardous waste.

For the “hot pursuit” (Article 41 of the Convention implementing the Schengen Agreement): murder, manslaughter, rape, arson, forgery of money, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of the laws on arms and explosives, willful damage through the use of explosives, illicit transportation of toxic and hazardous waste, and failure to stop and give particulars after an accident that has resulted in death or serious injury.

† Nevertheless, the French Penal Code of procedure permits any citizen to intervene when a crime is being committed in order to hand over the criminal to the police force. Article 73 of the French Code of Criminal Procedure stipulates that any individual is entitled to arrest a person caught in the act of committing a summary or indictable offense attracting a custodial sentence and thereafter take the perpetrator immediately to the nearest criminal police official. This right, granted to all French citizens, is also granted to foreign agents.



deliveries,” and “discreet investigations” and to set up “joint teams of investigation.” Some of these new customs powers are completely identical to the police cooperation tools, and the Naples II Agreement is frequently very similar to the Schengen Agreement.

In accordance with the Schengen Agreement, it is possible for the EU member states to conclude bi-national agreements to reinforce their cooperation in their borders areas. This coordination is implemented through “direct” cooperation between national public administrations at the transborder level, but also through the Centers for Police and Customs Cooperation (CCPD). France established CCPDs on each of its national borders (Maguer 2007) (see Box 4.7).

France also developed many bi-national joint police or customs patrols (which bring together police or customs agents from both the adjacent states) in order to coordinate checks in the border areas and to fight against (local

#### **BOx 4.7 CEn TERS FOR POLiCE An D CUSTOMS COOPERATIOn (CCPD)**

These centers replace the “*bureaux centraux nationaux juxtaposes*” (the transborder customs offices set up in the 1960s) and the “*commisariats communs*” (the transborder police officers set up in the 1990s). France thus concluded several particular agreements for the creation of the CCPDs. The adoption of the Mondorf Agreement (October 9, 1997) between France and Germany constituted the first experiment of this type. Now, numerous CCPDs cover the whole of the French borders with Belgium (Tornai), Luxembourg (Luxembourg City), Germany (Kehl), Switzerland (Geneva), Italy (Modane and Vintimille), and Spain (Perthus-La-Junquera, Melles-Pont-du-roi, Canfranc-Somport, Biriadou-Irun). Their primary goal is to permit a more direct exchange of information between the agencies working on the two sides of the border. They bring together the police and customs agencies from the two adjacent states. The CCPDs had been created to reinforce the exchange of information between the police and customs agencies at the local level. But many police and customs services throughout French territory contact the CCPD to obtain foreign information about the identity of a person or to verify whether a vehicle has been stolen. As a result, since the creation of the CCPDs the transnational exchange of information on police and customs matters has been enhanced. The DCPJ is no more the only service to provide information from abroad (but it continues to be the official contact node with Interpol, the Schengen system, and EUROPOL).

and global) transborder crime. These generic patrols permit the gathering of materials, a broader exchange of information between the police or the customs services, and the reinforcement of the bounds between all the police or customs officers working in the border areas.

On October 24, 2008, the Ministers of the Interior and Justice of France, Germany, Belgium, and Luxembourg signed a new agreement to strengthen the transborder cooperation between their police and customs agencies. They decided to create the first Common Center for Police and Customs Cooperation, joining together the police and customs forces of the four countries. This agreement aims to better ensure the safety in their border areas against serious forms of criminality (smuggling in human beings, drugs, illegal immigration, etc.). Located in Luxembourg, the Common Center for Police and Customs Cooperation is qualified to collect, analyze, and exchange information necessary to the police and customs services, including the common periodic evaluation of the frontier situation, and to help with the preparation and execution of the police and customs transborder missions. The total staff should be 31 persons (14 for France, 5 for Germany, 6 for Luxembourg, and 6 for Belgium).

## **After September 11, 2001: Reinforcing Counter-Terrorism Tools in an Open World**

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As noted earlier, a number of significant French border security strategies and tools were developed and implemented before the attacks of 9/11. They were mainly influenced by the will of the French political authorities to ensure the freedom of movement within the EU (even if many compensation measures were immediately adopted) and also to conform to European law. The French position was also guided by the desire to prevent terrorist attacks such as France experienced during the 1980s and 1990s. After the events of 9/11, France introduced a series of new tools in an effort to deter future attacks while not diluting any of the earlier initiatives.

### **Reacting to the 9/11 Attacks**

In the aftermath of 9/11, then French Prime Minister Lionel Jospin decided to reinforce the Vigipirate Plan. Created in 1978 by then President Valéry Giscard d'Estaing, the Vigipirate Plan has since been amended three times, the first time being in 1995, after the Islamic terror bombing campaign, and then again in 2000 and 2003. The system is based on many measures of vigilance, prevention, and protection of the population, institutions, and infrastructures. Its first goal is to permit the evaluation of the threats and the

coordination of the responses to terrorist attacks. In more practical terms, it has been implemented through the protection of vulnerable sites (the installation of barriers, prohibition to park near schools, reinforcement of vigilance in public transport, messages of prevention for travelers in the railway and airport stations, mobilization of soldiers to carry out patrols in collaboration with the police, hand luggage inspections at the entry of shops, and so on). Correspondingly, the system includes four levels of threat represented by four colors (yellow, orange, red, and scarlet). Yellow denotes the presence of uncertain danger(s), while scarlet is indicative of a significant risk and calls for unconventional intervention (see also Guittet 2008). In 2003 the Vigipirate Plan had been reformed to take into account the “permanence” of the terrorist threat. It also contributes to the building of a general framework for the whole of the more specialized French prevention and emergency plans (Biotox, Piratox, Piratome, Piratair-Intrusair, Pirate-sea, and Piranet).

Around the same time, law no. 2001-1062 on daily security (*Loi sur la sécurité quotidienne*: November 15, 2001) took into account this new international security agenda. Originally aimed to reinforce the fight against minor crimes, it also included a number of provisions related to the prevention of and fight against terrorism (see Chapter V of the law, which is devoted entirely to the “provisions reinforcing the fight against terrorism”). The law has established a new offense for “terrorist financing” and also added money laundering to the list of terrorist crimes when this offense is related to a project of terror. The law also expanded police powers to inspect vehicles (Article 23 of law no. 2001-1062). Thus, the Attorney General can authorize senior police officers to inspect vehicles circulating, stopped, or parked on public highways or in places accessible to the public (not only in the 20-kilometer-border zone). The Attorney General can also authorize senior police officers to conduct house inspections and to seize objects without the approval of the owner. Within the seaports and airports, the law also created new powers for police and customs officers for inspecting people and goods. These new powers were also allotted to private security agents who execute these security checks (Article 25 and 26 of law no. 2001-1062). Since then, these agents have the power to engage in visual inspections of hand luggage as well as their search with the assent of the traveler. They are also allowed to perform security-related body palpations with the assent of the person. Article 27 of the law also modifies law no. 83-629 of July 12, 1983, on private security. It authorizes private security agents to conduct visual inspections of hand luggage (for example, at the entry of shops) and security body palpations (with the assent of the person and only in the event of serious threats for public security, decided by the local representative of the French government). Finally, the law also introduces provisions that obligate telecommunications operators to store telecommunication data in order to let the police consult them during judiciary investigations.

The 2001 provisions were adopted in a particular context in order to respond to a high level of threat. They were regarded as transitory measures, which ended in December 2003. Nevertheless, the adoption of law no. 2003-239 of March 18, 2003, “for interior security,” transformed these new powers in permanent provisions. Since then senior police officers can conduct inspections of vehicles traveling or stopped on public highways or in places open to the public when there exists one or more plausible reasons to suspect the driver or a passenger to be the author or the accomplice of a serious crime.\* Law no. 2003-1119 of November 26, 2003, permits senior police officers to proceed to migratory identity checks beyond the 20-kilometer border zone. Thus, these checks can be realized only on motorway sections starting in the 20-kilometer zone and up to the first road exit. On these sections, they can only be realized on the motorway car parking areas or at the car parking road exit.

In March 2004 the “law adapting justice to the evolutions of criminality” expanded the police powers of investigation in relation to “organized criminality.” Aligning terrorism with “organized criminality,” the law extended the capacities for police investigations. That is, it authorizes undercover investigations and the infiltration of criminal networks, the implementation of “phone-tappings,” and home searches during the night between the hours of 8:00 pm and 6:00 am.

On January 23, 2006, another piece of legislation was introduced (law no. 2006-64 on the fight against terrorism and border security). Like the preceding legislation, the 2006 amendments increased the penal sanctions for some crimes of terrorism (20 years for the participation in a criminal conspiracy related to terrorist attacks, and 30 years for the leaders). In addition, police custody was extended from 4 to 6 days and an emergency procedure was set up to apprehend terrorists’ financial assets. Finally, the period for which a naturalized citizen charged with a terrorist act can have his or her citizenship removed has been extended from 10 to 15 years after naturalization.

In summation, the various pieces of legislation have served to extend the powers of various elements of the French criminal justice system and address the growing concern about national security and the risk that terrorism and related crimes pose to the social fabric of France.

### **Reinforcing the Prevention Security Capacities**

As much as the initiatives have served to strengthen the repressive tools against terrorism, the various legal measures have also included many

\* This power can also be implemented to prevent a serious attack that may affect citizens and/or the safety of their goods (with the agreement of the driver or with the instruction of the Attorney General). Awaiting these instructions, the vehicle can be immobilized for a duration that cannot exceed thirty minutes.

preventive provisions to anticipate terrorist attacks. For example, it encouraged the development of CCTV (“*vidéosurveillance*”) in order to prevent terrorist attacks by permitting the installation of video cameras “inside” and at “the immediate surroundings” of the public buildings, but also in the public spaces that are at risk (see Article 1 of law no. 2006-64 on the fight against terrorism and border security). Since then, “in the event of a perceived risk,” the prefects can approve the installation of CCTVs for a period of up to four months. The interest of the government to extend the number of cameras is strong. For example, in November 2007, Minister of the Interior Michele Alliot-Marie inaugurated the new National Commission on CCTV. She underlined that the effectiveness of CCTV is “nowadays proved in particular in the United Kingdom with the elucidation of murders of children and of terrorist crimes” (speech of the French Minister of the Interior, November 9, 2007). In November 2007, the Minister of the Interior estimated that there are currently 340,000 authorized video cameras in France. However, the Minister noticed that only 20,000 were related to street surveillance (public spaces), with the majority being used for surveillance of private spaces (shops, companies, etc.). The government wants to expand the number of operative CCTVs in public spaces from 20,000 to 60,000 by 2010.

In addition to expanding the use of CCTV, the legislation to combat terrorism and border security threats also included provisions allowing authorities to automatically take photographs of vehicles’ passengers “in all suitable points of the country.” These photos, which have to be destroyed within eight days of being taken, can be compared to the French intelligence files on stolen vehicles as well as to the Schengen Information System. The law also reinforces the possibility of conducting identity checks on international trains “between the French border and the first stop” (up to 50 kilometers within the French territory). These provisions supplement the initial capacities of conducting identity checks within the 20-kilometer zone. These provisions are consistent with those powers conferred to the police and customs officers after the ratification of the Schengen Agreement (see Article 78-2 of the French Code of Penal Procedure).

In addition to these new border control powers, the 2006 law on the fight against terrorism and border security obligates transport companies (rail, maritime, and airline) to transmit specific traveler information to the national Police and Gendarmerie (except for travel within the EU). This information is collected from travel documents and from the reservation system of the travel companies. Those companies that fail to collect and disclose traveler information to the police are liable to a fine of 50,000 euros per voyage. The French Code on the entry and the residence of foreigners in France also provides for air companies to use a device that enables the digitalization of traveler information prior to their departure. This information can be transmitted to the PAF services in charge of border checks at Roissy Airport. The main goal of

this device is to verify the authenticity of travel documents and visas as well as the identity of the passenger from abroad (see Articles R625-5 to R625-12 of the French Code on the entry and the residency of foreigners in France). Thus, it reinforces the effectiveness of border checks and allows the PAF to verify whether the papers presented upon entry to France are the same as those presented to the airline company before departure. This point is important because the airline (and also the maritime) companies can be made to pay an administrative fine if they convey illegal immigrants to France without checking the validity of their documents. Moreover, if the transportation company can show they used this new tool for transmitting electronic copies of a passenger's documents, the administrative fine can be reduced. Therefore, the transport companies not only ensure a first screening by examining the conformity of passengers' documents, but also collect and transmit preliminary information to the French border police. Collectively, these elements show the importance attached by the French political and administrative authorities to the collection of any information through its formal channels as well as relevant information obtained by the various private actors of transport. These new provisions permit police services to outsource a part of their border checks (and their costs) to the private transport companies (Guiraudon 2002).

Since 2006, the Ministry of the Interior is also allowed to create new information databases concerning passengers in order to prevent the illegal entry of non-citizens into French territory. This step permits the development of targeting strategies on the basis of the preliminary information communicated on the transborder flow of people. Prior to the introduction of these provisions, the National Police utilized the "transborder national database" (*Fichier National Transfrontière*, or FNT), created in 1991 (Bauer 2006). The aim of the FNT was to prevent terrorist attacks and to preserve national security and the public safety of France. Part of the information collection process for the FNT involves the PAF collecting traveler information cards from passengers arriving from nations deemed by the UCLAT to be of higher risk for migration-related issues. Information on these cards includes the traveler's legal name, date and place of birth, nationality, airport of arrival, and date and airport of departure (Bauer 2006). Once these cards have been collected, the information contained is transmitted to a number of police and intelligence agencies (PAF, DST, DGSE, DPSD, DCRG, DCPJ). The law on terrorism and border security of January 23, 2006, replaced the non-automated FNT program with a more robust electronic system. Since then, the decree no. 2007-1136 (July 2007) permitted the establishment of a new automated database that contains the personal information of illegal immigrants who have been identified at the various possible points of entry into France. This database can also be implemented, under the same conditions, to prevent and repress possible acts of terrorism. The access to the information is then limited to the agents individually designated and duly



competent (services of the National Police and Gendarmerie especially in charge of these missions; and services of Police and Gendarmerie as well as Customs in charge of the security of international transport). The data can also be interconnected with data from other automated databases (file of the researched persons, the Schengen Information System). In short, since 2007, transport companies are required to provide more and more private information to police services in order to prevent clandestine immigration as well as possible acts of terrorism.

Facing the increasing flow of persons passing through transport nodes, both the French public authorities and the air transport companies have developed new common systems of surveillance based on new technologies (biometrics, in particular), based in part on commercial customer loyalty programs. The experimental program PEGASE (*Programme d'Expérimentation d'une Gestion Automatisée et Sécurisée*) was thus implemented between 2005 and 2007 and was managed by Air France (the major French airline company). It allowed the Ministry of the Interior to create an automated database in order to collect personal data on Roissy Airport passengers who voluntarily contribute to the PEGASE program. After being registered by the border police (PAF), passengers are given an identity card that contains their personal identification data, some of which is biometrics (the two index fingerprints). This card permits registered passengers to benefit from streamlined border checks before departure. Registered travelers enter a specific room to present their personalized card in front of an electronic reader and simultaneously apply one of their index fingers on a scanner. This enhanced pre-boarding process allows passengers to enter a special zone for departure without having to go through the standard police checkpoint. After the PEGASE experiment (which involved 10,000 registered voluntary travelers) the device was reformed and renamed PARAFES (*Passage Automatisé Rapide aux Frontières Extérieures de Schengen*). This new system (see decree 2007-1182, August 3, 2007) extends the scope of the PEGASE program by permitting the interconnection of the database with the Schengen Information System. Compared to PEGASE, eight fingerprints are now required to have access to the program as well as the preliminary recording of personal data.<sup>7</sup> The data is preserved for five years from the time the traveler joins the program. Data concerning people who give up the PARAFES program is erased without delay.

<sup>7</sup> Personal data: status (i.e., surname, name of use if necessary, first name, date of birth); birth place (city, region, country); nationality being reproduced on the passport presented at the time of the registration; address (optional). Data relating to the registration of the passenger in the automated file: registration number; date and hour of the registration; type, number and limit of validity of the passport.



Indeed, this program is not obligatory and initially was intended to facilitate travelers deemed low-risk transborder travelers. The Ministry of the Interior anticipates that approximately 100,000 participants are needed to have this program achieve success. The French border security strategies had also been reinforced through the reform of identity document control. Recently, France also decided to set up biometric passports (since the decree of April 30, 2008) as a means of enhancing the security of transnational travel. These new biometric passports will integrate a microchip containing fingerprints of their two index fingers as well as a recent picture ID, which is in accordance with European standards. The decree also considers the creation of a central database integrating the photographs and the fingerprints of eight fingers (which goes beyond what is defined by the European legislation). As of June 28, 2009, the French, and all Europeans, must have a biometric passport to travel.

With regard to processing individuals passing through customs, France has aligned its own procedures with those of the international and European framework. Indeed, in 2005, the European Union decision 648/2005/49 EC reformed the European Community Customs Code in order to enhance the efficiency of border checks, focusing on risk management and risk analysis, specifically in regard to European and national security (and not only commercial fraud). The European Union introduced into the European Custom Code the concept of “Authorized Economic Operator” (AEO), which obligates the trade companies to contribute to France’s security concerns.\* If trade operators want to be “authorized” by customs officials and benefit from fastest import/export procedures, then they must transmit summary customs declarations before the entry or exit of goods. Trade operators must also communicate to French Customs all the data necessary for the establishment of a risk analysis. With this new strategy of border control, the private trade actors take part in their own evaluation in regard to national security concerns. Hence, through this system, Customs also partly outsources the implementation of border checks and many associated economic costs. In exchange, the Customs administration offers a certain number of trade facilitations to the companies. This system is based on the preliminary information of the Customs authorities by the AEO concerning their international commercial freight. It allows for a better selectivity of customs controls by implementing risk analysis. It is also based on the international concept of “approved supply chain” defined by the World Custom Organization (WCO), which aims to reinforce the security of all the steps of

\* Satisfactory antecedents to meet the Customs requirements include an effective system of management of the commercial documents; the proof of financial solvency; and suitable standards of security and safety.

the logistic supply chain by enabling a closer cooperation between customs and the private trade sector.

Finally, the legislation of January 23, 2006, contributes to the fight against terrorism and enhances border security by extending the police's capacities to access data housed on the Internet and with telecommunication providers. From now on, these companies must provide information on their customers (including numbers of registrations or connections of a designated person, localization of the equipment utilized, list of the called numbers and phone-call duration, and date of the communications) to the police services tasked with counter-terrorism responsibilities. Cyber-café and WI-FI providers are thus concerned. This legislation also extends the possibility for the police services in charge of counter-terrorism to consult certain administrative files (such as for passports, identity cards, data relating to the stay and the entry from abroad, and drivers' licenses).

### **Reinforcing European and International Cooperation**

The international police and customs cooperation (between the member states of the European Union but also more broadly within the framework of the bilateral or multilateral agreements) constitutes another method to reinforce the effectiveness of the prevention and repression of terrorism. This level of international cooperation has been largely enhanced with the multiplication of international and European agreements and agencies (new supranational agencies such as EUROPOL and EUROJUST, but also new agreements permitting, for example, the sharing of more information or the setting up of joint investigation teams).

In summary, it is noted that France plays an active role in European police cooperation. For example, beyond the border security reforms related to the implementation of the Schengen area, eight liaison officers from the French Police, Gendarmerie, and Customs are based in EUROPOL (five for the National Police, two for the National Gendarmerie, and one for the Customs) (EUROPOL 2008, 61). In its 2007 annual report, EUROPOL underlines, for example, that "thanks to operation Aziyadeh, EUROPOL established links between an investigation run by the French border police (OCRIEST) targeting a Turkish-Chinese illegal immigration network and British operation Greensea. As a result a dedicated target group Greensea was created at EUROPOL to analyze French, British, and Belgian data and support EU law enforcement authorities. Operation Safari, in the area of the LTTE (Tamils), led to fruitful cooperation between the SDAT (criminal counter-terrorism sub-directorate of the French criminal investigation directorate) and a EUROPOL Analysis Work File, resulting in many operational successes" (EUROPOL 2008, 61). The cooperation between the European police services on illegal immigration and terrorism constitutes another means

to prevent and fight transnational terrorist threats. At the European level, France also takes part in EUROJUST and in the new European agency for the management of the operational cooperation at the EU's external borders (FRONTEX),\* which was created in 2004.

As noted earlier, France's involvement in the development of the EU's policies has been reaffirmed by the new *White Paper on Defense and National Security* (2008, 94). This document underlines that the intensified EU actions intended to combat terrorism through the following methods:

- The common and regular evaluation of the threats (under the aegis of the Council)
- The organization of joint exercises between adjacent States
- The development of detection and protection techniques by EU industries (biometrics, search for new vaccines)
- The preparation for unconventional terrorist attacks (surveillance of goods and detection of dangerous materials, protection of transport infrastructure, and communication policy)
- The installation of compatible alert systems and databases for crisis management
- The improvement of databases on terrorist networks, explosives, and weapons
- The reflection on a specific legislation for serious crises
- The reinforcement of anti-terrorism concerns in the EU external relations (assistance to fight terrorism in certain States close to EU, anti-terrorism stipulations conditioning the attribution of funding in cooperation policies)

It should be noted, however, that the level of cooperation between the EU member states is not always and solely multilateral. France has, for example, set up a Joint Investigation Team with Spain (on the Basque groups) and also with Belgium to investigate terrorist groups. It also enhanced its cooperation with a number of EU member states (Austria, Belgium, Germany, Spain, Luxembourg, and the Netherlands) by signing the treaty of Prüm on the reinforcement of transborder police cooperation (see law no. 2007-1160,

\* FRONTEX's goal is to contribute to better coordination of the operational interconnectivity between the member states in regard to the management of the EU's external borders. It also helps the member states to train their national border guards (including the establishment of common training standards), to carry out risk analysis on illegal immigration routes, and to follow the evolutions of scientific research in the fields presenting an interest for the control and the surveillance of the external borders. Lastly, FRONTEX lends assistance to the member states when they need technical and operational support at their external borders and provides the necessary support to organize joint operations of repatriation for illegal foreigners. Also refer to the Epilogue in this volume.

August 1, 2007, on the Prüm Treaty). This treaty, signed on May 27, 2005, is focused on the combating of terrorism, transborder criminality, and illegal immigration through expanded data exchange (including the genetic or digital prints databases) and joint border patrols. This provides a good example of intergovernmental cooperation outside of the broader EU framework. Let us recall that the Schengen cooperation was first an intergovernmental agreement before being integrated into EU law through the European Treaty of Amsterdam in 1998 (concluded on June 17 and signed on October 2, 1997, between the EU members states) (see other European contributions in this volume). Therefore, we may see the Prüm agreement one day being extended to the other EU member states and integrated into EU law.

More international cooperation had also been implemented at the international level. In July 2005, French citizens learned of the existence of an informal cell by the name of “Alliance Base” through the publication of an article in the *Washington Post* (Priest 2005). This cell, whose purpose was to gather clandestine information, was established in 2002 by the American and French governments in an effort to investigate possible al-Qaeda terrorist activities. Under the direction of a DGSE officer, it includes American officers from the CIA and FBI as well as other national intelligence services (including Canadian, British, Australian, and German). Thus, despite the oppositions that had appeared between France and the United States concerning the military intervention in the Iraq War in 2003, the collaboration between the police and intelligence services continued (*Le Monde* 2006).

## Conclusion

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We can see that these reforms in intelligence, judiciary, and border-security strategies have been in existence since the 1980s; however, the 9/11 attacks have led to a reinforcement of pre-existing counter-terrorism efforts. They show the strong will of the French political authorities to enhance the police and customs powers in order to develop intelligence-based strategies more oriented on prevention than reaction to terrorism. The access to new sources of information (sometimes collected and maintained by private actors from the transportation and trade community), concerning the identity of transborder travelers and goods has allowed the French government to increase its ability to conduct risk analysis and tracking techniques in an effort to combat global terrorism.

The development of intelligence-based strategies poses the problem of information gathering (and its political or occupational limitations) at both the European and international levels. Nevertheless, the question of the equilibrium between liberty and security did not really emerge within the French political debate (except with the local protest of some civil liberties

associations and the warnings of the national independent authority of protection of personal data, the *Commission Nationale Informatique et Libertés*, or CNIL<sup>7</sup>). Since 9/11, the CNIL has published many information pamphlets informing the public about any new counter-terrorism provisions and the impact they might have (directly and/or indirectly) on French citizens' liberties (see all the advice of the CNIL on [www.cnil.fr](http://www.cnil.fr)).

France continues to develop both counter-terrorism and border-security strategies in order to combat internal and external terrorist threats. In addition, France continues to develop border-security strategies to control illegal immigration, which remains an important concern at the national and European levels. Since the 1980s, France specially developed legal and judiciary strategies to fight against terrorism. The reinforcement of border controls was difficult to justify during the 1980s and 1990s because of the creation of the EU. However, in the aftermath of 9/11 and the formation of the EU, today France can no longer arbitrarily instigate systematic checks at its internal Schengen borders. Nevertheless, it has implemented new provisions to proceed to reinforce identity checks and searches in the border zones within its territory. It also progressively implemented preventive and intelligence-based strategies through cooperation with other police services at the European and international levels through information-gathering strategies with private actors (from trade and transport) and through the more intensive use of modern technological innovations (such as CCTV and biometrics). In conclusion, as has been the case in other developed countries (see other contributions in this volume), France has adapted its border strategies to counter the risk of terrorism since 9/11. Nevertheless, in the French context, these reforms also have to be related to the symmetrical reforms of the judiciary and intelligence French system implemented since the 1980s.

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<sup>7</sup> The CNIL was created by law no. 78-17 of January 6, 1978, on databases and liberty in order to inform the citizens and protect their rights.

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# Border Security in Germany since 9/11

# 5



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## Contents

Introduction	160
Germany's Experience in Terrorism—Old Versus New Risks	160
Rudimentary Control Regime—Germany's Border Security in the Schengen Open Border Era	171
Developments in Border Control Legislation and Policies Related to Terrorism	177
Impact of Border-Related Security Reforms	188
Impact on Travelers and Citizens	188
Impact for Police and Control Forces	190
Conclusion	194
References	195

## Introduction

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Located in the center of the European continent, Germany has one of the most extended borderlines among the EU member states. It shares land borders with no less than nine countries. These direct neighbors are Austria, Belgium, the Czech Republic, Denmark, France, Luxemburg, the Netherlands, Poland, and Switzerland. The overall length of land borders is 3,757 kilometers; the two coastlines at the North and the Baltic Sea have an additional length of 2,389 kilometers.<sup>7</sup> These basic figures illustrate the historical importance of border control as one element in the context of counter-terrorism policies.

This is even true in light of the fact that the border issue has to be assessed in a very particular political context in Europe. The new international terrorism struck Germany and Europe at a moment when the abolishment of border controls was one of the top priorities on the political agenda. On the one hand, governments consider the disappearance of borders between the member states as one of the fundamental achievements of the coalescent development in Europe. The disappearance of formal borders transpired at a time when a critical assessment of the EU and its existing bureaucracy and the merit of control-free movement of people and goods was considered one of the most visible and perceptible advantages in EU citizens' everyday lives. However, in the aftermath of 9/11 many of the measures introduced around border security and the control-free movement of goods and people were brought into question. Virtually all governments attempted to counter-balance the loss of border-related control opportunities by implementing surrogate measures. These will be presented and critically assessed here in detail.

In addition, Germany's experience with terrorism will be referred to as well. First of all, this is due to the fact that the present statutory regulations in the penal code have their origin in the fight against the domestic terrorism of the 1970s. Second, Germany has been quite intensively touched by the activities of the 9/11 terrorist events. Not surprisingly, this recent experience has clearly fueled policy developments in this field.

## Germany's Experience in Terrorism—Old Versus New Risks

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Like several other European countries, Germany had experience with domestic terrorism long before 9/11. The country was first struck by serious terrorist assaults as a result of a process of political radicalization among parts of the post-1968 movement that produced a serial terrorist threat

<sup>7</sup> Further information is provided by the Federal Office of Statistics at [www.destatis.de](http://www.destatis.de).

throughout the 1970s and 1980s. At that time, a left-wing terrorist group emerged that was initially named the Baader-Meinhof Group after its two main founders, Andreas Baader and Ulrike Meinhof, and eventually re-named the Red Army Faction (RAF). After the main period of activities of that group during the 1970s (see Table 5.1), the most prominent members of the first generation were either tried and convicted or had committed suicide. Nevertheless, it was only after German re-unification in 1990 that the group, after a longer period of inactivity, officially disbanded, though not without committing a final murder in 1991.\* Disclosure of documents from the former GDR† revealed that the RAF had been supported by the GDR ministry of state security and the state security police from the late 1970s on. Group members that had not been caught in the West, in particular persons of the “subsequent” or “second generation” of the RAF, were invited to settle in the GDR. Equipped with new identities from the GDR government, they lived inconspicuous lives as ordinary working-class people behind the Iron Curtain, shielded from investigations and prosecution by the Federal Republic of Germany.‡

Other leftist groups were the Movement of June 2nd (J2M, circa 1975), a sub-group of the RAF that temporarily acted independently, and the Revolutionary Cells (RZ) (circa 1975); both of them, however, were less prominent and committed significantly fewer atrocities, with most of their activities concentrated in Berlin (Engene 2004) (Table 5.1).

Notwithstanding the domestic character and the nationally oriented political focus of these groups, elements of transnational terrorism can already be found in these early times. These become evident with regard to the fact that the RAF and the RZ had connections to terrorist groups in the Middle East through Palestinian training camps and by being involved in joint activities such as the OPEC attack of 1975 in Vienna, Austria, and the aircraft hijacking events of 1976 in Entebbe, Uganda, and 1977 in Mogadishu, Somalia (Wittke 1983). Other “domestic” RAF assaults such as the 1975 attack on the German embassy in Stockholm, Sweden, were conducted abroad as well; therefore, they meet the definition of what nowadays is called transnational terrorism.

Another early German experience with transnational terrorism was the Palestinian assault upon the Olympic team of Israel during the 1972 summer games in Munich, when two athletes were immediately killed and another

\* Detlev Rohwedder, who was the director of the Treuhand agency responsible for the privatization of the industry in the former GDR, is assumed to be the last victim of the RAF (Engene 2004).

† Former (communist) East Germany had the official name German Democratic Republic (GDR).

‡ For more details on the RAF history and state reaction, see Aust 1997.

**Table 5.1 List of RAF-Related Terrorist Incidents of the 1970s**

Assaults/Attacks by the RAF	Date	Explanation
Arson in Frankfurt department stores	April 2, 1968	Committed by the Baader-Meinhof Gang, the antecedent of the RAF
Baader liberation	May 24, 1970	Andreas Baader liberated from prison, first “official” RAF action
Triple bank robbery in Berlin	September 29, 1970	Probably only 2 of the 3 robberies were actually committed by the RAF
Petra Schelm killed in Hamburg	July 15, 1971	RAF member Petra Schelm killed by police during a shootout in Hamburg
Norbert Schmid killed in Hamburg	October 22, 1971	Police officer Norbert Schmid killed by RAF during a shootout in Hamburg
Herbert Schoner killed in Kaiserslautern	December 22, 1971	Police officer Herbert Schoner killed during an RAF bank robbery
Bombing of U.S. 5th Army Corps headquarters in Frankfurt	May 11, 1972	Part of the RAF’s “May Offensive”
Bombing of police buildings in Augsburg and Munich	May 12, 1972	Part of the RAF’s “May Offensive”
Failed assault on federal judge Buddenberg in Karlsruhe	May 15, 1972	Part of the RAF’s “May Offensive”
Bomb attacks against the Springer Building in Hamburg	May 19, 1972	Part of the RAF’s “May Offensive”
Bombing of U.S. Army headquarters in Heidelberg	May 24, 1972	Part of the RAF’s “May Offensive”
First hunger strike	January 17, 1974	Forty prisoners go on hunger strike to protest Ulrike Meinhof’s isolated confinement; this is the first of 10 hunger strikes
Stockholm embassy attack	April 24, 1975	RAF occupies the German embassy in Stockholm, kills two staff members
Death of Holger Meins	November 9, 1975	Holger Meins dies in prison after being on hunger strike for 54 days
Suicide of Ulrike Meinhof	May 9, 1976	Ulrike Meinhof commits suicide by hanging in prison

Siegfried Buback murder	April 7, 1977	Federal Attorney General Buback is shot in Karlsruhe along with driver and bodyguard
Raid on an arms dealer	July 1, 1977	Two RAF members raid an arms dealer in Frankfurt
Failed attack on the Federal Attorney General's office	August 25, 1977	A missile attack on the Federal Attorney General's office in Karlsruhe fails by chance
Hanns Martin Schleyer kidnapping	September 5, 1977	President of the Employer's Union Schleyer is kidnapped in Cologne, four bodyguards killed in a subsequent shooting
Murder of a Dutch policeman	September 22, 1977	Knut Folkerts kills a Dutch police officer in Utrecht during a traffic control
Hijacking of LH airliner <i>Landslut</i>	October 13, 1977	The <i>Landslut</i> is hijacked by a group of Palestinian terrorists to attain the release of the RAF Stammheim prisoners. Stormed on October 18 by German special police unit GSG 9 in Mogadishu
Schleyer killed in Mülhausen	October 18, 1977	Schleyer is discovered dead in a car, killed the day before by the RAF
Stammheim suicides	October 18, 1977	Baader, Ensslin, and Raspe commit suicide in the terrorist prison in Stuttgart-Stammheim
Suicide of Ingrid Schubert	November 12, 1977	Ingrid Schubert commits suicide by hanging in prison
Jürgen Ponto murder	July 30, 1977	Dresdner Bank CEO Ponto is shot in his house in Oberursel by the RAF
Attempted assault on NATO Supreme Allied Commander	June 25, 1979	A bomb attack on the NATO commander fails in Casteau, Belgium

eleven kidnapped, who all later died in the course of a failed rescue mission by German police.

Besides that latter Palestinian attack, which had a direct and immediate impact on visa regulations and control policies at German borders and airports, all these domestically oriented terrorist threats brought no significant changes in border controls, which at that time still had a totally different structure. The incidents were assessed and combated as political crimes challenging national security from the inside. Consequently, legal initiatives had their focus on criminal law and criminal procedure; in both legal areas significant amendments were implemented (Vogel 1978). More or less irrelevant for the development of border control policies was also the homegrown right-wing terrorism that, besides one singular event when a bomb exploded during the 1980 Munich Oktoberfest, emerged as late as the 1990s and, for quite a while, was centered in the federal states of former Eastern Germany. Jewish sites (synagogues and community centers) and people, including Africans, Vietnamese, and other individuals of assumed foreign origin, were the main targets.

The most relevant statutes applicable for the prosecution of terrorist offenses are Articles 129 and 129a of the German Penal Code. First of all, Article 129, which traditionally had been the central organizational statutory offense in Germany, relates, in a more general manner, to the formation of criminal organizations.

Section (1) provides that:

whoever forms an organization, the objectives or activity of which are directed towards the commission of crimes, or whoever participates in such an organization as a member, recruits for it or supports it, shall be punished with imprisonment for not more than five years, or a fine.

Section (4) refers to serious cases by stipulating that imprisonment from six months to five years shall be imposed:

if the perpetrator is one of the ringleaders or supporters or there exists an especially serious case [...].

Through the Counterterrorism Act of August 1976,\* an extra organizational offense with particular focus on terrorist groups was introduced. Article 129a at that time provided in its section (1) that:

- (1) Whoever forms an organization, the objectives or activity of which are directed towards the commission of:
1. murder, manslaughter or genocide,

\* *Antiterrorismgesetz* [Counterterrorism Act] of 18 August 1976, BGBl. I (Federal Law Gazette, part I); p. 2181.

2. [specified] crimes against personal liberty, or
3. [specified] crimes dangerous to the public

or whoever participates in such an organization as a member, supports it or recruits for it, shall be punished with imprisonment from six months to five years.

- (2) If the perpetrator is one of the ringleaders or hintermen, then imprisonment for no less than three years shall be imposed.

In the following years the provision was further amended, *inter alia*, by increasing the statutory penalties for the formation of the organization to imprisonment from one year to ten years. Participation, recruitment, and support were formally upgraded to a separate section (3), providing the original sentencing range. Still, to date Germany has no separate provision on the financing of terrorism. Based on case-law interpretation established in the 1970s by the Federal Court of Appeals (the highest instance in criminal matters in Germany), these cases are regularly subsumed under the statutory alternative “support” as provided in the above-mentioned section (3) of Article 129a (Kilchling 2006).

The consequences taken by the legislature are completely different and much more complex with regard to the new international terrorism. Unfortunately, Germany has played a significant role as a “relaxation room” for the so-called “sleepers” of 9/11. In retrospect it was found that Mohammad Atta and several other suicide pilots were living openly for some time in Hamburg, some of them as students. A remarkable number of other individuals were part of that “Hamburg Cell”; some of them were either tried in Germany or in the United States, for conspiracy or concretely aiding and abetting the 9/11 murders (see Table 5.2). One of those people, Abdelghani Mzoudi, was finally acquitted at the last minute due to insufficient cooperation by U.S. agencies, which were unwilling to disclose any of the relevant evidence to the German courts (Safferling 2004; Blaauw-Wolf 2004).

As a consequence of these facts, the German Penal Code was further amended in the course of the post-9/11 legislation through which the provisions on criminal and terrorist organizations (Articles 129 and 129a of the Penal Code) were further extended.\* In addition, Article 129b was introduced, based on the fact that organizations having their main field of activity outside Germany can be tried here, too. This additional step was necessary because the related provisions had been designed and interpreted by the Federal Court of Appeals in accordance with the concrete history of the RAF

\* 34th Penal Code Amendment Act of 22 August 2002, BGBl. I (Federal Law Gazette, part I); p. 3390.



Table 5.2 List of 9/11-Related Proceedings and Suspicions in Germany

Name	Group	Date	Charges	Status
Mounir al Motassadeq	al-Qaeda/Hamburg Cell	11/01	Aiding to murder in 246 cases	15 years imprisonment
Abdelghani Mzoudi	al-Qaeda/Hamburg Cell	10/02	Aiding to murder in 3,066 cases	Acquitted
Eight suspects	al-Qaeda/"Attawhid library"	07/02	No charge	Preliminary investigations
Mohammad Ali Hassan al-Mudschad	al-Qaeda	01/03	Conspiracy, support of al-Qaeda and Hamas	Extradited to the U.S., 75 years imprisonment
Mohammad Moschen Jahja Sajjid	al-Qaeda	01/03	Conspiracy, support of al-Qaeda and Hamas	Extradited to the U.S., 45 years imprisonment
<b>Other Members of the Hamburg Cell</b>				
Mohammad Atta	al-Qaeda		Pilot of flight AA 11, which hit the north tower of the WTC	
Marwan al-Shehhi	al-Qaeda		Pilot of flight UA 175, which hit the south tower of the WTC	
Said Bahaji	al-Qaeda		Wanted for the 9/11 attacks, still at large	
Ziad Jarrah	al-Qaeda		Pilot of flight UA 93, which crashed in Shanksville, Pennsylvania	
Ramzi Binalshibh	al-Qaeda		Arrested in 2002, probably held captive in Guantánamo	
Zakariya Essabar	al-Qaeda		Arrest warrant in Germany, still at large	

terrorism of the 1970s—a fact which had the effect that only domestic groups could be tried on the basis of the traditional organizational offenses (Meyer 2006). It is remarkable that prosecution related to groups from abroad is considered a matter of national interest and therefore subject of an *ex ante* authorization by the Federal Ministry of Justice. Article 129b now explicitly provides that:

- (1) Art. 129 and 129a shall apply to organizations abroad. If the offence relates to an organization outside the member states of the European Union, this shall not apply unless the offence was committed by way of an activity exercised within the Federal Republic of Germany or if the offender or the victim is a German or is found within Germany. In cases that fall under the previous sentence the offence shall only be prosecuted on authorization by the Federal Ministry of Justice. Authorization may be granted for an individual case or in general for the prosecution of future offences relating to a specific organization. When deciding whether to give authorizations, the Federal Ministry of Justice shall take into account whether the aims of the organization are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of nations and which appear reprehensible when weighing all the circumstances of the case.

After the 2002 amendment, the statutory offense of Article 129a reads as follows\*:

- (1) Whosoever forms an organization whose aims or activities are directed at the commission of:
  1. murder under specific aggravating circumstances, murder or genocide or a crime against humanity or a war crime; or
  2. [specified] crimes against personal liberty, or whosoever participates in such a group as a member shall be liable to imprisonment from one to ten years.
- (2) The same penalty shall be incurred by any person who forms an organization whose aims or activities are directed at:
  1. causing serious physical or mental harm to another person,
  2. committing [specified] offences endangering the general public,
  3. committing [specified] offences against the environment under §330a (1) to (3),

\* Translation taken from Bohlander 2008.

4. committing [specified] offences under the Weapons of War (Control) Act, or
  5. committing [specified] offences under the Weapons Act; or by any person who participates in such a group as a member, if one of the offences stipulated in no. 1 to 5 is intended to seriously intimidate the population, to unlawfully coerce a public authority or an international organization through the use of force or the threat of the use of force, or to significantly impair or destroy the fundamental political, constitutional, economic or social structures of a state or an international organization, and which, given the nature or consequences of such offences, may seriously damage a state or an international organization.
- (3) If the aims or activities of the group are directed at threatening the commission of one of the offences listed in subsection (1) or (2) above, the penalty shall be imprisonment from six months to five years.
  - (4) If the offender is one of the ringleaders or hintermen the penalty shall be imprisonment of not less than three years in cases under subsections (1) and (2) above, and imprisonment from one to ten years in cases under subsection (3) above.
  - (5) Whosoever supports a group as described in subsections (1), (2) or (3) above shall be liable to imprisonment from six months to ten years in cases under subsections (1) and (2), and to imprisonment of not more than five years or in fine in cases under subsection (3). Whosoever recruits members or supporters for a group as described in subsection (1) or subsection (2) above shall be liable to imprisonment from six months to five years.
  - (6)–(9) [...].

The statutory offense now covers all crimes and complies with the “minimum maximum penalties” provided by the EU Framework Decision on Combating Terrorism\* (Dimitriu 2004). Furthermore, totally new elements can be identified: in particular, the legal definition provided in the last sentence of section (2), and the extension of punishability to the recruitment of supporters according to section (5). In the past, only recruitment of group members was prohibited.

Meanwhile, the state of security in Germany became more precarious. Quite obviously, the country is no longer a “relaxation room.” On the contrary, it has become a target, too. In recent times, several threats were prevented through the arrest of suspects (see Table 5.3). The most ominous incidents so far were certainly that of the Cologne suitcase bombers and the uncovered

\* Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA), O.J. No. L 164, pp. 3–7.

**Table 5.3 List of Other Arrests and Trials Related to al-Qaeda and the New Islamic Terrorism**

Event	Affiliation	Date	Arrested Suspects	Notes	Charges
Strasbourg Christmas market	al-Qaeda	12-00	Aerobui Baendali Lamine Maroni Fouhad Sabour Salim Boukhari	Sentenced to 10 to 12 years imprisonment	Planning of bombing of the Strasbourg Christmas market
Alawi assault	Ansar-el Islam	12-04	Ata R. Mazen A. H. Rafik Y.	Sentenced to 7.5 to 10 years imprisonment	Planning of assault of former Iraqi prime minister during Berlin visit
Düsseldorf al-Qaeda trial	al-Qaeda	1-05	Ibrahim Mohamed K. Yasser Abu S. Ismael Abu S.	Sentenced to 3.5 to 7 years imprisonment	Planning of terrorist attacks in Iraq
Gelsenkirchen attack		8-06	Eight suspects	No arrest warrant due to lack of evidence	Planning of the bombing of a tanker ship
Cologne Suitcase Bombers		7-06	Youssef Mohamed al-Hajdib, Fadil el S., Dschihad Hamad and two additional Lebanese	Hajdib sentenced to life imprisonment in first instance; appeal currently pending. Fadi el S. was acquitted. The other three are imprisoned in Lebanon	Attempted bombing of two regional trains in Cologne and Dortmund
Sauerland Group	Islamic Dshihad Union	7-06	Fritz Gelowicz Adem Yilmaz Daniel Schneider	Currently on trial in Düsseldorf.	Planning of several terrorist attacks on targets in Germany
Arrest of an Algerian		7-02		Arrested in Stuttgart	Wanted for various charges of extremism and terrorism in France

*(continued)*

Table 5.3 List of Other Arrests and Trials Related to al-Qaeda and the New Islamic Terrorism (continued)

Event	Affiliation	Date	Arrested Suspects	Notes	Charges
House search and arrests		10-02	Several suspects	Premises in several states were searched, several suspects arrested	Planning of terrorist attacks in Germany; membership in a terrorist association
House search and arrests		2-03	Four suspects	Premises in several states were searched, four suspects arrested	Planning of terrorist attacks in Germany; membership in a terrorist association
Arrest in Gelsenkirchen		3-03	One suspect	Acquitted due to lack of evidence	Membership in a terrorist association
House searches in various states		1-05	Eleven suspects	Eleven suspects arrested during a razzia	Membership in a terrorist association
Arrest in Munich		4-05	Two suspects	Suspicious of financing of al-Qaeda	Financing of terrorism
Arrest in Marburg		4-05	Ismail Abu S.	Suspicious of planning terrorist attacks	Planning of terrorist attacks in Germany; membership in a terrorist association
Arrest in Osnabrück		10-06	Ibrahim R.	Broadcasting audio and video messages from Osama bin Laden	Membership in a terrorist association
Arrest in Frankfurt		6-07	Burhan B.	Arrested at airport prior to journey to Jordan	Membership in a terrorist association
Arrest in Frankfurt	Islamic Jihad Union (IJU)	9-08	Hüseyin Ö. Omid S.	Associated with the Sauerland Group	Attempt to construct bombs with various chemical components
Arrest at Cologne airport	Islamic Jihad Union (IJU)	09-08	Omar D. Abdirazak B.	Arrested in KLM aircraft, suspected of traveling to a jihad training camp in Pakistan	Membership in a terrorist association

plans intended by the so-called Sauerland Group. In the Cologne case, the suitcase bombs were placed in two commuter trains; in the Sauerland case it seems that the police stepped in right before the bombs were filled with the fluid explosives for immediate use.

Unlike the early groups, the new terrorism is considered to be a de-individualized phenomenon that constitutes a new form of terrorist threat (Lepsius 2004). As a result, a whole set of measures that go beyond the “classical” penal and criminal procedural focus by which the former domestic terrorism was addressed have now passed the legislature. A number of these legislative initiatives have direct relevance to the field of border control.

### **Rudimentary Control Regime—Germany’s Border Security in the Schengen Open Border Era**

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Before the developments in border control policies and legislation are presented in more detail, the principles of the legal and factual framework for border controls in Germany will be briefly outlined. This is considered because, as part of the general trend toward unification in Europe, the border regimes have already been subject to a dramatic change for more than two decades. In order to establish a “common area of freedom, security and justice” as proclaimed at the Tampere summit of the European Council in 1999,<sup>\*</sup> it is common policy of most European governments that all border controls between the member states should be abolished. This principle and the related legal and practical consequences have been laid down in the Schengen Open Border Agreement of 1985<sup>†</sup> and in several subsequent intergovernmental treaties, all named after Schengen, Luxemburg, where the original Treaty was signed. The Treaty ultimately aims to establish total freedom of movement for everybody within and between the “Schengen countries,” without any kind of border control by police or customs authorities (see Box 5.1).

Although closely linked to the European Union, the Schengen Agreement is formally an independent intergovernmental system of border management that, on the one hand, includes several non-EU partners such as Iceland, Norway, and recently Switzerland; on the other hand, some of the EU member states, such as Ireland and the United Kingdom, have decided not to join the Schengen Acquis. In addition, some of the new EU member states, namely the former East Block states of Bulgaria and Romania, as well as Cyprus, have not yet been capable of meeting the legal and organizational requirements

*(text continues on p. 175)*

<sup>\*</sup> See, e.g., COM/2000/0167 final.

<sup>†</sup> The Schengen Treaty and related texts can be obtained from the EU documentation on the Schengen Acquis, O.J. no. L 239 of 22 September 2000.

**BOx 5.1 THE SCHEn GEN TREATy ( Ex CERPTS)—  
CROSSIn G FROn TiERS An D ViSAS**

**ARTiCLE 2**

- (1) Internal borders may be crossed at any point without any checks on persons being carried out.
- (2) Where public policy or national security so require, however, a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation will be carried out at internal borders. If public policy or national security requires immediate action, the Contracting Party concerned shall take the necessary measures and shall inform the other Contracting Parties thereof at the earliest opportunity.

[...]

**ARTiCLE 3**

- (1) External borders may in principle be crossed only at border crossing points during the fixed opening hours.

[...]

**ARTiCLE 5**

- (1) For visits not exceeding three months, entry into the territories of the Contracting Parties may be granted to an alien who fulfils the following conditions:
  - (a) in possession of a valid document or documents permitting them to cross the border [...];
  - (b) in possession of a valid visa if required [...]

[...]

**ARTiCLE 6**

- (1) Cross-border movement at external borders shall be subject to checks by the competent authorities. Checks shall be made in accordance with uniform principles, within the scope of national powers and national legislation, account being taken of the interests of all Contracting Parties throughout the Contracting Parties' territories.
- (2) The uniform principles referred to in paragraph 1 shall be as follows:



- (a) Checks on persons shall include not only the verification of travel documents and of the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also cover vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its legislation, in particular as regards searches.
- (b) All persons must be subject to at least one check making it possible to establish their identities on the basis of their presentation of travel documents.
- (c) On entry aliens must be subject to a thorough check as defined in (a).
- (d) On exit checks shall be carried out as required in the interest of all Contracting Parties under the law on aliens in order to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall be made in all cases in respect of aliens.

[...]

#### **ARTiCLE 10**

- (1) A uniform visa valid for the entire territory of the Contracting Parties shall be introduced. This visa [...] may be issued for visits not exceeding three months.

[...]

#### *Police and Security*

#### **ARTiCLE 39**

- (1) The Contracting Parties undertake to ensure that their police authorities shall, in compliance with national legislation and within the limits of their responsibilities, assist each other for the purposes of preventing and detecting criminal offences, [...].

[...]

**ARTICLE 40**

(1) Police officers of one of the Contracting Parties who, within the framework of a criminal investigation, are keeping under observation in their country, a person who is presumed to have taken part in a criminal offence to which extradition may apply, shall be authorized to continue their observation in the territory of another Contracting Party [...].

[...]

(2) Where, for particularly urgent reasons, prior authorization of the other Contracting Party cannot be requested, the officers conducting the observation shall be authorized to continue beyond the border the observation of a person presumed to have committed [listed offences] [...], provided that [specified] conditions are met.

[...]

**ARTICLE 41**

(1) Officers of one of the Contracting Parties following, in their country, an individual apprehended in the act of committing one of the [specified] offences [...] or participating in one of those offences, shall be authorized to continue pursuit in the territory of another Contracting Party without prior authorization where given the particular urgency of the situation it was not possible to notify the competent authorities of the other Contracting Party [...].

[...]

*The Schengen Information System***ARTICLE 92**

(1) The Contracting Parties shall set up and maintain a joint information system, hereinafter referred to as the Schengen Information System, consisting of a national section in each of the Contracting Parties and a technical support function. The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to reports on persons and objects for the purposes of border checks and controls and

other police and customs checks carried out within the country in accordance with national law and, in the case of the single category of report referred to in Article 96, for the purposes of issuing visas, the issue of residence permits and the administration of aliens in the context of the application of the provisions of this Convention relating to the movement of persons.

[...]

*Transport and Movement of Goods*

**ARTiCLE 120**

- (1) The Contracting Parties shall jointly ensure that their laws, regulations or administrative provisions do not unjustifiably impede the movement of goods at internal borders.

[...]

for joining the Schengen states. Recent communications from Switzerland further indicate that they also intend to formally join the Treaty.

This development also had consequences for the visa regime. In addition to the traditional national visa, any member state can also issue Schengen visas based on which foreigners enjoy the same freedom as citizens to move between and to stay within any of the Schengen states. In addition, as a consequence of the fact that entrance control has moved to the external borders, even a national visa allows for entry in and transit through another member state to the state of final destination that has issued the national visa (also see the other European contributions in this volume).

According to the Schengen Codex,<sup>\*</sup> member states have only restricted possibilities to temporarily suspend the non-control principle in urgent situations of security relevance. In recent years, this has in fact been the case. For example, following the initiative of the French government, after the London bombings of July 2005, border controls were re-introduced at the French-German border until February 2006. During that period French border police forces were closely supported by the German Federal Police (also see Chapter 4, on France). In addition to such terrorism-related reinforcement of control, other examples with direct security relevance were in evidence as well. Germany has thus far suspended non-control twice, during the 2006 FIFA football world championship and the G8 summit of

<sup>\*</sup> Regulation (EC) No. 562/2006 of 15 March 2006, O.J. no. L 105, p. 1.

2007 (Federal Ministry of the Interior 2008), and Austria during the UEFA European football championship in 2008.

Since the accession of Switzerland to the Schengen Treaty, Germany has no more external land borders.\* All borders between Germany and its neighbors have been downgraded bit by bit to control-free internal borders in the course of the Schengen process. Additional external borders that are formally relevant in our context are, first, the seaports. However, freight control is the most important issue there, much more important than passenger control. For sea cruises, lists of passengers and crew members now have to be transmitted in advance (Federal Ministry of the Interior 2008).

Second, with respect to passenger control in particular, airports have, without doubt, the largest practical impact both in terms of quantity and quality. Airports today have the highest priority for border control policies, as airports are, at the same time, internal and external borders. Whereas in 2007, the German seaports counted some 12.57 million passengers (German Marine Office 2008), German airport authorities counted some 183.58 million people arriving or departing from the 17 international airports<sup>†</sup>; of these, 62.53 million were Schengen passengers (German Airport Association 2008a). The quantitative differences also become obvious when looking at the numbers of illegal entries: only 136 of such incidents were registered in all seaports in the first half of 2007 as opposed to some 1,391 at airports (Federal Ministry of the Interior 2008).

Initially, Schengen-related control reduction included the deconstruction of barriers not only at any land borders but at airports as well. In accordance with the Schengen Treaty, European governments also aimed at abolishing all passport controls for air passengers coming from or leaving for another Schengen member state. This principle was implemented by establishing a dual system for passenger transfers at all airports in the Schengen countries, allowing for control-free passage, except for the general security check, which is a procedure more or less exclusively conducted by private agencies under the control of the civil airport authorities (also see the Epilogue in this volume). However, this initial idea has undergone quite a significant transition since 9/11: for departing passengers, passport controls once again became a regular procedure, even though they are conducted today mostly by civil airport or airline staff rather than by police personnel. Depending on the location, double or even triple ID checks have become common before one has reached the gangway or aircraft. The originally intended universal “Schengen liberties” can nowadays mainly be enjoyed by passengers upon arrival.

\* Switzerland's accession to Schengen became operational on 12 December 2008 for the land borders and on 25 March 2009 for the airport control regime.

<sup>†</sup> Another 5.79 million passengers traveled through regional airports (German Airport Association 2008b).

One can say that today, the prevention of potential terrorists getting access to aircraft has higher priority than the prevention of terrorists entering the country by air. The latter aim is more subject to general police activities. With regard to border control, this can, of course, work only under the premise that terrorists come from outside the Schengen area and will be identified and caught when trying to enter via an external border. At both land and air borders, all passengers arriving from outside are strictly controlled. This includes an immediate check through the electronic Schengen Information System (SIS) or a prior SIS check, which is routine prior to the issuing of a Schengen visa. Probable domestic terrorists (citizens or persons from abroad with residence in a Schengen country, such as the “sleepers” or other members of the Hamburg Cell during the planning and preparation phase of the 9/11 attacks), however, fall out of the system and, therefore, are subject to other, internal control regimes, which will be discussed in more detail below.

In general, with regard to its long-term impact, Schengen has significantly reduced border-related control intensity in Germany. This can be concluded from the figures outlined in Table 5.4. Illegal entries registered at internal borders developed in a non-uniform way, with an overall slight decline from some 11,400 in 1998 to fewer than 10,400 in 2006 and a further decrease in the first six months of 2007. The inconsistencies reflect the irregular character of temporary mobile controls behind the borders (see below). A dramatic decrease, however, is shown in relation to the external borders (from nearly 27,000 to 7,500). The development during the last decade represents the stepwise enlargement of the Schengen zone with its simultaneous disappearance of Germany’s external borders. A totally different development can be identified with regard to airports. Here, arrests in the course of changes in the scope and quality of control activities significantly went up in four waves, the first one in the years 2001 to 2003 and the second one in 2004, followed by further dramatic increases in 2005 and 2006. Only in 2007 can a reduced number of incidents be expected based on the actual figure covering the time span from January through June only. Finally, the figures also show that overall, seaports never had more than a fractional amount of all such incidents (in 2007 less than 10 percent).

## **Developments in Border Control Legislation and Policies Related to Terrorism**

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In addition to the general developments based on the European Schengen Acquis, the most significant changes in border control legislation and policies in Germany have their cause indeed in post-9/11 anti-terrorism initiatives. These policies have been developed in light of, and as a consequence

**Table 5.4** Illegal Entries at German Borders (1998–2007)<sup>a</sup>

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Internal borders	11,419	15,616	12,725	16,377	15,679	13,075	10,944	9,497	10,445	4,271
External borders	26,989	19,424	16,513	11,695	6,647	6,649	7,221	6,008	7,500	3,005
Airports	286	203	437	894	848	836	1,675	2,683	3,863	1,391
Seaports	191	349	250	437	481	569	497	545	287	136
Total	38,408	35,040	31,485	28,560	22,638	19,974	18,165	15,551	17,992	7,326

<sup>a</sup> 2007: 1 January through 30 June only.

Source: Federal Ministry of Interior, 2008, and earlier editions.

of, the Schengen process, which can be summarized as a radical, long-term cutback of border controls. Citizens now have the freedom to travel freely, crossing any national border between the member states free of police and customs control. Incoming travelers from outside enjoy the same freedom once controlled at the first external border of the Schengen area. However, measures have been introduced in order to substitute for the loss of control facilities. One of those instruments was introduced with the Schengen Treaty itself, which provides the legal basis for so-called suspect-free controls. In a first step it allows police to stop and check any individual at any time within a zone of 30 kilometers from an internal border (so-called mobile border controls).<sup>\*</sup> The federal states of Bavaria and Baden-Württemberg allowed their police forces such suspect-free controls even beyond these 30 kilometers, followed by other states. In May 1998, the federal parliament passed a bill that allowed such controls on a general basis, which in essence transformed the country into a great border territory.<sup>†</sup>

With special attention given to the coastlines, the border control area was significantly extended. Instead of the regular 30 kilometers, control activities are allowed within a 50-kilometer zone; in addition, the Federal Ministry of the Interior was given the power to extend by decree, whenever necessary, the 50- to an 80-kilometer zone.<sup>‡</sup> These extensions aim at providing sufficient room for security controls even in coastal regions with a meandering borderline characterized by tideland, bays, river mouths, etc., which obviously have caused practical problems in the past (Blümel et al. 2006: § 2 annot. 45).

This latter amendment was part of a total of three legislative “packages” thus far (the national “security” or “anti-terrorism packages,” which have been implemented by the national legislature since 2001). Each of these packages were comprised of an array of concrete regulatory elements. The first one provided three measures that have a direct link to border control. In addition to the aforementioned extension of the control belt in seashore areas, airport security was enhanced by introducing a mandatory security check of all airport personnel. In addition to information from the internal and external secret services, even information taken from the files of the former GDR’s ministry of state security can be used in monitoring and security checks, especially when new employees are hired. And finally, fingerprints were introduced as part of visa procedures. More generally, police and other security agencies were furnished with additional financial funds of €1.5 billion for staff and equipment (Meyer 2006). In order to raise the necessary

<sup>\*</sup> In order to prevent states from introducing new “relocated” inland border control regimes as a substitute for the abolished ones, neither regular nor systematic controls are allowed (Art. 24 of the Schengen Treaty of 1985 and Art. 99 of the Convention for the Implementation of the Schengen Treaty of 1990).

<sup>†</sup> BT-Drucksache 13/10790 of 26 May 1998.

<sup>‡</sup> Art. 2 of the Federal Police Act [*Bundespolizeigesetz*].



income, tobacco and several other taxes were raised through an explicit Financing of Counterterrorism Act.<sup>\*</sup> An additional element of the package was the amendment of the offense statutes on terrorism conduct (see above), notwithstanding the fact that it was implemented through a separate piece of legislation.

The second step was the implementation of the Combating Terrorism Act of 2002.<sup>†</sup> Unlike the “first package,” which had its focus mainly on repressive measures, the “second package” centered on the preventive area (Lepsius 2004). Consisting of approximately one hundred regulations by which 17 different laws, statutes, and statutory orders were amended or introduced, it can be considered as the main piece of direct post-9/11 legislation in Germany. In particular, the powers of the federal internal secret services (Federal Intelligence Service<sup>‡</sup> and Federal Office for the Protection of the Constitutional Order<sup>§</sup>), of the external secret service (Military Counterespionage Service<sup>¶</sup>) and of the Federal Criminal Police Office (*BKA*) were extended.

The new competencies clearly go beyond traditional “strategic” information. They can now retrieve data from banks, postal offices, telephone companies, and airlines. All these powers aim at providing border control agencies with information to identify individuals having contact to extremist groups. Furthermore, operational data exchange regarding actions or movements of terrorist persons or networks, forged or falsified travel documents, and weapons was improved. Alien law and asylum law was amended in order to prevent counterfeiting, forgery, and fraudulent use of identity papers and travel documents and to ensure that refugee status is not abused by terrorists by not recognizing political motivation as a ground for refusing requests for extradition of alleged terrorists. Additional measures aimed at advancing identification techniques through biometric features in order to facilitate identity checks and to further improve border controls. And finally, having armed air marshals from the Federal Border Security Guard on board German vessels was introduced.

Besides all these legal regulations of the second anti-terrorism package, which deal with very specific matters, there was an important organizational change that, without doubt, brought the most significant and far-reaching change to the security architecture in Germany. On July 1, 2005, the Federal

<sup>\*</sup> Financing of Counterterrorism Act [*Gesetz zur Finanzierung der Terrorbekämpfung*] of 10 December 2001, BGBl. I (Federal Law Gazette, part I); p. 3436.

<sup>†</sup> Combating Terrorism Act [*Terrorismusbekämpfungsgesetz*] of 9 January 2002, BGBl. I (Federal Law Gazette, part I); p. 361.

<sup>‡</sup> [*Bundesnachrichtendienst – BND*].

<sup>§</sup> [*Bundesamt für Verfassungsschutz – BfV*].

<sup>¶</sup> [*Militärischer Abschirmdienst – MAD*].

Police was set up.\* This change is so fundamental because it undermines the traditional division of power between the federal and the state level as provided by the constitution, a division partly abolished now. As a consequence of the negative experiences during the Third Reich, a centralized national police force would best be prohibited in the future. Therefore, policing became the exclusive power of the federal states. Besides the Federal Criminal Police Office, which originally was not more than a clearing and coordination agency without any direct executive power, there existed only two centralized federal agencies with—limited—police powers; these were the former Border Security Guard (*Bundesgrenzschutz*) and the former Railroad Police Guard (*Bahnpolizei*). These two agencies were transformed into the new Federal Police (*Bundespolizei*).

According to Article 2 of the Federal Police Act, the Federal Police has exclusive responsibility for border security. This includes not only border protection in its traditional sense but the prevention of any kind of endangerment of public security and public order in connection with border transit (Blümel et al. 2006: § 2 annot. 5). Whereas the field of activity of the former border security guard was restricted to the prevention of threats coming from outside the borders into Germany, the new Federal Police is responsible now for any kind of threat or danger irrespective of whether a concrete threat has its origin inside or outside the country. By enlarging the scope of responsibility, the German legislature aimed to ensure that, in the post-9/11 era, export of hazardous material shall be prevented as intensively as the importation of hazardous material. Hence, in qualitative terms the new agency has full police powers, which means that a second—parallel—police structure was established.

Besides border control, the Federal Police is also responsible for the security at the 17 international airports, in all national railway stations, on board German aircrafts, and in Lufthansa premises worldwide. However, border control does not necessarily have to be conducted by officers from this agency. The law provides that border control can be devolved to the customs authorities (Article 68 of the Federal Police Act) (a devolution of competency that is of high practical impact). In order to be even better prepared to counter terrorist threats, the Federal Police was the subject of a fundamental re-organization of its structures, which became effective on May 1, 2008.

In addition to traditional border control, the Federal Police is involved in a variety of different supra-national cooperation structures, such as the European border agency FRONTEX, the railway police network COLPOFER, and the Baltic Sea Region Border Control BSRBCC.

\* Act on the Renaming of the Border Security Guard into Federal Police [Gesetz zur Umbenennung des Bundesgrenzschutzes in Bundespolizei] of 21 June 2005, BGBl. I (Federal Law Gazette, part I); p. 1818.

The Federal Police is also involved in a further organizational innovation aimed at improving the fight against the new international terrorism, which was introduced in December 2004, when the Joint Terror Defense Center in Berlin (GTAZ)\* was established. Besides the denomination as such—the Center’s function is threat assessment rather than “defense” in its generic meaning—it is also remarkable that this is the first institution in Germany in which all authorities that are involved in matters related to terrorism cooperate on a daily basis. The purpose of the Center is the bundling of all information gathered by the different institutions and the strengthening of the competence of analysis (Kerner et al. 2006). Besides the practical aspects, this new institution signifies even a double breach with the fundamental, previously irrevocable, principles of the division of power. Since the foundation of the Federal Republic of Germany in 1949, there was not only consensus about the necessity of a strict separation of state police and security and other agencies on the federal level; even stricter was that of police from intelligence services.

Notwithstanding this historical “taboo,” officers from the Federal Criminal Police Office, the Federal Intelligence Service, the Federal Office for the Protection of the Constitutional Order, the Military Counterespionage Service, the State Police Offices, the State Offices for the Protection of the Constitutional Order, the Federal Police, the Customs Police Office, the Federal Attorney General, and the Federal Agency for Migration and Refugees now regularly meet in the GTAZ. In addition to the daily briefings that aim at rapid exchange of information, the GTAZ’s agenda includes operational planning, situational analyses, and long-term threat analyses as well. The setting up of this service is in line with a general development in Europe toward the institutionalization of multi-agency bodies in counter-terrorism matters (Neve et al. 2006). At a European level, Europol usually is an additional key player at such meetings.

In order to provide a better data basis for the joint center in Berlin as well as for local police authorities, a new joint database was set up in September 2006. Its legal basis is provided by the Joint Database Act,† which allows for the exchange and joint use of data that traditionally had been restricted for internal use by the recording authority only. Based on the new system, scattered data on the marital status, profession, telephone and banking information, knowledge of weapon possession, and the religious affiliations of suspects can be provided by the system upon request (Meyer 2006). In the political debate, the latter item was the subject of the most intensive controversies (Roggan 2007). In most of Europe public sensitivity toward this issue

\* [*Gemeinsames Terrorabwehrzentrum*].

† *Gesetz zur Errichtung gemeinsamer Dateien von Polizeibehörden und Nachrichtendiensten des Bundes und der Länder (Gemeinsame-Dateien-Gesetz)* [Joint Database Act] of 22 December 2006, BGBl. I [Federal Law Gazette, part I], p. 3409.

is high and can be compared to that of the race issue in the United States and other countries. In March 2007, the database was officially opened by the Federal Minister of the Interior.

The most recent legal activity with relevance in our particular context is the third “anti-terrorism package,” called the Combating Terrorism Extension Act.\* It amends several laws such as the acts concerning the Federal Intelligence Service, the Federal Office for the Protection of the Constitutional Order and the Military Counterespionage Service, the telecommunications interception laws, the air security act, the street traffic law, the law on private associations, the customs law, and the passport law. In addition to data of post and telephone companies and financial institutions, the aforementioned security authorities now also have access to information from airlines concerning names and addresses, all relevant transport details, and booking details. Unlike in the United States, information on religion and dietary habits is not yet the subject of surveillance (also see Chapter 2). In the future, biometric data will also be used for the issuance of passports; before this recent amendment, this data was only necessary for the visa procedure.

In addition to the national developments summarized before, a new international initiative with a specific focus on the transnational prosecution and prevention of terrorism within the control-free Schengen area was launched. The 2005 Prüm Convention (see Box 5.2), named after the small town in the Eifel Mountains in the federal state of Rhineland Palatinate, is an intergovernmental European treaty between Austria, the Benelux countries, France, Germany, and Spain. It deals with the strengthening of police cooperation, cross-border cooperation, and data exchange in matters of terrorism, cross-border crime, and illegal migration and will have a significant impact on the development of the security architecture in Europe. This convention is very interesting as it may develop in the same way in which the Schengen Treaty once did (that is, it may encourage other EU member states to join). Sometimes titled “Schengen III,” the Prüm Convention (also called the Prüm Treaty or Prüm Convention) certainly has the potential to become a kind of replay of Schengen (Bonvicini 2007) and to become, sooner or later, part of the EU *acquis*. Indeed, in June 2007, the European Commission published a decision according to which great parts of the Prüm Convention should be integrated into the *acquis communautaire*.†

Chapter 3 of the Convention pertains to the prevention of terrorism and provides, for example, the transmission of personal data of persons who might commit terrorist actions to any police or justice service of any of the signatories, without any previous requirement. This is a very obvious and

(text continues on p. 187)

\* *Terrorismusbekämpfungsergänzungsgesetz* [Combating Terrorism Extension Act] of 5 January 2007, BGBl. I [Federal Law Gazette, part I]; p. 593.

† EU Press Document, IP 07/803 of 12 June 2007.

## **BOx 5.2 THE PRü M COn VEn TiOn ( Ex CERPTS)**

### **CHAPTER 1 – GEn ERAL ASPECTS**

#### **Article 1: Basic principles of the Convention**

- (1) By means of this Convention, the Contracting Parties intend to step up cross-border cooperation, particularly mutual exchange of information.
- (2) Such cooperation is without prejudice to European Union law and open for any Member State of the European Union to join, in accordance with this Convention.
- (3) Cooperation under this Convention is aimed at devising initiatives to promote European cooperation in the fields laid down in this Convention.
- (4) Within three years at most following entry into force of this Convention, on the basis of an assessment of experience of its implementation, an initiative shall be submitted, in consultation with or on a proposal from the European Commission, in compliance with the provisions of the Treaty on European Union and the Treaty establishing the European Community, with the aim of incorporating the provisions of this Convention into the legal framework of the European Union.
- (5) The Contracting Parties shall regularly submit joint progress reports on cooperation to the Council of the European Union and the European Commission.

[...]

### **CHAPTER 2 – Dn A PROFiLES An D Fin GERPRin Tin G An D OTHER DATA**

[...]

### **CHAPTER 3 - MEASURES TO PREVEN T TERRORiST OFFEn CES**

#### **Article 16: Supply of information in order to prevent terrorist offences**

- (1) For the prevention of terrorist offences, the Contracting Parties may, in compliance with national law, in individual

cases, even without being requested to do so, supply other Contracting Parties' national contact points, as referred to in paragraph 3, with the personal data and information specified in paragraph 2, in so far as is necessary because particular circumstances give reason to believe that the data subjects will commit criminal offences as referred to in Articles 1 to 3 of EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

- (2) The data to be supplied shall comprise surname, first names, date and place of birth and a
- (3) description of the circumstances giving reason for the belief referred to in paragraph 1.

[...]

#### **CHAPTER 4 – MEASURES TO COMBAT iLLEGAL MiGRATiOn**

[...]

#### **CHAPTER 5 – OTHER FORMS OF COOPERATIOn**

##### **Article 24: Joint operations**

- (1) In order to step up police cooperation, the competent authorities designated by the Contracting Parties may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials (hereinafter referred to as "officers") from other Contracting Parties participate in operations within a Contracting Party's territory.
- (2) Each Contracting Party may, as a host State, in compliance with its own national law, with the seconding State's consent, confer sovereign powers on other Contracting Parties' officers involved in joint operations or, in so far as the host State's law permits, allow other Contracting Parties' officers to exercise their sovereign powers in accordance with the seconding State's law. Such sovereign powers may be exercised only under the guidance and, as a rule, in the presence of officers from the host State. Other Contracting Parties' officers shall be subject to the host State's national law. The host State shall assume responsibility for their actions.

*(continued)*

- (3) Other Contracting Parties' officers involved in joint operations shall be subject to the instructions given by the host State's competent authority.

[...]

#### **Article 25: Measures in the event of imminent danger**

- (1) In urgent situations, officers from one Contracting Party may, without another Contracting Party's prior consent, cross the border between the two so that, within an area of the other Contracting Party's territory close to the border, in compliance with the host State's national law, they can take any provisional measures necessary to avert imminent danger to the physical integrity of individuals.

(2) [...]

- (3) The officers crossing the border must notify the host State without delay. The host State shall confirm receipt of that notification and without delay take the necessary measures to avert the danger and take charge of the operation. The officers crossing the border may operate in the host State only until the host State has taken the necessary protective measures. The officers crossing the border shall be required to follow the host State's instructions.

[...]

### **CHAPTER 6 – GEnERAL PROViSiOnS**

#### **Article 29: Protection and assistance**

The Contracting Parties shall be required to provide other Contracting Parties' officers crossing borders with the same protection and assistance in the course of those officers' duties as for their own officers.

[...]

### **CHAPTER 7 – GEnERAL PROViSiOnS On DATA PROTECTiOn**

[...]



very important change regarding the rules of information transfer between European countries (Dehousse and Sifflet 2006).

More generally, the Prüm Convention grants the member states and their police forces the possibility to require and above all to retrieve any information available in any other member state. This “availability principle” can lead to a mutual openness of the data. Although this principle had been evoked within the EU Commission before,<sup>\*</sup> it is the Prüm Convention that actually turned this principle into life and reality, and made it enter into the real practice of police forces. In fact, it provides disposability of data for a much wider range of objectives (that is, much more global objectives, such as the prevention of crime and the maintenance of order during public events). This may produce problems concerning both national and EU laws for the Treaty application, although the Prüm Convention itself assumes the supremacy of EU rules over those of the Prüm Convention.

Concerning the internal Schengen borders, cooperation centers have been established since 1997, when the first German-French cooperation center was set up in Kehl, Germany (Maguer 2004). Since then, many of these centers have developed alongside internal borders in Europe, and some attempts have been made after 9/11 for them to receive additional powers in the general fight against terrorism. However, except for the very specific case of the cooperation centers in the French-Spanish border region, none of the other actors in the field of counter-terrorism was willing to share such powers. The lack of human resources and the regional anchorage of those centers, as well as the fear of central services of being ignored by the network of such centers in the EU, have been very strong factors in keeping the centers away from this field of activity.

Last but not least, some side aspects of other international counter-terrorism initiatives that have some impact on border control practices should be mentioned here in brief (for more details, see Albrecht 2006). These include, for example, the previously mentioned EU Framework Decision on Combating Terrorism, the European Arrest Warrant, and the array of rules and guidelines concerning money laundering control, which, as a more or less direct policy reaction on the 9/11 events, include the financing of terrorism, too, either as a component of or as an equivalent to money laundering in its traditional sense (Kilchling 2006). The most important issue of border security that will also be addressed in more detail below is the cash controls according to the FATF 40 plus 9 recommendations. This instrument was adopted by the European Union through a binding regulation<sup>†</sup> and implemented in Germany in Article 12a s. 2 of the Customs Act.

<sup>\*</sup> O.J. no. C 187 of 03.07.2001.

<sup>†</sup> Regulation (EC) No. 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community, O.J. no. L 309, p. 9.

## Impact of Border-Related Security Reforms

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The impact of all the border-related security reforms as outlined above can be analyzed from different perspectives. Our focus shall be a two-folded one here. The first one is that of the travelers in particular and the citizens in general. The second one is the sphere of police and other control forces.

### Impact on Travelers and Citizens

The importance of the border as a line to be crossed by persons and goods has completely changed over time, and paper travel documents are no longer as important in the context of border crossing. Whereas they have lost weight, the importance of electronic control technologies has grown. The very control of traveling people and above all the one that is operated by the post-industrial countries—the United States and Western Europe first—is achieved long before the travelers have even reached the border they want to cross. Thanks to electronic technology, biometric data can be obtained by the control forces in a shorter time than the physical travel takes (Bigo 2008). The paper document does not matter anymore once the “virtual or electronic profile” of the traveling person has satisfied the security criteria of the control forces. It is not the crossing of the border, and therefore not the border, that is of relevance in this context anymore, but the movement of persons as such. This is true above all for the control policies in the United States (also see Chapter 2), which have been partially disconnected with the actual crossing of their territorial borders. In Europe, and especially in Germany, under the Schengen system, the link between border crossing and control still prevails, however with a strong focus on the border of the European Union, which has been crossed first by the traveler, especially in the case of a non-EU citizen traveling.

Article 17 of the Prüm Convention provides the presence of armed police forces to be allowed on board airplanes and in some of the airport zones but does not regulate precisely whether or how they may be able to intervene. As a matter of fact, in Germany, the actual prevention of danger in the air depends on the intervention of the Federal Air Force (*Luftwaffe*), and only on it. One major reason is that it is the only armed force to dispose of the actual means of prevention and defense in the air environment (Paulke 2005). Some authors have therefore asked the question whether there may be after all the possibility for the state governments to employ their own regional police forces as sky marshals, like the federal government. Either way, the presence of armed police forces during a flight and the changing rules to be observed in the air defense management in Germany can generate some feelings of insecurity among passengers. Indeed, regarding the rules to be observed toward civilian airplanes, some aspects of the air defense have changed in

German law. In particular, it has to be underlined that under the 2004 Air Security Act armed air forces are authorized, under strong conditions, to make use of their specific weapons against a civilian airplane.

Another change regarding the scope, or target, of border control that has a significant impact on travelers relates to the cash control regime. Since 2005, people who want to travel into, or out of, the national territory have to declare to a Customs agent when they are carrying €10,000 or more in cash. Moreover, the Customs officers may conduct physical controls on persons, luggage, and cars in order to search for, and seize, undeclared cash. Recently, a coordinated control action—Operation Athena—was conducted in the first week of September 2008 at the German-Swiss border, including trans-border trains, and at all 17 national airports. During the operation, and for its particular purpose, customs checked some 13,000 persons, searched some 22,000 pieces of luggage, and seized some €5.5 million.\* In the course of such controls, the use of sniffer dogs specialized in detecting money is a regular instrument (*Focus-Money* 43/2008, 84).† Thus, based on legal provisions introduced to tackle the financing of terrorism, a great number of travelers are affected by such controls that, unofficially but clearly, have tax evaders as their main target, not terrorists. It was reported that airports were temporarily blocked while Operation Athena was going on.‡

More generally, many authors have seen serious long-term consequences of 9/11 for foreigners, especially in Germany. This might affect not only those who are traveling but also, and maybe even first of all, those who have been living for years in Germany (Gössner 2007). All foreigners living in Germany, as well as their German family members, have to register themselves in the central registration system for foreigners. This administration tool has been in many ways criticized for being discriminatory and viewed as a universal instrument of state control upon a very precise category of the population in Germany. This tool has been said by some authors to have been used in an increasing manner after 9/11 (Gössner 2007). Indeed, the personal data registered in this central file can be sent to any of the federal and state services that may require pieces of information from it (social services, police, custom services, etc.). This central registration service functions just as a second control tool after the border crossing, and as such may be even more efficient than border controls, because of its universal (federal, inter-state, and inter-services) availability.

\* [http://www.zoll.de/f0\\_veroeffentlichungen/f0\\_sonstiges/w0\\_2008/z28\\_bargeldkontrolle/index.html](http://www.zoll.de/f0_veroeffentlichungen/f0_sonstiges/w0_2008/z28_bargeldkontrolle/index.html).

† [http://www.focus.de/finanzen/steuern/tid-12233/bargeldkontrollen-seite-2-kritische-grenzen\\_aid\\_342866.html](http://www.focus.de/finanzen/steuern/tid-12233/bargeldkontrollen-seite-2-kritische-grenzen_aid_342866.html); see also [http://www.focus.de/finanzen/steuern/zoll-schwarzgeld-schnueffler-auf-vier-pfoten\\_aid\\_334542.html](http://www.focus.de/finanzen/steuern/zoll-schwarzgeld-schnueffler-auf-vier-pfoten_aid_334542.html).

‡ For further details, see [www.focus.de/politik/deutschland/schmuggel-operation-athena\\_aid\\_334680.html](http://www.focus.de/politik/deutschland/schmuggel-operation-athena_aid_334680.html).

Legal changes have tightened the entry and living condition of foreigners in Germany. The new immigration law of 2004 often has been seen as a law on security immigration limitation. This new law allows quicker expulsions under the suspicion of extremism and provides for a wider range of grounds for expulsion. Moreover, since 2005, no appeal can be filed against an expulsion decision of the Federal Administrative Court.

It has been noted that police controls of Muslim people have increased in the last few years, and some doubts have been expressed whether they may even cause more trouble than security. The power to control anyone without any precise cause for suspicion was introduced in Germany in the 1990s, as a compensation for the disappearance of systematic physical controls at the federal borders. Ever since this method of control was implemented, it was observed that those most concerned by these controls were actually foreign-looking persons. Indeed, the disappearance of border controls have never been thematized as a possible cause of increasing terrorism but only of increasing petty crime and above all of illegal immigration.

In addition, governmental representatives have never argued that border controls are an effective tool in the fight against terrorism, and it is unlikely that it should be seen any more as such. This is even true with regard to airports, as it has to be considered that their particular impact and security relevance arise from the fact that they are direct or indirect targets for terrorists. In fact, administrative tools as well as the policies tend to complicate both immigration issues and terrorism problems (Dover 2008), and dissolve both issues into the same bunch. This is particularly true for the EU member states' policies toward Africa. In this framework, the fight against terrorism has led the EU member states to policies that might negatively affect the intended securitization of EU territory. The development of conditional aid as well as the increasing costs that are imposed on African immigrants especially might generate more frustrations and the very threat that the European governments fear (Dover 2008).

### **Impact for Police and Control Forces**

The events of 9/11 have prompted many EU countries to introduce many significant changes to their national security strategies and policies. Since the events of 9/11, governments have been considering that internal and external security did not need to be dissociated in security policies. In Germany, it has to lead to an increasing effectiveness of the use of prevention and early recognition tools against terrorist threats (Denkowski 2008). This change has to be accomplished by an increased exchange of data and by strategies that became possible through the linking-up of all security and intelligence offices at all governmental levels. For some authors, this change has been particularly drastic, especially in regard to the Federal Office for the Protection

of the Constitution, the Military Counterespionage Service, and the Federal Intelligence Service, which still were, at least partly, structured according to the Cold War way of working—that is, above all in mutual dissociation from any other security service and secrecy (Denkowski 2008). For the other German security services, this in turn may have been less virulent because the federal structure in Germany was always characterized by a very high level of networking. The most important change came with the growing weight of the federal level within the German security system. In many ways the security services at the federal level obtained, or anchored, their supremacy over various security fields, in particular the fight against terrorism. Therefore, it can be said that it is just a consequence of the fact that the borders have lost their strategic importance as control territories within the European Union that federal bodies have been searching for new paths to retain control in the field of security and possibly to increase their role and weight in this context.

The first of these changes refers to the abovementioned transformation of the former Border Security Guard into the Federal Police. A number of authors have considered this change as an attempt by the federal government to establish a generalist police service that stands in direct competition—not to say rivalry—with the traditional state police services (Wolff 2007, 74). It has been argued that, on the contrary, the Federal Police should not be authorized to abandon its quality as a specialized police force to become a general security force; even the new name *Federal Police* received critical comments (71).

The second major trend for the German control services affects the military. There have been discussions on the competency of the military forces to prevent or combat dangers in cases that would overstrain the regular police means. Especially in the case of an airplane attack it was proposed that the military be authorized to bring down an attacking airplane. However, the Constitutional Court explicitly prohibits such an option.\* More generally, the Court further ruled that the military can intervene as a police force, that is, without any use of military means. Some authors doubt if it can be practicable in case of an emergency to make a distinction between military and non-military means and technologies. At all events, under the present legal circumstances, the use of military means and technologies for purposes of domestic security would require a modification of the constitution. So far, however, this has always been another taboo in security policies; its break could bring even more destruction into Germany's long-standing security system.

The third major trend concerns the growing responsibility of the federal level in some fields, such as terrorism. The federation obtained exclusive

\* Ruling of the Constitutional Court of 15 February 2006, 1 BvR 357/05.

jurisdiction over the defense against dangers arising from international terrorism under certain circumstances. The Federal Criminal Police Office is responsible if either the danger affects more than one state, or the state agencies are not capable of dealing with the problem in an efficient way, or an exclusive competency of another authority cannot be established. Through this change the federal level, which traditionally held most of the legislative power pertaining to criminal law matters, has now gained additional administrative and operative capacities in this field. So far, such federal executive powers were restricted to terrorism and other matters of national security.

The general trend toward increasing responsibility at the federal level in the area of domestic security could be criticized when contrasted to the parallel trend toward a privatization of at least some parts of the internal security (Wolff 2007). However, the German police and intelligence services have not been the only bodies that face changes in their structures and work procedures in the course of the fight against terrorism since 9/11. Another sector that has also been increasingly involved in the surveillance of terrorist conduct is the banking sector, which has to implement surveillance systems for money transfer (Ohler 2008). In addition to the control systems based on the organized-crime-related money laundering legislation (for more details, see Kilchling 2006), the European Union issued a further directive\* according to which banks and financial institutions are now obliged to declare and authorize any money transfer within the Union. Indeed, the Common Market had opened the borders to money transfers without providing sufficient control instruments to security authorities, neither on the member states nor at the community level. Germany is one of the few member states that had organized its own control system, but it was of minor strategic interest as long as no uniform and EU wide control system was implemented. Besides, all the bank-related control measures operated by the private finance sector controls have to focus on physical cross-border transfers of money at the border territory. Here, the border line is given a new and very important function that may work only at external borders of the EU—that is, as far as Germany is now concerned, essentially at air and sea borders. This control system is rather questionable, as it might affect the privacy of many people without any real and concrete purpose. There are, in particular, two aspects that characterize the complexity of such a system of financial control. First, surveillance cannot be conducted without any point of suspicion; and second, controls at such a large scale cannot avoid affecting people who are not at all concerned with the control goal, as could be witnessed during the aforementioned Operation Athena. It has been con-

\* Directive of 13 November 2007 on payment services in the internal market (2007/64/EG), O.J. no. L 319, p. 1.

sidered that the security and control authorities should be able to legitimize in a very precise manner every concrete control initiative.

Notwithstanding the above mentioned issues, the cooperation between federal and state security agencies has nonetheless increased—if not in operational practice fields, then at least in the fields of intelligence and data resources. The best example is the joint anti-terror database in which any state and federal security service shall gather and register their pieces of information about terrorism and terrorist risks. This reflects a fundamental change of the structures and the working procedures within the German services that no longer rely on the very border as a strategic territory for the fight against terrorism. One could even say that, paradoxically, German services dealing with terrorism and terrorist risks have, on the contrary, retreated from that very operational territory in order from now on to work from afar. Likewise paradoxical is the observation that this intelligence work “from afar,” which is in operation with computers rather than on scene, has not alleviated in any way the burden of suspicion upon the traveling foreigners in their everyday experience but made it both heavier and more global.

As far as border procedures are concerned in the context of police cooperation, the Prüm Convention has obviously introduced a tremendous change regarding the reality of judicial and legal (penal law) borders between the Prüm member states, even compared to the border agreements of the Schengen Treaty and the subsequent Schengen-related cross-border cooperation agreements. It totally disconnects the border territory from police control strategy. It also brings fluency into the police and data exchanges from one member state to another in a way and to an extent that has not been attained elsewhere before. Moreover, it gives new legitimacy to international public law vis-à-vis to the complexity of the EU internal law-making processes. As a matter of fact, the many attempts to coordinate the counter-terrorism policies within the EU since the 1990s have not reached a considerable solution until now. Furthermore, even the position of EU Coordinator for the fight against terrorism, which was created after the Madrid attacks of 2004, has not been reoccupied since the departure of its first holder in 2007.

On the other hand, no satisfactory response has yet been given to the subject of data protection. This has been one of the most criticized aspects of the Prüm Convention. Many authors (see *Datenschutz Nachrichten* 2006) have focused on the weak standards of protection arising from the fact that no general data protection rules have been imposed on the different member states. In particular, doubts arise regarding the capacity of police forces to respect the obligation to bind each piece of information they gather to a precise police and control goal. A second important question of data protection deals with the actuality and legal ownership of the data (Bigo 2008, 41). In fact, in addition to a strong mutual trust in the respective data protection capacities required for effective day-to-day police work, strong legal bases and



control structures for this data protection appear absolutely necessary for the long-term functionality of police data exchange in a globalized world.

## Conclusion

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In the greater political context of border control, two totally contradicting developments can be witnessed today. On the one hand, there is the greater policy of freedom of control-free travel everywhere in Europe, which from the traditional perspective of police and security agencies is quite counter-productive. On the other hand, in response new strategies and tools have had to be developed in order to intensify border controls that now extend beyond airports and other external borders.

In the course of the border cutbacks, Germany handed over a major part of the responsibility for border controls to those neighboring countries to which the external borders have moved. This became particularly obvious when Poland and the Czech Republic effectively joined the Schengen community in 2007—to the effect that the turnpikes opened and the “great barrier” moved eastward. Germany has been preparing for this change in two ways. First, in anticipation of the fact that the German security forces could not rely anymore on their own border checks, significant financial and personnel resources were invested in order to train and further support Polish and Czech authorities with the setting up of the new external border regimes toward Belarus and Ukraine. In addition, new cooperation structures at the new internal borders were implemented. Efficient exchange of information between the German and the foreign police forces gained in fundamental significance, as this is the only way to obtain information about incoming travelers from third countries. Of course, this requires not only appropriate structures, and human and material means, but also a very high degree of mutual trust in the reliability of the information coming from the neighboring countries that are now in charge of controlling the external border for the whole Schengen community. However, in the case of Germany and Poland, with their still painful common historical past, this was not the easiest part of the construction of the new control system of the Schengen zone. The second way in which Germany prepared for the period after 2007 was to develop a new management of traveler control for its own police forces, that is, a control system that has been disconnected from any physical border control.

The drastic bureaucratic and organizational changes, however, further affected the domestic security system as a whole. In the post-9/11 era, Germany witnessed one of the largest institutional, intra-governmental changes since the end of World War II: the transformation of the former border security guard into a “full” federal police authority. Such an accumulation of centralized police power that works independently of and in competition with the state

police powers would have been impossible without the 9/11 assaults. In light of the fact that, traditionally, policing was the exclusive power of the federal states, this recent development can be assessed as nothing less than a “revolutionary” development. The huge federal police headquarters building currently under construction in Berlin stands as a visible symbol of this transformation.

In addition, the Joint Terror Defense Center brought a further breach with fundamental, so far irrevocable principles of division of power. For example, not only is there a division between the federal and state police and other agencies but also a clear division of powers and jurisdiction between the different levels of police and intelligence services.

To date, only one traditional constitutional taboo in the German system of domestic security still stands, which is the fact that armed forces cannot operate inside the territory of the Federal Republic, not even in case of a natural disaster.

It must remain open here as to whether, and to what degree, the development of the national security forces as it has been portrayed here could have happened without the Schengen development. However, it is clear that the price to be paid by the people for their liberty to cross borders without passport control is high. And the price is further increased for the purpose of the prevention of terrorist threats under such circumstances.

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# Italy and Border Security in the Post-9/11 Era

# 6



LORENZO SEGATO  
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## Contents

Introduction	200
Italian Border Security	203
Physical Features of Italian Borders	203
Proximity to Other Countries	204
Presence of Criminal Organizations	205
Migration Flows	206
Fight against Illegal Migration	208
Legislation on Migration	209
Border Control in the European Union	211
Airport and Flight Security	211

Counter-Terrorism	214
Brief History of Terrorism in Italy	214
Jihadist Menace in Italy	215
Relevant Italian Literature Concerning al-Qaeda and the Terrorism Threat	220
Overview of the Main Italian Legislation on Terrorism	221
Legislation Pre-9/11	221
Legislation Post-9/11	222
Counter-Terrorism in the European Union and the United Nations	224
International Instruments	226
Italian Law Enforcement Authorities	227
Law Enforcement Functions for Border Control and Counter-Terrorism	230
Border Control	230
Counter-Terrorism	231
New Technologies	233
Counter-Terrorism at the Olympic Winter Games of Turin	233
Part II	235
The Impact on Travel across the Italian Border	235
Perspectives	237
References	238
Internet Websites	239

## Introduction

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Analyzing terrorism and its countermeasures is not an easy task, as the impact of 9/11 is still far from being fully recognized. Western states reacted promptly to the opening event<sup>\*</sup> of the al-Qaeda era with strong and muscular initiatives by starting an emergency “war on terror” (with largely expected results) and adopting tough laws that deeply modified citizens’ lives (see, for instance, the PATRIOT Act, or EU Reg. 1546/2006; also see Chapter 2). Even though seven years have passed since the terrorist attacks of 9/11, emergency laws remain in force despite the fact that the worldwide context of terrorism has changed. More resolute governments reacted by setting up counter-terrorism strategies meant to ease the fear, uncertainty, and insecurity many of their citizens felt. Furthermore, in the post-9/11 era, many aligned world leaders (such as Bush, Blair, and Berlusconi) coordinated their electoral platforms around a consensus of how terrorism should be addressed. With this has come a spike in the profits realized by those

<sup>\*</sup> September 11, 2001, although al-Qaeda had been well known by intelligence services even before.



security industries that have benefited from this heightened level of insecurity and government spending in the name of global security and counter-terrorism. Politicians have used the seriousness of the menace to justify restriction to our established freedoms and rights, and at the same time have shifted public funds toward security products.

International terrorism has become the *fil rouge* in wider themes, such as the progress of the European Union, migration flows from African and Asian countries, the fight against transnational crime, and globalization. The aftermath of 9/11 has undoubtedly changed political priorities and law enforcement actions, moving others problems onto the back burner. However, such problems remain challenges for Italy and Europe as a whole and are emerging again as the years go by. To date, over-exposition of the al-Qaeda threat in political debate is decreasing, and there is a sense of bewilderment about the real terrorist threat. Since 2001, Italians' perceptions of insecurity and fear related to terrorist attacks have gradually decreased with respect to other problems that hinder the everyday life of citizens (Eurobarometer, 56–69).<sup>\*</sup> People seem much more concerned about economic uncertainty, urban crimes and disorder, the environment, and migration flows, and less about jihadist threats. Wars in Afghanistan and Iraq have progressively eroded the consensus of citizens and have brought dramatic economic consequences worldwide, while doubts remain about the eventual benefits for Western countries. In spite of public opinion, pro-American governments continue to justify their fight against international terrorism in the name of global stability while at the same time causing established civil liberties to erode under new security measures.

Furthermore, migration issues have been *de facto* assimilated into matters of criminality<sup>†</sup> and terrorism. As Shaftoe et al. (2007) identify, most of the post-9/11 national and border security reforms intended to protect people have resulted in increased discrimination against specific ethnic and religious groups. This has strengthened national strategies against migration, mixing different problems and adopting restrictive policies without making distinctions about diverse purposes.

We have yet to see more reasonable, responsible, and forward-thinking laws being enacted to replace what should be considered temporary

<sup>\*</sup> According to European Survey reports, Italians' concern about terrorism has decreased from 92% in December 2001 to 2% in April 2008.

<sup>†</sup> Studies on video surveillance (Fonio 2007) demonstrate, for instance, that the use of CCTV can lie on a priori stigmatization of foreigners (being much more watched) and often violates the dignity of the citizens (e.g., women are watched by policemen through more careful and close shots).

emergency laws implemented shortly after 9/11, to open a “second phase” of the al-Qaeda era. This phase should start with a reliable assessment of opportunity, proportionality, and cost-effectiveness of counter-terrorism security strategies—especially in Italy, where national intelligence services assess the risk of jihad terrorist attacks as medium-low (Stevenson 2006). Even though it is difficult to assess the effectiveness of such strategies (in part because of the lack of information covered by “national security” secrecy that reduces the possibility of public control on government activity), steps are taken to access such matters. For example, a general analysis of the impact of al-Qaeda in our security measures is complicated by the nature of the crime (hidden, sudden, and non-conventional) and by the multi-complexity of the many factors that interact in modern societies. The number of variables and the need to ensure fundamental freedoms of citizens make it very difficult to predict the capacity of national security measures to prevent terrorism. In fact, Western societies remain highly vulnerable to terrorism: bombings in Israel, Pakistan, and Iraq, where the efforts for counter-terrorism and the military presence in the cities are at the highest level in recent history. This demonstrates that no level of security is sufficient to stop terrorism (see the recent bombing attack in Islamabad, where a massive truck bomb killed 53 people). On the contrary, strong security measures can have a displacement effect of terrorist attacks to less protected areas or to the gates of the protected area. Investments and procedures for aircraft and airport security have increased greatly in the past years, but this did not stop criminals from putting bombs in an airport parking lot (Madrid) or in public means of transportation (Madrid and London). On the other hand, the need for mobility between our cities and countries makes it impossible to implement levels of security effective for preventing terrorist attacks. In short, the nature of terrorism—which can use “normal” instruments for criminal purposes and can include the personal sacrifice of the criminal—hinder the probability of preventing criminal actions.

In a context where boundaries between member states are gradually disappearing, external EU borders are assuming more and more relevance in controlling access of persons and goods into “fortress” Europe, in particular for the criminal opportunities that can arise (such as making the illegal trafficking of human beings and drugs and smuggling easier). Thinking about how border security has changed for counter-terrorism can help in keeping the

\* Some authors view the “second phase” as the global war on al-Qaeda, anywhere, any time, by any means, after the first phase of immediate U.S. reaction to 9/11. For the purpose of this work, “second phase” has a different meaning from that used by many authors in the aftermath of 9/11, for instance, Jenkins (2002). We view the “second phase” as the “post-emergency” phase, in which the myth of the omnipresent enemy should be dismantled. This idea lies also in some analysts’ opinion that al-Qaeda, after 20 years of activity, is in a state of crisis. See, for instance, Byman (2008).

right balance between freedom and security, and in not being overwhelmed by the fear of al-Qaeda.

This chapter contributes to the debate by describing the state of Italian border security in the al-Qaeda era. The following pages first introduce an overview of Italian border security strategies for counter-terrorism. Law enforcement authorities' functions for counter-terrorism and border security are described before offering some concluding remarks. The chapter concludes with some thoughts on the impact of the al-Qaeda era on the cross-border movement of persons and goods as well as the mobility of foreigners within Italy.

## Italian Border Security

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### Physical Features of Italian Borders

One of the main factors for understanding border security in Italy is its natural shape. Italy extends as a quay\* within the basin of the Mediterranean Sea, a peninsula with some 10,000 kilometers of natural borders, closed to the north by the Alps, and by the Mediterranean Sea to the east, south, and west. Terrestrial borders† cover about 18% of the total, and follow the natural chain of mountains that divide Italy from bordering member states of Europe (Switzerland, Austria, France, and Slovenia). Historically, the orography of the Alps has always represented a protection for Italy to the north by creating a barrier to the entrance of foreigners, with few passes representing natural access points that facilitated the transit control of people and goods and the location of customs offices. On the other hand, smuggling and illegal entering into Italy from the north have always taken place, taking advantage of the natural paths crossing the mountains.

Maritime coastlines‡ represent the vast majority of Italian borders, characterized mainly by low coasts and sandy beaches. Protection of these borders is rather difficult, because the Mediterranean Sea is characterized by shallow waters and relatively short distances between opposite coasts, in particular between Italy and the Balkans.§ The opportunities for entering Italy illegally by the sea, even with small boats, are potentially infinite, as there are no

\* The average distance between the eastern and western coasts of Italy is about 250 km.

† About 1,878 km.

‡ More than 8,300 km.

§ For instance, to the east the Adriatic Sea is a narrow channel of water, and less than 75 km separate Italy from Albania in the Strait of Otranto (to the east). To the south, Tunisia is less than 150 km from Sicily over the Strait of Sicily. The presence of small islands within the Mediterranean Sea, belonging to Italy, further reduces the distances.

physical barriers for stopping a landing.\* The small island of Lampedusa, located between Sicily and the African coast, is well known for its natural beauty and tourist attraction. However, it is more famous now as the destination for clandestine landings and for the presence of a CPT† (Center for Temporary Stay), a prison-like structure where clandestine immigrants are kept until they are identified and their legal status (refugee or clandestine) is established.

### **Proximity to Other Countries**

In addition to geographical features, which create good opportunities for illegal migration and smuggling, another critical element for border security is that Italy borders the European Union, and so is sort of a proxy border to a number of non-EU countries. Maritime coasts of Italy border Croatia to the northeast, the Republic of Macedonia and Albania to the east, and the African coast countries—Libya, Tunisia, and Algeria in particular—to the south. None of these countries is part of the European Union, and in the past years they have provided little or no effective cooperation in controlling migration flows toward Italy.

The dissolution of the former Yugoslav Republic in 1992 and the subsequent conflicts worsened the situation. Wars and economic and democratic crises have in the past years generated a strong migration pressure of refugees toward EU countries, with Italy often being the first destination point.

Furthermore, those countries proximate to the European Union, including Turkey, have become transit countries for migrants coming from afar (World Bank 2006). The pressure of thousands of migrants from the East, attracted to living and working conditions in Europe, has increased since 1991, after the fall of the Soviet Union, with Albania, former Yugoslavia, and Turkey being used as transit countries (World Bank 2006). In this context, Italian police have been forced to face strong migration flows toward Europe, both legal and illegal. The entry into force of the Schengen Agreement, which has opened borders between European countries, has provided more incentives for migrants to enter Italy, as well as for people whose goal is the northern countries of Europe (also see the Epilogue [Chapter 10] in this volume).

\* Official data from the Ministry of the Interior: 15,378 aliens were detected by patrolling services in the southern regions during the period of January to July 2008.

† In Italy, there are Centers for Temporary Stay in Caltanissetta, Lampedusa, Ragusa, Trapani, Agrigento, Crotone, Lamezia Terme, Milan, Rome, Torino, Lecce, Brindisi, Bari, Bologna, Modena, and Gradisca D'Isonzo.

## Presence of Criminal Organizations

In the past years, criminal organizations have increasingly exploited Italy's borders for their transnational illegal affairs, because of the above-mentioned physical features as well as national and international legislation, which ensures protection for refugees, asylum seekers, and people in distress at sea. Criminal organizations have played a fundamental role in illegal migration and trafficking in human beings, following the routes of smuggling of drugs and goods (Interpol 2008). Italian organized crime has set up partnerships with similar organizations in Albania, Greece, Russia, and China for exploiting such businesses, and the progressive penetration of "exogenous" criminal organizations into the national territory has favored the evolution of criminal schemes for keeping control of the territories (Italian Ministry of the Interior 2008).

Historically, criminal organizations in Italy such as the *cosa nostra*, *'ndrangheta*, *camorra*, and *sacra corona unita* (briefly known as the Mafia) have been widespread in all regions, wielding their influence in the legal economic sector. In particular, their influence impacted public procurements in the use of structural funds and the purchase or control of legal activities; they also disregard "traditional" businesses in lieu of such criminal activities as trafficking in goods, drugs, and human beings. Police investigations have discovered increasing forms of cooperation with foreign criminal organizations from Eastern Europe, the Balkans, Asia, Northern Africa, and South America operating in Italy, in particular in drug traffic, illegal migration, trafficking of human beings, and the exploitation of prostitution.

For its southern location and its proximity with Albania, Apulia is one of the regions at higher risk for illegal migration. Criminal organizations in Apulia, structured in a plurality of *consorterie* (cliques) that are very adaptable and fluid, along with traditional businesses have "offered" their cooperation to international trafficking, in particular with ethnic groups specialized in trafficking in human beings, drugs, and counterfeited products (Ministry of the Interior 2008).

The main ethnic criminal groups operating in Italy are Albanians, Chinese, Romanians, Nigerians, Northern Africans, former Soviets, and South Americans.\* Albanian criminal organizations in the southern regions, and in Apulia in particular, are today well integrated within the local mafia. In this region, the Albanian mafia has capitalized on the geographical proximity and the mutual interest of cooperating. Relations across the Adriatic have reinforced criminal groups on both sides of the sea, and illegal migration is one of the most active sectors in the area. Criminal groups have

\* Information on national and ethnic organized crime can be found in the Rapporto Sicurezza 2006 of the Italian Ministry of the Interior.

sufficient resources to constantly evolve in order to frustrate cooperative countermeasures (such as coast guard, harbor surveillance, bilateral agreements for expulsion, and re-admittance) set up by the police forces of Italy and Albania. Traditional means for illegal entrance, such as fraudulent documents, are still in use, and the number of stowaways that are rejected daily at the maritime borders of Venice, Ancona, Brindisi, and Venice demonstrate this (Ministry of the Interior 2008). Furthermore, police investigations have dismantled several criminal groups given to the production of false or counterfeited documents.

The Romanian mafia is expanding the trafficking in human beings into the southern regions of Italy in cooperation with criminal groups operating in Albania, Moldavia, Ukraine, and the Russian Federation. Illegal foreigners enter Italy by hiding inside a truck or a car, or by traveling by train to Greece or Yugoslavia and then by boat, or by using charter flights. In addition, criminals from Northern Africa (i.e., Morocco, Tunisia, and Algeria) are involved in illegal migration schemes, though limited to favoring the illegal entrance of compatriots, while criminal groups coming from the former Soviet Union are largely involved in trafficking in human beings, in particular women for sexual exploitation or for the black market.

Although virtually all criminal organizations operating in Italy are involved in illegal migration, this is not their central business. However, the involvement of criminal groups makes the violation of border security easier and the presence of undetected aliens in Italy increasingly prevalent (Ministry of the Interior 2008).

## **Migration Flows**

Although there is no direct link between illegal migration and terrorism, the possibility of entering a country without being detected, or the presence of unrecorded aliens within the national territory, can favor criminality and increase the risks for terrorist attacks. The movements of persons between countries, caused mainly by economic inequalities between countries and by demographic pressure, have brought some 50 million foreigners from the East and South into Europe.\* Social and demographic changes in Italy have resulted in massive migration flows in recent years, thus increasing the perception among inhabitants of local communities that there are more foreigners than previously. This has resulted in political concern since the 1970s, when the first restrictions were made on cross-border movements by reducing the number of foreigners allowed

\* Source: IDOS (2007) XVII Rapporto Dossier Statistico Immigrazione Caritas/Migrantes, Pomezia.

to stay in Italy (quota restrictions for foreigners) (IDOS 2007). In contrast, national governments have never adopted legislative instruments that tackle the demand of migration flows, and this has contributed to the phenomenon of irregular migration, because some of the foreigners requested by the market are not allowed to enter Italy legally because of quota restrictions. According to an authoritative source of information on migration, Italy is one of the countries in Europe with the most immigrants: about 3.7 million foreigners regularly stay in Italy, of which between 540,000 and 760,000 are believed to be illegal immigrants.\*

If we consider only the flux of illegal immigrants coming by boat in the south of Italy during the first half of 2008, the average arrival constitutes 66 persons per day. This is because Italian coasts represent one of the main access points to Europe for those wanting to reach other European countries. The larger ethnic communities regularly staying in Italy are the Romanians (15.1%), Moroccans (10.5%), and Albanians (10.3%), and the migration phenomena have had consequences on the composition of the religious communities (Ministero dell' Interno 2007). The presence of foreigners in our cities, with different attitudes and cultures, nourished the perception of insecurity of citizens and the creation of the binomial *migrant-criminal*. The 9/11 events, together with the diffusion of Islamic religion within migrant communities across Europe and the growing attention toward international terrorism, have contributed in transforming the binomial from *migrant-criminal* to *migrant-terrorist* (Shaftoe et al., 2007). The growing presence of Muslims since the mid-1990s, and especially in the post-9/11 era, has caused concern about the connections between Islam and terrorism. Furthermore, the increase in the number of mosques and places for Muslim prayer (more than 730 in 2007, according to intelligence services) aggravate the sense of fear and insecurity among citizens. Current estimates account for more than a million Muslims regularly staying in Italy.

The management of migration flows involves direct border control policies. In particular, the illegal transit and residency of aliens within a nation has become a main concern for politicians and administrators, involving security policies, police role and functions, and the fight against organized crime.

\* See Ministero dell'Interno (2007), 1° Rapporto sugli immigrati in Italia.



## Fight against Illegal Migration

Italy has reinforced its law enforcement structures in an attempt to stop illegal aliens at the borders. This reinforcement has involved closer cooperation<sup>\*</sup> with other European Union member states. New administrative instruments (*decreto di respingimento*, *decreto di espulsione*, and *rimpatrio forzato*) and ad hoc structures (*Centri di permanenza temporanea*) have been adopted to manage the fluxes and the expulsion of undesirables from Italy. However, the aptitude of tackling the problem is still low: in 2006, police discovered 124,383 illegal aliens, but only 36.5% of them have been expelled or repatriated.<sup>†</sup>

The techniques for illegally entering Italy are numerous. The media often portrays the landing of “boat people” on Italian coasts and the concealment within cars or truck as common means of transportation for illegal migrants. However, the 22,000 foreigners who landed on Italian soil by sea in 2006 represents only 13% of all the illegal aliens staying in Italy, while the number of people who entered through normal access points (ports and airports) and then remained illegally in Italy is unknown. In general, the easiest and most common means for illegally remaining in Italy includes the request for a temporary visa (for instance for work, family reunion, study, or religion) and then simply staying on in the country after its expiration.

The police have set up permanent cooperation with other agencies operating at the borders, primarily the Ministry of Infrastructures and Transport, the Ministry of Foreign Affairs, the Italian Civil Aviation Authority, and Customs. Targeted anti-immigration services have been set up, with the support of mobile units and local police forces, to strengthen controls in the main Adriatic and Tyrrhenian ports.

Italy's established bilateral and multilateral (especially with the G-8) working relations have enabled Italy to produce best practices on international and domestic legal frameworks for border management, for preventing stolen and lost travel documents from being used by terrorists, and for preventing document forgery. Italy has also investigated how

<sup>\*</sup> Italy cooperates extensively with other EU member states in identifying and adopting measures to counter illegal immigration, including within domestic borders. Below is a list of the most significant actions:

- Cooperation with the European Agency for External Borders (Frontex), particularly for the 2006 Turin Olympic Games and the 2006 German World Soccer Cup
- Cooperation with the Police and Customs Cooperation Centers of France, Switzerland, and Austria
- “High-impact” trilateral operations between Italy, France, and Spain, and between Italy, Austria, Germany, and Slovenia
- Joint operations with Greece
- Joint operations with Germany, France, the United Kingdom, and Spain
- Joint control services at extra-Schengen borders, with mixed patrols at the Slovenian border and national patrols at the Swiss border

<sup>†</sup> See XVII Rapporto Statistico, p. 77.

intelligence can be effectively exchanged in order to combat transnational threats without violating personal privacy.

### **Legislation on Migration**

Italy became a country of structural immigration flows only in the early 1980s; consequently, migration policies are relatively recent. Before 1986, foreigners working or living in Italy had no instruments to regularize their status, and the Ministry of the Interior and the police were in charge of managing migration under the Code for Public Security (*Testo Unico e Leggi di Pubblica Sicurezza*) of 1935, which submitted foreigners to the discretionary use of powers by the police. Law 30 December 1986 no. 943 provided the first law on entrance and residence of foreign workers, while law 28 February 1990 no. 39 regulated migration under three pillars:

- Entrance and residence of foreign workers in Italy (annual quotes)
- Status and conditions for legal residence in Italy (residence permit)
- Fight against illegal and clandestine migration

The measures set up to fight this problem reinforced law enforcement capacities and created ad hoc administrative instruments. Since then, a number of legislative acts have provided the legal framework for migration in Italy.

An important norm is the law decree 18 November 1995 no. 489, which regulates the flux of immigrants as seasonal workers and which in different chapters regards entrance, expulsions, and penal dispositions for illegal migrants and for irregular employers, meeting of relatives, health assistance, final norms, and regularizations.

Issued three years later, the legislative decree 25 July 1998 no. 40 (*Testo Unico sull'Immigrazione*), more commonly known as the Turco-Napolitano Law, has as its aim the creation of a unique and exhaustive Code concerning the phenomenon of immigration and the condition of immigrants. It consists essentially of some innovative points:

- Reorganization of the fluxes' programming procedures
- Simplification of procedures regarding the entrance for work and the searching for work
- Integration projects policies: creation of CPTs (Centers for Temporary Stay)
- Contrast of illegal migration and criminal exploitation of fluxes

Law 30 July 2002 no. 189, also known as Bossi-Fini, amended the Turco-Napolitano Law by linking foreigners' permanence in Italy with the legal duration of their work contract. Moreover, the text concerns:

- Immediate expulsion of irregulars
- Abolition of immigration sponsorship
- Digital fingerprinting for all foreigners
- International cooperation in the fight against criminal exploitation of illegal migration
- General duties for the employer for ensuring decent conditions of the worker's life
- Simple rules for the asylum request
- The institution of a specific National Committee with the function of monitoring the application of norms

In order to meet the need of facing illegal migration and terrorism at the same time, the law decree 14 March 2005 no. 35 (turned with amendments into law 14 May 2005 no. 80), among other things, allocated 80 million euros to the Customs Agency to purchase equipment for port security. Moreover, 154 million euros was invested for the setting up of the SIS (Schengen Information System), with the function of enhancing the exchange of visa information between EU member states.

Enacted in the same period, the law decree 31 March 2005, no. 45 (urgent dispositions for the efficient administration of the public security) set rules and resources to increase the staff of Police, Carabinieri, and Forest Guards. While Article 5 attributed resources for the modernization and empowerment of police forces, Article 6 assigned 43 million euros for strengthening the fight against illegal migration. In particular, resources were directed at:

- The implementation of the European AENEAS cooperation program (EU reg. 491/2004), with the perspective of providing technical assistance to third countries on asylum and migration flows
- The prosecution of the reception services at border posts
- Supplying of instruments for tackling illegal migration in countries of origins
- Integration of interventions related to illegal migration into the national territory

Recent instruments issued on 21 May 2008 have provided new norms for dealing with illegal migration, specifically providing for the expulsion of illegal migrants and the confiscation of their flats (law decree *Misure urgenti in materia di sicurezza pubblica*). Draft law 733, (*Disposizioni in materia di sicurezza pubblica*) aims at introducing clandestine immigration as a crime,

norms for regulating money transfer services, and the extension to 18 months for the period of stay in the centers for identification and expulsion. The legislative decree *Ricongiungimenti familiari dei cittadini stranieri* has narrowed the chances for foreigners for family reunions and introduced a DNA test to verify blood relationships.

## **Border Control in the European Union**

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As discussed in several other contributions to this collection, free movements of persons in a European Union without internal border controls were set out practically in Schengen with the Agreements (1985 and 1990), followed by the Convention in 1995 that abolished controls on internal borders between the signatory countries, which was ultimately incorporated into the Amsterdam Treaty of 1999. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (known as Frontex)<sup>\*</sup> coordinates the activities of the national border guards in ensuring the security of the EU borders. The Agency cooperates closely with other EU partners that are involved in the security of external borders such as Europol (the European Law Enforcement Organization), CEPOL (the European Police College), and OLAF (the European Anti-Fraud Office).

In 2006, a multilateral project headed by Frontex involved sea patrolling activities in the Mediterranean Sea and the Atlantic Ocean to intercept fluxes of illegal migration coming from Morocco, Mauritania, and Senegal.

Directly involving Italy was the 2006 Torino Winter Olympics Frontex Project.<sup>†</sup> Operating at the air border sector, the project's aim was to:

- Increase the information exchange concerning the airport border checks of persons traveling for the purpose of the Olympic Games
- Monitor the threats at the external borders from criminals and illegal migrants taking advantage of the increased numbers of passengers

## **Airport and Flight Security**

As introduced with the Torino Project, after 2001, following the new geopolitical scenario and the international menace of terrorism, airport security

<sup>\*</sup> The Frontex Agency is headquartered in Warsaw, Poland.

<sup>†</sup> A total of 24 airports in 15 member states and one Schengen-associated country joined the operation (Austria, Czech Republic, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, the United Kingdom). Source: [http://www.dcaf.ch/border/ev\\_dubrovnik\\_070222\\_Wache.pdf](http://www.dcaf.ch/border/ev_dubrovnik_070222_Wache.pdf).

has become one of the strategic fields upon which to concentrate efforts and resources.

Italian aviation security devolves to the Presidency of the Council of Ministers, the Ministry of the Interior, and the Ministry of Transport. In practice, ENAC, the Italian Authority for Civil Aviation, has had the general responsibility for that since its inception in 1997. Following ICAO<sup>\*</sup> and ECAC<sup>†</sup> directives, ENAC duties are to define the National Program for [Aviation] Security, to monitor its implementation, and to entrust, under license, security and patrolling services within airports in cooperation with police forces. CISA,<sup>‡</sup> the Inter-ministerial Committee for Security in Air Transportation and Airports, defines the National Program for Airport Security Measures, in cooperation with the Head Offices and the Committees for Airport Security within airports.

The National Program for Security includes provisions for security checks of passengers and hand baggage, hold baggage, goods, mail, catering, provisions, diplomats, special cases, crew and airport staff, aircrafts, and airport infrastructures. It also comprises security measures for potential risks, special flights, and the guidelines for auditing critical infrastructures of airports. Security checks are utilized for preventing the boarding of dangerous materials (such as weapons and explosives) through metal detectors and x-ray machines. Supporting the purpose of enhancing the level of security in Italian airports, ENAC also has a highly specialized unit that deals with specific research activities in the field involving new technologies. Recently, this unit has provided new technological solutions that have been installed in some major Italian and European airports such as body scanners, radiogenic cabinets for identification of explosives, and radio control for perimeter and superficial defense.

Since 1992, airport security follows the privatization wave related to the necessity of reducing costs and the relocation of many police agents in other fields of public security. In every Italian airport, a Security Director of ENAC normally controls the correct application of the National Program by airport

<sup>\*</sup> ICAO (International Civil Aviation Organization) is a UN specialized agency that represents the global forum for civil aviation. It works to achieve its vision of safe, secure, and sustainable development of civil aviation through cooperation among its member states (source: <http://www.icao.int/>).

<sup>†</sup> ECAC (European Civil Aviation Conference) promotes the continued development of a safe, efficient, and sustainable European air transport system. It has two main purposes: harmonize civil aviation policies/practices among its member states and promote understanding on policy matters between its member states and other parts of the world (source: <http://www.ecac-ceac.org/index.php>).

<sup>‡</sup> CISA members are the Presidency of the Council of Ministers; the Ministries of the Interior, of Transport, of External Affairs, of Communications, and of Defense; the General Command of the Excise and Tax Police; the Customs Agency; ENAC; ENAV; Poste Italiane, Assaereo; Assaeroporti; and IBAR (International Board Airlines Representatives).

security management, air companies, and private security organizations. During emergencies, the Director collaborates with police forces (Frontier Police Office) to find ad hoc security solutions, and they both take control of the situation through Airport Security Committees (CSA).<sup>\*</sup> This body has strategic functions for general airport security and the security of passengers, as stated in its Airport Security Program. Moreover, it defines rules for emergencies and makes proposals for enhancing the level of security.

Serious measures against terrorism involving airports and aircraft have been taken since 2001, and following the attempted attacks in the United Kingdom in 2006, the European Commission issued Regulation 1546/2006, dealing with new security measures involving boarding a plane with liquids, which further modified the security check procedures at airport gates. According to an interview<sup>†</sup> with a civil aviation pilot and a flight attendant about the security before and during the flight, while the pilot holds the same functions as before, flight attendants now have more authority and responsibility, which are translated into the operational level. First, before the flight, cabin crewmembers have to confirm the identity of all people entering the plane (such as janitors and ENAC inspectors) and supervise their activities. During the flight, an important duty is to control any potentially dangerous behavior of some “unruly passenger”<sup>\*\*</sup> and keep such a passenger calm through a series of warnings, from simple verbal advice to immobilization.

Airport security has also been enhanced through the adoption of armored doors that protect pilot cabinets from incursions of passengers or explosives, and CCTV systems for surveillance of passengers and aircrafts. According to interviewees’ opinions such measures, instruments, and laws are efficacious,

<sup>\*</sup> Members of CSA are the Security Director of ENAC (who is also the president of the committee), one manager of ENAV (the Italian Air Traffic Control Agency), managers of the Frontier Police Office, Airport Customs, Carabinieri, Customs and Excise Police, and Fire Agents.

<sup>†</sup> Questions:

- Which are the main changes in functions and operations you have to deal with in the air and at the airport after September 11, 2001?
- Have there been changes or modifications of onboard security instruments?
- What do you think about the new measures, instruments, and laws? Do they seem to be efficacious for the security of passengers and that of the airplane’s crew? What are the main limitations, and what would you propose to enhance the aviation security system?
- Depending on the destination, what are the zones you think to be safer, either in Europe or in other extra-European areas?
- How do you consider Italian civil aviation security level, compared to others?
- Do you find differences in passengers’ attitudes and perception of security after September 11? (only for the flight attendant).

<sup>\*\*</sup> The term “unruly passenger” refers to passengers who fail to respect the rules of conduct on board aircraft or fail to follow the instruction of crew members and thereby disturb the good order and discipline on board aircraft (source: ICAO Circular 288, “Guidance material on the legal aspects of unruly/disruptive passengers 2001”).

but only for any menace coming from passengers, while problems can arise from personnel, the goods of catering, and baggage services. In fact, there are only random controls on them, and the crew is informed about their content by a cargo form. An intelligent proposal (suggested by the pilot) could be to create an x-ray slipway to inspect all contents before coming on board. Crew members also criticized the lack of personnel and resources for security; in particular, they underlined the need for more police agents and for a more systematic planning of airport security.

Concerning security at destinations, survey results reveal that respondents feel British and German airports are safer than most other European airports because of greater police capacity to react promptly to any threat. According to their point of view, Italy has a medium-low security level when compared to other airports' systems; although in respect to the last question, after September 11, 2001, passengers demonstrate more attention to security instructions and a certain respect for the crew's role.

## Counter-Terrorism

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### Brief History of Terrorism in Italy

The history of modern national terrorism in Italy can be traced back to the end of World War II, with the reorganization of neo-fascist movements (right-wing matrix) aimed at destroying democratic institutions and popular rights. The explosion of social conflicts in the 1970s favored the growth of left-wing movements, which were inspired by Communist ideologies, with the birth of such terrorist groups as the *Brigate Rosse* and the *Nuclei armati proletari*. These groups were involved in an armed fight to hit the State and the middle class, with the intention of starting a revolution through assaults and homicides. One of the main deeds involving the *Brigate Rosse* was the murder in 1978 of Aldo Moro, the leader of the *Democrazia Cristiana* and two-time Prime Minister of Italy. After the 1980s, terrorist movements began to lose strength, and over the past twenty years they have evolved to new forms and adapted to the transformations of society. In particular, the new movements are less tied to traditional left-wing opposition and reach out more to the international scenario.

In addition to these movements, Italian terrorism also involved groups linked to the Mafia's organizations and organized crime, which represented—and still represent—a serious menace for the State and public security. As a response to the growing number of victims at the beginning of the 1990s and the murders of the anti-Mafia judges Giovanni Falcone and Paolo Borsellino, the Italian government started the war against the Mafia by deploying soldiers in certain hot spots of organized crime. Operation *Vespri Siciliani*



(1992–1998) was the first major law enforcement intervention carried out by the Italian Army against the Mafia.

Since World War II, the Italian police have been sensitive to the internationalization of terrorism and the risk of terrorism that was being inspired by Islamic ideologies—especially in the aftermath of 9/11. In 1999, following inputs from American FBI and CIA, the Italian Police were already aware of bin Laden’s terrorist activities.

### **Jihadist Menace in Italy**

In the 2008 annual report on security (*Relazione sulla politica dell’Informazione per la Sicurezza*) of the Department of Information on Security (*Dipartimento delle Informazioni per la Sicurezza*) of the Italian government, threats are classified into four classes: those potentially and quickly lethal for a large number of citizens; those potentially lethal but limited in extent; long-term and dreadful threats (with special reference to weapons of mass destruction); and risks related to national heritage (material and intellectual). While subversive or national terrorism belongs to the second class, the jihadist menace belongs to the first class for its highly serious, lethal consequences, as well as for its transnational and national organized crime.

The AISI Agency (*Agenzia Informativa e Sicurezza Interna*) reports that the extremist presence within Italian borders has the main function of giving support to the international Islamic organizations and of recruiting new mujahedin volunteers. During 2007, the CASA (*Comitato di Analisi Strategica Antiterrorismo*) examined 230 cases of threats against Italy and realized that 79.5 percent of them were from jihadist groups, but affirmed that relative to other countries Italy has a low-level risk. According to the Europol’s *EU Terrorism Situation and Trend Report 2008*,\* Italy had no registered Islamist attacks, but there were 21 arrests of suspected terrorists and 44 verdicts for the charge of terrorism. Following are three boxes referring to Islamic terrorism against Italy. In particular, Boxes 6.1 and 6.2 show terrorist threats and acts, and Box 6.3 deals with the deportation of the Imam Abu Omar and other cases.

(Text continues on p. 220)

\* Available at: [http://www.europol.europa.eu/publications/EU\\_Terrorism\\_Situation\\_and\\_Trend\\_Report\\_TE-SAT/TESAT2008.pdf](http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2008.pdf).

**Box 6.1 THREATS OF ISLAMIC TERRORISM  
AGAINST ITALY AFTER SEPTEMBER 11TH**

24 June 2002: An Islamist terror group linked to al-Qaeda is suspected of plotting to blow up Bologna's most important church to erase the offense of a 15th-century Gothic fresco showing Mohammed being tormented by devils in hell.

11 July 2002: With a new threat by bin Laden's men, al-Qaeda plans to destroy Hebraic buildings in Italy.

18 November 2002: During an interview for Italian TV, the Imam of Carmagnola (Turin), Abdul Qadir Fadallah Mamour, affirms that Italy will be hit if Italians do not stop persecuting mujahedin.

19 October 2003: A new audio recording from Osama bin Laden affirms: "We will keep the right to hit every country that collaborates with the American Army, included Great Britain, Spain, Holland, Poland, Australia and Italy."

24 December 2003: Using a note reported by SISDE (Intelligence and Democratic Security Service), an inquiry of Procura della Repubblica of Milan evaluates the responsibility of two Somalian people linked to the group of Al-Ittihad al-Islami to have planned the assassination of Premier Silvio Berlusconi.

12 March 2004: A new threat coming from the Brigade of Abu Hafsa al-Masri, which affirms: "Who will protect you—Great Britain, Japan, Italy and the others—from us?" and "When we attacked Italian soldiers in Nassiriya and gave you (Aznar) and U.S. agents an ultimatum ordering you to give up the anti-Islamic alliance, you didn't understand the message. Now we have made this message clear."

9 April 2004: A new serious terrorist alarm comes from the notice that jets are ready to take off and to attack St. Peter's Basilica. Fortunately, countermeasures taken by the Minister of the Interior and the Police forces prevent this action.

7 May 2004: In an audio recording attributed to bin Laden, rewards in gold are offered for the killing of U.S. and UN officials in Iraq as well as citizens from other countries such as Japan and Italy who are in Iraq.

18 July 2004: An Islamic threat affirms: "Italian people, your government is participating in Iraqi's war and has sent their troops and weapons. We invite you to retire your army peacefully."

2 August 2004: An ultimatum of the Abu Hafs al-Masri Brigade states: "We are mobilizing our sleeper cells in Rome and in other Italian cities. We're giving Berlusconi 15 days to pull out of Iraq, after which we shall no longer be responsible for the deaths to follow. We have warned you in other messages asking for the withdrawal [of Italian troops] immediately. But we have seen nothing ... Now we shall speak to you in the language of blood."

11 August 2004: Another threatening message directed at Silvio Berlusconi is signed by the Abu Bakr al-Siddiq Brigade: "Berlusconi, we have you in our hands and we will slit your throat like a sheep."

12 August 2004: A new threat from Abu Hafs al-Masri Brigade states: "Either you get rid of that incompetent Premier Silvio Berlusconi or Italy will truly burn." A deadline of 15 August was given by the militant group for Italy to remove its forces.

15 August 2004: Italian intelligence reports to the Minister of the Interior that probably a Ford Transit was circulating in Italy full of explosives.

27 August 2004: A group of Sarajevo's Carabinieri states that Islamic terrorists are planning to destroy St. Peter's Church and the Vatican with C4 plastic bombs.

8 November 2005: An Internet Website reports the threat of a future terrorist act against Italy. This message is posted by a man who is known as Sayf al-Adel.

3 April 2007: The Imam of Turin, Mohammed Kohalia, was secretly filmed during one of his sermons, urging worshippers to hate Jews and Christians, and to pray for their deaths.

21 July 2007: Operating in a Mosque of Perugia, a small extremist cell allegedly ran what Italian police say was a "terror school" that trained in hand-to-hand combat, bomb making, and airplane piloting.

17 June 2008: Italian Prime Minister Silvio Berlusconi and the Italian journalist Magdi Allam, who recently converted to Christianity, are the targets of new death threats posted on one of the most popular Islamist Websites said to be close to al-Qaeda.

*Source: Journal Websites*

### **BOx 6.2 iSLAMiC TERRORiST ACTS AGAiN ST iTALy AFTER SEPTEMBER 11TH**

Italy had always concentrated its resources and efforts primarily against internal terrorist activities that have been related to the political scene. In fact, with the exception of some isolated cases of Islamic terrorist action, most of the incidents have come from internal groups and persons who subscribed to extremist political ideologies, which typically are derived from right or left parties. However, after the recent Twin Towers disaster in New York, the “face” of terrorism gained a focus of attention and interpretation. Italy, and the world, turned its attention to the Islamic matrix, which includes both religious and political aspects. The first relevant episode of Islamic terrorism against Italy is the Nassiriya bombing (November 12, 2003), a suicide attack on the Italian military police headquarters in the Iraq city of Nassiriya, about 225 miles southeast from Baghdad. It started with a shooting against the police checkpoint on the main road of the building, and then ended with the enormous explosion of a truck full of explosive material. It provided tragic consequences: at least 28 people were killed, including 17 Italian carabinieri and 11 civilians (two Italians and nine Iraqis), and more than 100 people were injured (nineteen Italian soldiers among them).

The second was the kidnapping of four Italian security contractors in Iraq (Umberto Cupertino, Maurizio Agliana, Salvatore Stefio, and Fabrizio Quattrocchi), perpetrated by the extremist Islamic group Green Mujahedin Brigade (April 13, 2004). While three of them were freed in a bloodless raid by U.S. troops, Quattrocchi was killed on the 29th of the same month in a terrible way by his executors, who made a videotape of his death.

Another execution in Iraq is that of the Italian freelance reporter Enzo Baldoni, taken hostage by the Islamic Iraqi Army on August 20, 2004, and killed on the 26th by the same terrorist group. On December 16, the Islamic Movement of Iraqi Mujahedin killed the photojournalist Salvatore Santoro.

Finally, the most recent event connected to terrorism is the abduction of Giuliana Sgrena (an Italian reporter of *Il Manifesto Journal*) by the Islamic group of Mujahedin without Borders. After she was released on March 4, 2005, her car was shot at by U.S. agents and Italian agent Nicola Calipari died.

*Source: Web*

**Box 6.3 THE ABU OMAR CASE AND OTHER  
IMAMS ACCUSED OF IN CITING TERRORISM**

The former imam of Milan (Italy) Hassan Mustafa Osama Nasr, also known as Abu Omar, was abducted on February 17, 2003, in Milan by the CIA while going to the mosque and was transported to nearby Aviano Air Base before being transferred to Egypt, where he was secluded and interrogated, and was subsequently tortured. The CIA operation interrupted the investigation by Italian authorities concerning Nasr (Abu Omar) about his alleged membership in Islamic terrorist organizations. Nasr was released in February 2007 because his detention was unfounded and also because he had not been indicted for any crime in Italy. The event was carried by the international press as one of the well-known and clearer cases of extraordinary rendition carried out by the United States Central Intelligence Agency in the context of the global war on terrorism.

After September 11, considerable attention has been concentrated on (and sometimes against) Islamic people and leaders of Islamic centers. The first case is the deportation, authorized by the Interior Ministry, of the Senegalese Imam Mamour Fall because of his support of Osama bin Laden after he predicted more attacks on Italians in Iraq and Afghanistan (November 2003). Another episode is the expulsion from Turin of Imam Bouiriqi Bouchta (September 2005). He was accused of inciting violently anti-Western behavior and of having relations with extremists close to militant jihadists. Recently, another example is the sentence against Abu Imad, the Imam of Milan, found guilty for criminal association, aggravated by conspiracy for terrorism (December 2007). These are a few cases, but there are many episodes concerning investigations, arrests, and expulsion of imams and Islamic people from Italy, although sometimes the European Community invalidates such sentences.

*Source: Web*

## Relevant Italian Literature<sup>\*</sup> Concerning al-Qaeda and the Terrorism Threat

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After the events of 9/11 the Italian literature about al-Qaeda began to blossom as the media and academic scholars attempted to analyze and understand the phenomenon from a scientific perspective or a personal point of view.

Relevant scientific publications include those of *Centro Studi per la Pace*,<sup>†</sup> such as *Terrorismo internzionale: riposta dello stato italiano* (Palma 2002), which explains the new crime of international terrorism as introduced by the Italian Penal Code. With a comparative overview of the different reactions toward terrorism in democratic states, *Terrorismo, emergenza e costituzioni democratiche* (Bonetti 2006) analyzes national and international legal instruments that have been introduced to combat the risk of terrorism as well as the efficacy of the laws for respecting major rights, such as life, safety, and privacy.

Others refer to the Italian contribution to the NCTB (*National Coördinator Terrorismebestrijding*) counter-terrorism project (Transcrime 2006), aimed at providing an overview of the Italian legislation and measures against terrorism from 1990 to September 1, 2005.

From multiple perspectives, ITSTIME's<sup>‡</sup> *Le nuove sfide del terrorismo metropolitano* (Lombardi et al. 2007) describes the modern scenario of urban terrorism while analyzing its potential risk and the response of people and authorities.

Another noteworthy publication on the matter concerns a series of Italian essays on al-Qaeda that have been written by journalists, reporters, and judges. Magdi Allam, the Italian-Egyptian vice-director of the *Corriere della Sera* newspaper, is one of the most well-known writers to reflect on Islam and its forms of extremism, such as the global jihad of al-Qaeda. In *Bin Laden in Italia—Viaggio nell'Islam radicale* (Allam 2002a), the author reveals that in 2002 Italy offered refuge to hundreds of mujahedin<sup>§</sup> who were not neutral to the State for their participation in Afghanistan military operations. The same year, Allam (2002b) offered some reflections on how and why Osama bin Laden was able to engage in the types of Islamic extremism that

<sup>\*</sup> The purpose of this section is not to provide a complete list or references of Italian researchers and writers concerning al-Qaeda, but to introduce some interesting and useful contributors.

<sup>†</sup> The *Centro Studi per la Pace* has the purpose of promoting knowledge about international law regarding conflicts and human rights, and for promoting peace and toleration among people.

<sup>‡</sup> ITSTIME is the Italian Team for Security, Terrorist Issues, and Managing Emergencies (Università Cattolica del Sacro Cuore of Milan).

<sup>§</sup> The Islamic fighters.

he did and why there is a certain degree of incompatibility between splinter forms of Islam and the West.

Italian journalist Lilli Gruber, war correspondent and a close observer of the Islamic world, in his *L'altro Islam: Un viaggio nella terra degli Sciiti* (2005) shows the aftermath of the Iraq War after U.S. troops took control of Baghdad. Beyond the daily attacks, decapitations, and torture she describes the world of Shiites (the “other Islam”), who had always been persecuted by Saddam’s regime.

Public Prosecutor Stefano Dambrosio and Guido Olimpio (2004) address the outcome of the investigations on the presence of terrorist cells within the city of Milan and in Lombardy in their book *Milano-Bagdad. Diario di un magistrato in prima linea nella lotta al terrorismo islamico in Italia*.

In summary, it can be seen that the Italian media and academic scholars have engaged in considerable debate and discussion about terrorism and issues related to it; the al-Qaeda movement and its proliferation, threats, and attempts; and the reaction of the Italian law enforcement authorities. Nevertheless, with the exception of airport security, border control is not yet considered a relevant topic connected to terrorism by the vast majority of Italian society.

## **Overview of the Main Italian Legislation on Terrorism**

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Italian legislation pertaining to terrorism can be divided into two periods: pre- and post-9/11, with the majority of laws being enacted in the post-9/11 period.

### **Legislation Pre-9/11**

Although not directly referring to terrorism, law 19 March 1990 no. 55 (new dispositions for preventing the mafia criminal activities or other kinds of crimes that are extremely dangerous to the public security) was the first legal instrument that allowed for the prosecution of identified members of terrorist groups or organizations. With the passing of the law, public prosecutors could investigate aspects of suspects’ lives and examine their financial assets and patrimony through the Excise and Custom Police or Judicial Police, in order to assess the regularity (or irregularity) of their activities.

Later in 1990, laws 20 October 1990 no. 302; 23 November 1998 no. 407; and the presidential decree 28 July 1999 no. 510 were legislated. They regulate benefits in favor of the victims of terrorism and organized crime.



## Legislation Post-9/11

At the end of 2001, the Italian government issued two legal instruments to address international terrorism. The law decree 12 October 2001 no. 369 (urgent measures to repress and contrast international terrorism financing), becoming law 14 December 2001 no. 431, created a financial security committee (CFS) aimed at finding patrimonies or suspect financial operations in order to refer them to the United Nations Council Sanctions Committee. In addition, the law decree 18 October 2001 no. 374 (urgent dispositions to face international terrorism), becoming law 15 December 2001 no. 438, criminalized terrorist associations, punishing those who provided assistance to their members, and introduced new instruments of investigation concerning cover operations and preventive interceptions.

Then in 2003, with the enactment of law 14 January 2003 no. 7, Italy ratified and implemented the International Convention for the Suppressing of the Financing of Terrorism (New York, 9 December 1999), while the law decree 4 February 2003 no. 13 (enacted into law 2 April 2003 no. 56) and the law 3 August 2004 no. 206 were aimed at regulating benefits in favor of victims of terrorism and organized crime.

Under law decree 27 July 2005 no. 144 (becoming, with amendments, law 31 July 2005 no. 155), the legislation dealt more specifically with innovations for counter-terrorism. For example:

Article 1 extends the powers of Police forces for investigative interrogations in battling terrorism.

Article 2 authorizes the release of temporary visas to foreigners who help the police forces or the Judiciary.

Article 3 extends the powers of the Government (the Ministry of the Interior or the prefects) to immediately exclude foreigners from the national territory.

Article 4 extends the powers of the secret services in order to prevent terrorism.

Article 5 prescribes the involvement of all Police forces in anti-terrorism investigations: in case of terrorist attacks of particular seriousness, the Ministry of the Interior sets up special multi-agency investigative units, and the public prosecutors have to make use of such an agency for investigative action.

Article 6 modifies the rules on telephonic or telematic data. For example, requests to get a SIM card require providing ID documentation (for the client) to the store. In addition, mobile phone companies are now obliged to keep data on traffic either of phone calls or of simple “rings.”

Article 7 sets the commitment of getting a license from the *Questore* (the head of police provincial administration) to open or to maintain a Phone Center.

Article 8 gives to the officials of the special body of the Ministry of the Interior for the safety of telecommunication services the powers for undercover police operations.

Article 9 puts under control flight licenses and the admission to training courses, while Article 9bis set resources to increase security in airports by authorizing the national authority for civilian flight (ENAC) to allocate 5 million euros for investments in airport security.

Article 10 allows the police to take organic samples (hair or saliva) in a compulsory way, and put new crimes in the criminal code (e.g., the possession or making of counterfeited documents).

Article 11 increases security of temporary visas by introducing specific anti-counterfeiting measures.

Article 15 introduces three new crimes in the criminal code, namely terrorist recruitment, terrorist drilling, and the conduct of international terrorism.

Article 18 opens the possibility to subcontract security services to private companies in ports, railway stations, underground stations, and deposits. Article 18bis includes provisions that widen the powers granted to the military when used for surveillance and control of targets for “specific and exceptional necessity,” according to Law 189/2001. In this case, soldiers can identify, arrest, and search anyone suspected by unjustifiable “behavior or presence in a specific place or time.”

Article 19 finances increased security measures for the XX Olympic Winter Games in Turin.

Law decrees 30 December 2005 no. 272 (becoming with amendments law 21 February 2006), 3 April 2006 no. 135, and 27 September 2006 no. 260 authorized the Police (*Polizia di Stato*) to engage new police officers for “preventing organized crime and terrorism.” (The financial investment for increasing the number of police officers was 8,650,000 euros.)

More recently, law decree 29 December 2007 no. 249 (urgent measures of expulsions for preventing terrorist acts and concerning public security) established the expulsion (validated by a judge) of European citizens out of the State from a minimum of five years to a maximum of ten years. If the person violates the prohibition, that person will be imprisoned for a maximum of three years (expulsion concerning public security) or four years (expulsion for preventing terrorist acts) and expelled immediately after his or her release.

Even if not specifically referring to counter-terrorism, law 24 July 2008 no. 125 established the presence of 2,500 Italian soldiers in the major Italian cities to prevent and respond to crimes, to defend state property, and to ensure public safety. With the exception of the war against the Mafia in the early 1990s, this is the first time that the army took part in joint operations with police forces for public security purposes.

## **Counter-Terrorism in the European Union and the United Nations**

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Italy has been one of the member states of the European Union since its foundation in Rome in 1957, and in this position it contributes to the development of common policies, to which it is consequently subject.

Since 2001, the European Union has developed policies on external security and the strategy against international terrorism as one of the major world interlocutors. On November 6, 2007, the Commission adopted a package containing a series of proposals dealing with the criminalization of terrorist training, the recruitment and public provocation to commit terrorist offenses, the prevention of the use of explosives by terrorists, and the use of airline passenger information in law enforcement investigations, as well as on the implementation of the Framework Decision on combating terrorism.\* The EU counter-terrorism strategy, briefly, can be summarized as follows:

The strategic commitment of the Union is to combat terrorism globally while respecting human rights and to make Europe safer, allowing its citizens to live in an area of freedom, security, and justice. The Strategy groups all actions under four headings: PREVENT, PROTECT, PURSUE, RESPOND.

To combat terrorism effectively all Member States must ensure that all their relevant national services coordinate their activities and operate based on sufficient capabilities.

\* Taken from the 2008 report "Implementation of the Strategy and Action Plan to Combat Terrorism," available at <http://register.consilium.europa.eu/pdf/en/07/st15/st15411-re01.en07.pdf>.

In order to succeed in fighting terrorism and organized crime, which are sometimes interconnected, a sufficient flow of information at national and international levels has to be ensured. However, considerable deficiencies remain in sharing information at a national level. Despite a general trend among the Member States in favor of a “multi-agency” approach, those deficiencies constitute one of the main obstacles to cooperation at the European level. They relate chiefly to the lack of platforms bringing together the different agencies (police, customs, FIU, etc.) and to insufficient links between the agencies’ databases.

The first objective of the counter-terrorism strategy is to prevent people from turning to terrorism by tackling the factors or root causes which can lead to radicalization and recruitment, in Europe and internationally. The Internet has been identified as a key vector for the spread of terrorist propaganda and recruitment, and for bomb-making instructions. A Media Communication Strategy, approved by the Council in July 2006, aims to challenge inaccurate depictions of EU policies and to undermine terrorist propaganda, which distorts conflicts around the world as supposed proof of a clash between the West and Islam.

The second objective of the counter-terrorism strategy is to protect citizens and infrastructure and reduce vulnerability to attacks, inter alia through improved security of borders, transport, and critical infrastructure. With the adoption of the Council Decision on the establishment, operation, and use of the second generation Schengen Information System (SIS II), the legal basis for the SIS II has been completed. The Commission has confirmed that the technical part of the SIS II project should be finalized by December 2008. Following the extension of the current SIS (SISone4all project) and the successful evaluation of nine Member States that joined the EU in 2004, the abolition of border checks (land and sea borders) for the new Schengen members will take place in December 2007 and the abolition of air borders in March 2008.

The third objective of the European strategy against terrorism is to pursue and investigate terrorists across EU borders as well as globally to impede planning, travel and communications, to disrupt support networks, to cut off funding and access to attack materials, and to bring terrorists to justice. There has still not been much progress on the abuse of the non-profit sector by terrorist financiers. At the current stage of discussions, it appears that there are significant differences between practices in the Member States, allowing limited scope for comprehensive EU level legislation in this area. However, while implementing their own rules individually according to the FATF criteria, Member States could continue to explore further the scope for a common EU approach to certain aspects of reducing NPO vulnerabilities to criminal (terrorist) infiltration.

The fourth priority of the EU’s counter-terrorism strategy is to prepare the EU, in a spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with the aftermath, the coordination of the response, and the needs of victims.

## International Instruments

The Declaration on terrorism of the European Council of March 25, 2004, requested the adoption and implementation of a list of legislative instruments by member states.\* The laws that adopted international instruments on terrorism are

- \* To date, Italy has adopted the following legislative instruments:
- Framework Decision of 13 June 2002 on the European Arrest Warrant;
- Framework Decision of 13 June 2002 on Joint Investigation Teams;
- Framework Decision of 13 June 2002 on Combating Terrorism;
- Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;
- Decision of 28 February 2002 establishing Eurojust;
- Framework Decision of 22 July 2003 on the execution of orders freezing property or evidence;
- Framework Decision of 24 February 2005 on attacks against information systems (2005/222/JHA);
- Decision of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences;
- Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Protocol of 30 November 2000 amending the Europol Convention;
- Protocol of 28 November 2002 amending the Europol Convention and the Protocol on the privileges and immunities of Europol; and
- Protocol of 27 November 2003 amending the Europol Convention.
- The same happens with United Nations, and the implementation of international Treaties and Regulations. Italy has ratified the following United Nations Instruments:
- Convention on Offences and Certain Other Acts Committed Onboard Aircraft of 14 September 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973;
- International Convention against the Taking of Hostages of 17 December 1979;
- Convention on the Physical Protection of Nuclear Material of 3 March 1980;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 24 February 1988;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1 March 1991;
- International Convention for the Suppression of Terrorist Bombings of 15 December 1997; and
- International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

- Legislative decree 6 November 2007 no. 192, which consists of the actuation of the Directive 2004/36/CE, regarding the security of foreign aircraft entering European airports
- Legislative decree 21 November 2007 no. 231, which represents the actuation of the Directive 2005/60/CE, regarding the prevention of the use of financial systems to launder money deriving from illegal activities and for financing terrorist acts

Along with other member states, Italy is playing an important role in the designing of modern anti-terrorism legislation and policies. On the other hand, part of the Italian national security strategy—including terrorism and border security—has supra-national origins.

## Italian Law Enforcement Authorities

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This section describes law enforcement scenarios in Italy, in particular with reference to counter-terrorism and border security. In 1774, the King of Sardinia Victor Amadeus III founded the Legion Light Troops, a special military body with the responsibility of financial control and the defense of kingdom borders. After the fall of Napoleon, King\* Victor Emmanuel of Savoy created a military corps in the footsteps of the French Gendarmerie, named the Royal Carabinieri. Its functions were to “contribute to State prosperity, ensure order and public security, ... protecting good subjects, and punishing offenders,” and they were subject to the (modern) Minister of Defense.† In the 1850s, King Charles Albert of Savoy established a new law enforcement body under control of the Ministry of the Interior, the Corps of Guards of Public Security, and set up a new Administration of Public Security, with the functions of overseeing and preventively ensuring law enforcement respective of public and private interests.

In less than a century, the ancestors of the modern Italian Republic had created three different law enforcement authorities, with sometimes overlapping duties and functions. This model has been unchanged for years. Historically, the coexistence of plural police forces has generated forms of

\* At the time of the Vienna Congress of 1814, the Kingdom of Sardinia covered the territories of modern Sardinia, Piedmont, and Liguria.

† See the preamble of Regie Patenti (Royal Patents) of 13 July 1814.

competition<sup>\*</sup> more than cooperation, with negative consequences<sup>†</sup> on the effectiveness and efficacy of law enforcement (Barbagli and Sartori 2003). Despite the opinion that “there are too many police forces and police officers in Italy, badly trained and equipped” (Savona 2000), the situation gradually improved, in particular since 1981, when law no. 121 set the modern organization of law enforcement authorities.

Law no. 121 states that the Minister of the Interior is the National Authority for Public Security, which holds the general direction and responsibility of the security policy in Italy and the coordination of all national police forces (Article 1). To accomplish this function, the Minister operates through the Administration for Public Security, which includes the Department for Public Security<sup>‡</sup> at the ministerial level, and the *Prefetture* and *Questure* at the local level. The Administration includes both civil servants and police officers, as the *Polizia di Stato* belong to the Department of Public Security. Other police forces<sup>§</sup> do not belong to the Department of Public Security,<sup>¶</sup> but depend functionally upon the Ministry of the Interior for the functions of public order and security and can be considered part of the Administration of Public Security.

The Army (*Esercito*) can be involved in ensuring public order and security, in cooperation with law enforcement agencies, in areas where particular

<sup>\*</sup> In particular, the Police and the Carabinieri have similar jurisdictions and divisions. For instance, they both are engaged in basic activities (e.g., road safety), they both hold special units for hostage rescue, and they fight against terrorism and terrorists: the Police has the NOCS (Nucleo Operativo Centrale di Sicurezza), while the Carabinieri have the GIS (Gruppo di intervento speciale). The fact that the same Ministry of the Interior, during the years 1977–1978, created the two special corps, with almost the same functions, is a demonstration of how competition can generate negative effects.

<sup>†</sup> Despite the EU Decision of 1991, the lack of cooperation between different agencies blocks the adoption of the single emergency number (112), so there are different numbers according to the type of emergency, with serious consequences on people rescue. See, for instance, Sicurezza, 45 minuti ad aspettare a vuoto l'arrivo dei soccorsi (Nov. 20, 2007), *Il Giornale*, (retrieved Feb. 14/08). Emergency numbers are: Carabinieri (112), Police (113), Fire Brigades (115), Ambulance (118), Forestal Police (1515) only for forest fires, maritime emergency (1530), Tax police (117).

<sup>‡</sup> According to the last reform of 2001 (D.P.R. 398 of 7 September 2001), the Ministry of the Interior comprises five Departments (internal affairs, public security, civil liberties and migration, fire brigades, civil protection, and emergency service).

<sup>§</sup> Art. 16 of Law 121/81 identifies the jurisdictions of law enforcement agencies for order and public security: Police (*Polizia di Stato*) and Carabinieri (*Arma dei Carabinieri*), military police in permanent service for public security, cover the full range of police services. Customs and Excise Police (*Guardia di Finanza*) can cooperate in “supporting maintenance of public security and order.” Penitentiary Police (*Polizia Penitenziaria*) and Forest Rangers (*Corpo Forestale dello Stato*) can concur in fulfillment of services of public security and order.

<sup>¶</sup> The Carabinieri army is hierarchically under the Ministry of Defense (recruitment, discipline, administration, armor, equipment), the Tax Police is under the Ministry of Finance, the Penitentiary Police under the Ministry of Justice, and the Forest Rangers under the Ministry of Environment (Law 36/04).



events can hinder the safety of the communities. The cooperation was recognized officially in Law 382/98, which ascribed to the Navy and Army the role of “concurring to the safeguard of free Institutions.” In 1992, the Army was used to fight organized crime in the southern regions and to control illegal migration. On occasion, soldiers were given the qualification of Agents (*Agente di pubblica sicurezza*) with immediate powers of identification and search of persons and vehicles.

More recently, Law 331/2000 gave to the Army the subsidiary competence on security “in case of national disasters or in other cases of extraordinary emergency” (Art. 1 co. 5), while Law 128/2001 confirmed the cooperation between the Army and law enforcement agencies without the necessity of specific legislative acts of authorization, but under specific agreements at a local level.

The organization of law enforcement authorities in Italy maintains traces of the evolution of the historical context already described, and traces of the old haphazard exist in Law 121/81.\* Recently, the Ministry of the Interior has recognized “problems of superimposition of jurisdictions of more police forces in the same functions”† and that Italy needs a definitive reform of policing. Police forces have never been reduced in number—on the contrary, there is a general demand‡ for increasing powers for local administrative police, and they have kept general functions of judiciary police and public security. The last reform of 2006 rearranged the special functions (*comparti di specialità*) between police forces: police exclusively hold the special function of border control, though with some exceptions. The fight against national and international terrorism has not been considered a special function and remains under concurrent jurisdiction of different police forces.

\* Compare Art. 13: “The prefect is a provincial authority on public security,” and 14: “The Questor is a provincial authority on public security.” Both the *Prefetto* (delegate of the Minister of Interiors) and the *Questore* (head of provincial branch of the police) are the two provincial authorities for security.

† Text from the Decree of the Minister of the Interior of 28 April 2006. But see also Law 121 of 1 April 1981, “New code of the Public Security Administration,” Law 395/1990, Law 78/2000, Legislative Decree 297/2000, Legislative Decree 68/2001, Decree of the President of the Republic 208/2001, Law 36/2004, the Decrees of the Ministry of Interiors of 12 February 1992, 12 February 2001, 2 April 2004, and 28 April 2006.

‡ Mayors request more powers and more instruments for security at the local level. See for instance the Charter for Urban Security, signed in April 2008, with many requests to the new government. The requests include more powers to mayors for ensuring urban safety, more funding for technologies, more means and more police forces, more cooperation between law enforcement agencies and local police, simplification of the procedures for denying residence, more severe sanctions, promptness of judgments, and fight against illegal migration.

## Law Enforcement Functions for Border Control and Counter-Terrorism

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### Border Control

Police for border control gained an exclusive authority in 2002 yet still require the cooperation of the Excise and Customs Police for cases concerning economic and financial border policing. Maritime border controls follow instead a specific operational model, set up in 2003 to fight illegal migration by sea, which requires the cooperation of all police forces. The recent numerous—and often tragic—episodes of illegal trafficking of human beings from the Balkans and African countries demonstrate that Italy is particularly vulnerable to illegal migration, and the Ministers of the Interior, Defense, Treasury, Infrastructure, and Transportation adopted a joint decree on July 14, 2003, for the fight against illegal immigration. The core of the decree\* is the decision that patrolling and the prevention of and fight against traffic of immigrants by sea require the cooperation by aero-naval means of (all) Police forces, the Military Marine, and the Harbor Authorities (*Capitanerie di Porto*). The Navy has the main responsibility for surveillance, detection, and control of ships and boats in international waters, with the support and assistance of the Customs and Excise Police and the Harbor Authorities. In national waters, the police are responsible for crime prevention, while Harbor Authorities perform search and rescue duties, but when the context suggests that the emergency is related to human trafficking, the Harbor Authority must inform the Police (namely, the Central Directorate for Immigration and Border Police).

For what concerns aerial borders (the airports and the harbors), the jurisdiction is once again that of the State Police. Since 2002, border security belongs to the Central Directorate for Immigration and Border

\* Art. 11 of Law 189/2002 (*Coordinamento dei controlli di frontiera*) states “1. Al testo unico di cui al decreto legislativo n. 286 del 1998, all’articolo 11, dopo il comma 1 è inserito il seguente: “1-bis. Il Ministro dell’interno, sentito, ove necessario, il Comitato nazionale per l’ordine e la sicurezza pubblica, emana le misure necessarie per il coordinamento unificato dei controlli sulla frontiera marittima e terrestre italiana. Il Ministro dell’interno promuove altresì apposite misure di coordinamento tra le autorità italiane competenti in materia di controlli sull’immigrazione e le autorità europee competenti in materia di controlli sull’immigrazione ai sensi dell’Accordo di Schengen, ratificato ai sensi della legge 30 settembre 1993, n. 388.”

Police,<sup>\*</sup> whose mission focuses on immigration and border issues, developing strategies to counter illegal immigration from an international perspective.<sup>†</sup> The tasks of the Border Police include controlling individuals and verifying their identity documents and baggage when entering and leaving Italy through its land, sea, and air borders. Border police officers are also engaged in preventing and fighting crime in border areas. The Border Police has the authority concerning security on air and maritime calls, issues concerning foreigners' residency permits, and procedures aimed at recognizing the status of citizens, asylum seekers, and refugees. The service is comprised of two divisions:

Division I coordinates and plans all activities of the nine areas of border police, which include 18 sectors and 35 airports or maritime ports; and

Division II coordinates activities related to foreigners' temporary residency, and supports some procedures on entrance, asylum, and citizenship visas. Moreover, it coordinates the 103 migration offices in the *Questure*.

## Counter-Terrorism

Before 9/11 the Italian government and police forces had to deal mostly with internal terrorism deriving from political extremism, and special units were created to counter internal terrorist groups that represented a threat to public safety. After this date, these units maintained their duties while gaining responsibilities concerning international terrorism, derived from either Islamic fundamentalism or other groups.

The most important is the GIS (*Gruppo di Intervento speciale*), a counter-terrorism asset inside the Italian Carabinieri military police, first formed in 1978. In 2004, the GIS evolved into a Special Forces unit and took part in counter-terrorism operations and VIP protection in Afghanistan and Iraq. GIS is also the first armed unit called by NATO for special operations dealing with terrorists and kidnappers ([www.giscarabinieri.altervista.org](http://www.giscarabinieri.altervista.org)). Another corps within the Carabinieri is that of ROS (*Raggruppamento Operativo Speciale*), an elite unit founded in 1990 to deal with organized crime (Mafia and others), subversive activities, terrorism, and the more complex types of crime.

\* Art. 35 of Law 189/2002 (*Istituzione della Direzione centrale dell'immigrazione e della polizia delle frontiere*) states: "1. È istituita, presso il Dipartimento della pubblica sicurezza del Ministero dell'interno, la Direzione centrale dell'immigrazione e della polizia delle frontiere con compiti di impulso e di coordinamento delle attività di polizia di frontiera e di contrasto dell'immigrazione clandestina, nonché delle attività demandate alle autorità di pubblica sicurezza in materia di ingresso e soggiorno degli stranieri. Alla suddetta Direzione centrale è preposto un prefetto, nell'ambito della dotazione organica esistente. [...]"

† Source: [www.poliziadistato.it](http://www.poliziadistato.it).

The *Polizia di Stato* holds a special unit named NOCS (*Nucleo Operativo Centrale di Sicurezza*). This unit, established in 1974, is specialized for high-risk operations involving the rescue of hostages, for the capture of terrorists or dangerous criminals, and for diplomatic security services. Another important unit of the *Polizia di Stato* is the DIGOS (*Divisione Investigazioni Generali e Operazioni Speciali*), which is responsible for investigating acts of terrorism, organized crime, and capital offenses such as kidnapping and extortion. It is known for its role in several high-profile Mafia investigations, and for its prosecution of the so-called “Imam Rapito” affair, involving the kidnapping of the Egyptian imam Hassan Mustafa Osama Nasr on February 17, 2003. Men from the NOCS and the DIGOS jointly captured Hamdi Isaac in Rome on July 26, 2005, one of the terrorists involved in the London Shepherd’s Bush Station, an attempt that fortunately had no victims ([www.corriere.it](http://www.corriere.it)).

At last, within the Italian Customs Police (*Guardia di Finanza*), the ATPI (*AntiTerrorismo Pronto Impiego*), formed in 1983 as a special police unit, deals with counter-terrorism operations and VIP protection in Italy.

On a different level, the Italian intelligence system consists of the AISI (*Agenzia Informazioni e Sicurezza Interna*), which is the domestic national intelligence agency, and the AISE (*Agenzia Informazioni e Sicurezza Esterna*), the external one.

A decree of the Minister of the Interior instituted in 2004 a strategic committee, known by the acronym CASA\* (*Comitato di Analisi Strategica Antiterrorismo*—Anti-Terrorism Strategic Analysis Committee). This body involves the Judicial Police and the Intelligence Services, which jointly share and evaluate information regarding internal or external terrorist threats. Moreover, it plans different activities in which the corps of the *Polizia di Stato*, *Carabinieri*, and *Guardia di Finanza* are involved. CASA deals with

- Coordinating control services at national and regional levels of extremist Islamic groups and foreigners who are supposed to be radical exponents
- Extraordinary preventive controls
- Investigations on persons and associations to find out monetary fluxes for terrorism financing
- Internet-monitoring activities, for the control of Islamic fundamentalist websites and the interception of jihadist messages

\* Members are the General Director of the Police, who is also the President, and high officers or directors of the *Carabinieri*, of the AISI and of the AISE, and exponents of the *Guardia di Finanza* and the CESIS as observers.

## New Technologies

Border Police are equipped with the following technological support:

- Mobix—a truck equipped with x-ray scanners and other electronic devices for the control of containers and cargo vehicles
- Avian heartbeat and CO<sub>2</sub> detectors—for revealing hidden persons within vehicles
- Gamma rays detector—for revealing double bottoms
- SIDAF—scanners for checking fake documents and bank notes

Besides the new technologies listed for the border control, counter-terrorism has been recently adopting new modern instruments that consist of laser systems for the revealing of explosives in various forms (solid, liquid, gas) and dimensions. For instance, a European project named ISOTREX<sup>\*</sup> (Integrated System for Online Trace Explosives Detection in Solid and Vapor State), has as its purpose the creation of two prototypes for the detection of explosive material, which will be installed at risk places (airports, customs, access points, etc.). The first prototype is LIBS (Laser Induced Breakdown Spectroscopy), which allows real-time detection of elementary dust components, while IR (cavity ring-down and laser photo acoustic spectrometer) enables the detection of gas explosives.

## Counter-Terrorism at the Olympic Winter Games of Turin<sup>†</sup>

The following is from a written interview with Dr. Francesco Norante, director of the Turin Organizing Committee (TOROC) Games Security Department.

In 2006, for the first time, the Games were held in a large city, Turin, with a population of more than one million people. From a security perspective, TOROC had to face a big challenge: secure the Olympic Games and at the same time try not to compromise life for the residents—a concept

<sup>\*</sup> The project activities will be jointly executed by ENEA, CNR, and the industrial partners IPAC (Improve Process Analytics and Control GmbH [Austria]), von Hoerner & Sulger GmbH (Germany), TelCon srl (Italy), and with the assistance of RIS of Carabinieri di Roma (Scientific Investigation Department of Carabinieri in Rome), which supports the definition of the scenarios and the identification of explosive substances and their additives to be analyzed. (For more information, see [http://ec.europa.eu/enterprise/security/doc/project\\_flyers\\_2007/ISOTREX.pdf](http://ec.europa.eu/enterprise/security/doc/project_flyers_2007/ISOTREX.pdf)).

<sup>†</sup> Questions about security strategy in the Olympic Winter Games—Turin 2006:

1. In a few words, can you describe Olympic Games Security?
2. Which role and functions has TOROC had?
3. Which forms of cooperation have been set up with the Ministry of the Interior and law enforcement agencies? And at an international level?
4. Which ad hoc structures have been set up for the Olympic Games Security?
5. How many persons/officials have been involved in Olympic Games Security?

that with the years evolved to attempt to focus the attention on a sporting event with a security overlay, rather than on a security overlay housing a sporting event, and that represented one of the pillars of the security-planning phase.

The devastating 9/11 terrorist attack in Manhattan also completely changed the global scenario, for what concerned the Olympic Games and consequently the level of security became aligned to the international threat level.

The main difficulty TOROC faced in the organization of the Olympics lay in the necessity of coordinating different entities, public and private, over a long period. The entire planning required several years of very close planning between law enforcement agencies and the Organizing Committee.

For this particular reason, a functional area called “Games Security” was created within the Turin Organizing Committee (TOROC), with the role of planning, coordinating, and integrating security operations for the XX Winter Olympic Games with TOROC Functional Areas and designated Italian law enforcement agencies.

The TOROC Games Security department was responsible for defining appropriate levels of service for security activities, coordinating and integrating law enforcement security planning with TOROC Venue Operations, and developing security policies, procedures, and Venue Security Plans to support Games operations.

The Games Security department developed a joint process for the review and approval of all key documentation to guarantee that security requirements be balanced with the levels of service of specific Olympic Client Groups, more in line with the “spirit of the Games.”

Working groups were created to address specific targeted areas, such as transportation, logistics, and airport operations, where the cooperation of TOROC Functional Areas and law enforcement agencies was fundamental in establishing ad hoc policies and procedures to guarantee a safe and secure environment for all the people involved in the Games and to meet clients’ and stakeholders’ expectations.

Significant emphasis was given to provide the Olympic venues with the most modern passive and active security features available on the market, never forgetting to maximize the legacy for the future. The PSS (Physical Security System) was a key element for deterring, detecting, and denying any possible breach of security within the Olympic theater during the Games, and now the municipalities of Turin and of the mountain villages that hosted the Games can display modern sporting sites and ice arenas equipped with state-of-the-art CCTV camera systems. Other security equipment was re-allocated in many public installations across the country. According to Norante’s opinion, this has been one of the key factors of success for the Turin Games, which distinguishes Turin from previous Games, where security was a minor aspect.

The TOROC Games Security department strongly supported law enforcement agencies in security operations during the Games, with a significant presence in all venues and more than 214 paid staff and 2,000 volunteers and contract security guards across the Olympic theater.

TOROC supported law enforcement officers also for the specific training in the venue. Between all different police agencies, there were in Turin an additional 15,000 officers on top of the existing resources already present.

## Part II

Norante has said that TOROC defined the level of security based on law enforcement threat assessment. The threat assessment for Turin was considered medium, although security measures for the opening and closing ceremonies were reinforced for the attendance of more of 40 dignitaries, including heads of state and sports ministers.

The level of threat was continuously monitored by law enforcement and intelligence services in cooperation with other foreign police forces based on terrorist organizations' capacity to cooperate and interact across the world.

TOROC developed for the first time in the Games an Integrated Command Center, located in TOROC Headquarters, in which all the security components were collocated in the same structure: law enforcement agencies, the international policing office, all utility companies, and TOROC.

## The Impact on Travel across the Italian Border

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Freedom of movement between the European Union member states is a relatively recent achievement. Before 2001 the perspective of eliminating internal barriers for the circulation of people, goods, services, and money was seen as one of the major opportunities for development and cohesion in Europe. Only a few countries were seriously concerned about possible negative implications of this reduction of controls at national borders<sup>†</sup>—criminal

<sup>†</sup> Questions about anti-terrorism strategy in the Olympic Winter Games—Turin 2006:

1. What was the threat from international terrorism on the Olympic Winter Games?
2. Which sources of intelligence/information have provided information?
3. Which forms of controls have been set up for anti-terrorism?
4. What cooperation occurred with intelligence services before, after, and during the Olympic Games?
5. Which specific strategies for foreigner control were set up?
6. Which connections were set up with border police and anti-terrorism police?
7. Did border security increase during the Olympic Games?

<sup>†</sup> Indeed, most of these countries did not sign the Schengen Agreement and are not part of the European area of free movement.



exploitation of the elimination of borders and of controls for their crimes and personal impunity, for instance. This freedom increased occasions for terrorist financing; money laundering; illegal circulation of arms, weapons, explosives, and drugs; and illegal trafficking of persons within Europe. Terrorists can now move from one country to another with minimal risk of confronting law enforcement. However, for the police and judicial authorities of the member states, borders still formally exist.

The European Union and its member states are working together to coordinate and harmonize national criminal laws, law enforcement systems, and the judiciary, with a long-term perspective of achieving a European Criminal Justice system. The process is difficult and is complicated by the technical problems arising from the coordination of fundamental principles of the various countries. In recent years, coordination\* and cooperation† in criminal matters have experienced relevant progress. The attacks of 9/11, and even more recently the bombing events in London and Madrid, have accelerated the process, and to date the political debate at a European level is achieving the right balance between freedoms and security.

With the creation of the Schengen area,‡ “external” borders of member states (that is, the borders with non-EU countries, in particular those toward southeastern countries) have become strategically relevant for all of Europe, not only for the States controlling them. The possibility today for a person to travel from Greece to Norway or from Lithuania to Portugal without any identity check when moving from one State to another makes Greek (or Lithuanian) border security relevant for Norwegians and Portuguese, as for all the citizens of the countries crossed (also see the Epilogue in this book).

On an individual level questions posed to a group of travelers reveal that crossing European internal frontiers by terrestrial vehicles (cars, trucks, trains, etc.) no longer requires controls. In contrast, airplane travelers now have to undergo more intensive searches by metal detectors, x-rays, and other series of controls, such as those regarding the presence of liquids in hand baggage introduced by the European Commission Regulation 1546/2006, which followed the attacks in the United Kingdom in 2006.

On the other hand, airport controls are more careful about people coming from outside Europe. As stated previously, to meet the necessity of controlling borders while preventing terrorism, after 9/11 controls were greatly enhanced, often requiring more time at the airport for both passengers and drivers.

\* Above all, Europol and Eurojust.

† See, for instance, the bilateral agreements that set the cooperation of border police forces, including the possibility to follow criminals into other countries’ territories, although for a limited distance from the border.

‡ Map source: [http://www.delsgp.ec.europa.eu/en/about\\_us/images/p-010370-00-3hEuroArea2007s.jpg](http://www.delsgp.ec.europa.eu/en/about_us/images/p-010370-00-3hEuroArea2007s.jpg). Blue countries joined Schengen area in late 2007.

## Perspectives

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Before the birth of al-Qaeda and the proliferation of its menace, Italian border control and counter-terrorism were far from being considered on a global perspective, at both intellectual and operational levels. In fact, while border control activities were aimed at the contravention of illegal migration and international crimes, counter-terrorism agencies were concerned more with preventing the internal threat coming from extreme left- or right-wing ideologies. Therefore, at the beginning of the al-Qaeda era there was certain confusion about the jurisdictions of the law enforcement agencies due to their overlapping roles. Subsequently, confusion was replaced by a more efficient internal re-organization and a progressive division of duties between the police forces. Moreover, international cooperation and common rules on border security and counter-terrorism permitted the identification of strategic functions and then the creation of new ad hoc structures.

The Italian law enforcement authorities first reacted to the terrorist attacks of 9/11 with the enhancement of airport security. Now, traveling has gained different implications for passengers, as they have to submit themselves to more intense controls at airport gates, with a certain loss of time, whether flying to European or extra-European destinations.

On the other hand, and paradoxically, while vehicle controls (both terrestrial and maritime) have been intensified at EU external frontiers through joint operations between member states, internal EU controls have been reduced. Now it is possible to travel from one country to another without obligatory controls but with the risk of there being free circulation of drugs, weapons, etc., and the consequent impunity for those who commit crimes and for criminal organizations. However, illegal migration flows demonstrate that the vulnerability of borders is still high, in particular with respect to people who enter Italy with valid temporary visas and then stay on illegally in the country.

Moreover, in a global society, fluxes are not only those of persons and goods but also those derived by making use of media such as Web, phone communication, and telematic systems, which are vehicles for both legal and illegal acts and also for terrorism in the recruitment of new members, the financing of jihadist organizations, and the diffusion of their messages and threats. While persons and goods are always submitted to national and international laws, communication and media exchanges overpass these limits. Because of this, law enforcement authorities and intelligence services have created special units for investigating these exchanges in order to intercept both criminal and terrorist operations.

These considerations lead to an important implication: preventing terrorism by controlling information means, among other things, certain consequences in terms of loss of privacy. The issue has gained a certain profile

in Italy, where there have been different cases of suspected illegitimate interceptions concerning politicians, business professionals, and managers from various areas, resulting in enormous scandals in different sectors of society. Sometimes investigations have succeeded in the arrest of important managers and directors who have committed a relevant number of crimes. According to the political agenda, there is an expressed need to reform the legal framework that establishes how to conduct interceptions by the police and the power of judges to order investigations and collection of legal notices. In a mediatic society, where the flows of data and communication are a daily necessity, the empowerment of border control and the strengthening of counter-terrorism must deal with an important question: How much of our privacy are we favorably disposed to lose to satisfy the need to feel safe in the al-Qaeda era in Italy, as well as in most of the other countries discussed in this chapter?

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# Border Security in the United Kingdom

## A Contradiction in Terms?

# 7



JON MORAN

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## Contents

Introduction	242
UK Border Controls: An Overview of the Issues	243
The International Aspect of the Terrorist Threat	247
The Structure of UK Border Security	252
The UK Border	252
Recent Organizational Changes	252
Policy Development	253
Border Security in Practice	254
Screening and Blocking	254
Airport and Port Security	256
Incapacitating Suspected Foreign Terrorists Already within the UK	258
Asylum/Deportation/Extradition	259
Exit Controls	260
The Effectiveness of the New System	260
Organizational Change	260
The Technology of Screening and Blocking	261
Transport Infrastructure	263
Human Rights	264
Human Rights and Those Non-Citizens inside the UK	264
Human Rights and Mass Travel	265
Asylum/Deportation/Extradition	266
Conclusion	267
References	268

## Introduction

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This chapter examines the ways in which border security in the United Kingdom has been tightened, following a period of liberalization, via legal change, organizational development, and the use of technology. The tightening has not been driven solely by counter-terrorism, but has arisen from the development of immigration as a charged political issue in the UK. The government has been heavily criticized for granting visas to individuals such as those involved in the Glasgow attack, and the political pressure for tightened border security has been fuelled by those terrorist plans which have targeted transport (the August 2006 transatlantic airline bomb plot; see Box 7.3) or associated facilities (the Glasgow Airport attack of June 2007; see Box 7.1). However, public pressure on the government is not driven by terrorism but rather by the public's general view that immigration and border security policies and practices are too liberal. Throughout the first decade of the 21st century, pressure over immigration has built, accelerated by panic over



crimes committed by foreign nationals and the large-scale immigration of Eastern Europeans to the UK to work.

In practical terms a number of issues arise. The first is that the tightening of border security will take some time, and will have a number of problems with regard to the operation of the organizations and systems involved in practice. Second, increased security conflicts with the UK's commitment to the freer movement of goods and people. This tension is evident in the manner in which the UK is tightening controls in relation to the rest of the world, while the European Union is enlarged and travel within it has become progressively easier. This is a problem, since a number of terrorist networks are already based in the EU or have the ability to move within Europe via the Schengen Agreement (see the Introduction and the other European contributions to this volume). Third, the government is seeking to invest in technology as the solution to the problem of how to maintain or increase border controls without slowing down personal and commercial traffic. However, the idea that technology will be a solution to the security problem must be treated with caution. Technology, like intelligence, is not the panacea for countering terrorism. It may increase the risks of travel for violent radicals and thus deter some incomers, but the movement of goods and people into and out of the UK is too massive to prevent *any* terrorist attack. Fourth, the UK's terrorist problem is largely home-grown. Some of those plotting terrorist attacks may have international links, and the role of Pakistan is important here. But the shock to the security services and policy makers who had based their strategy on countering *international* terrorism was that the July 7, 2005 (7/7), and July 21, 2005 (21/7), terrorist attacks (see Box 4.2) and other planned attacks were driven by UK citizens who had been radicalized particularly in the last stages by the UK's participation in the Iraq War of 2003.

Finally, the tightening of border security has to take account of the UK's domestic and international human rights obligations. The latter point is particularly important since a number of the policies pursued by the UK government have been criticized in the media, in the courts, and by human rights groups in the UK and internationally. Concerns have centered on the mass surveillance of passenger movements and associated data-sharing between the UK, United States, Canada, and other countries; the detention of suspected terrorists; and the deportation of suspected terrorists. These debates have highlighted those broader debates about the balance between national security and civil liberties in the "war on terror."

## UK Border Controls: An Overview of the Issues

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Mukhtar Ibrahim, the leader of the July 21, 2005, attempted bombings in London was on bail for the public order offense of distributing extremist

literature when he attempted to leave the UK to travel to Pakistan in 2004. MI5, who had Ibrahim under surveillance, requested that the police's Special Branch officers stop him at Heathrow airport. On searching Ibrahim's luggage the Special Branch officers found cash, cold-weather equipment, and ballistics information. However, they allowed Ibrahim to travel on to Pakistan, where he reportedly received bomb-making training in an al-Qaeda affiliated camp. Hussain Osman, another of the 21/7 bombers, had come to the UK when his Italian visa expired in the late 1990s. He claimed asylum in Britain and was given indefinite leave to remain. Claiming he was a Somali, Osman was in fact Ethiopian. After the attacks Osman was able to leave the UK via the Waterloo Eurostar train terminal (Johnston 2007b, July 11). Further, in early 2008 it was revealed that the UK's new Border Agency did not have its uniforms due to a dispute over their design, had not completed the basic training of its officers in their new powers, and had to halt the search for illegal immigrants on weekends and during bank holidays due to budgetary restraints, despite the new Agency not even being fully operational (Slack and Hickley 2008).

These accounts suggest that UK border security is a contradiction in terms. Many observers, from the media, to non-governmental organizations, the UK Parliament, and the general public, view UK border security as an example of policy failure for widely differing reasons.<sup>\*</sup> However the UK's problems partly stem from the complex and contradictory environment in which border security has been developed, particularly over the last 10 years. This environment has almost made policy failure inevitable. Thus, while the system is certainly open to critique, its current disorganized state results from the UK government's inability to reconcile competing political and cultural objectives.

For example, border security in the UK has consistently been buffeted by the rapid move to the free movement of goods and people at a regional and global level. While the UK is currently (as a result of popular political pressure) tightening its controls and screening of non-EU citizens, *within* the EU travel to the UK is more easily achieved than ever before. In any case, even if controls on non-EU travelers are increasing, the sheer volume of people who visit the UK every year makes measured screening extremely difficult.

<sup>\*</sup> For critiques from a human rights perspective see the civil rights group Liberty's various submissions on immigration, asylum, and nationality legislation passed or proposed by the UK government in recent years (<http://www.liberty-human-rights.org.uk>), and also the campaign group The Refugee Council (<http://www.refugeecouncil.org.uk>). For the idea that UK immigration policy and border security is weak and disorganized, see the campaign group Migration Watch (<http://www.migrationwatchuk.com>). For recent Parliamentary scrutiny of the lack of planning and coordination in immigration policy see Home Affairs Committee, 2006; and Communities and Local Government Committee, 2008.

In 2006, 32 million tourists visited the UK, spending £15 billion. Of these, 11.8 million were from outside the European Economic Area, the largest figure being 3.9 million from the United States. Tourism supports an estimated 1.4 million jobs (Cabinet Office 2007).

In 1996, there were 72.5 million entrants to the UK. In 2004, the figure was 97 million, rising to nearly 105 million in 2006. In the 2004 figure of 97 million entrants to the UK, 68 million were UK citizens. Of the remaining 29 million, 17 were European Economic Area nationals and 12 million from outside the EEA (4 million were from the United States, 1 million from Australia, and 850,000 from Canada). These individuals arrived for a variety of reasons, “to return home, to visit the UK, or to study, work, or settle” (Home Affairs 2006, 11; Public Technology 2006; BIA n.d.). In total, 218 million passenger journeys cross the border each year, as does 440 million tons of freight (Cabinet Office 2007).

A substantial component of these flows results from the UK’s opening to more permanent settlement. “Across the EU in recent years, inward migration has played a much bigger role than natural change in determining the extent of population growth ... However the UK is unusual within Europe in having large migratory flows both into and out of the country” (Home Affairs 2006, 11). From 2004 to 2007, 1,425,565 individuals legally migrated to the UK, including 600,000 from EU countries, with 36,000 dependants; 318,330 from outside the EU; 261,235 from outside the EU with work permits with 87,000 dependants; and 123,000 were granted asylum. Added to this was illegal migration, estimated anywhere from 300,000 to 800,000 people (Home Office figures quoted in BBC 2007b). Indeed, the UK’s position as perhaps the most diverse country in Europe in terms of residents means that the flow of friends and family back and forth is continuous and massive. For example, it is estimated that 400,000 people leave the UK to visit Pakistan each year (Phythian 2005).

While much criticism is heaped upon the current Labour Government (Labour has been in power since 1997) it was the Conservative governments of the early 1990s that began to progressively liberalize border controls. This was partly due to the move toward greater European integration and partly due to Britain’s traditional policy of being in favor of the free movement of capital, goods, and people—a process that accelerated after the Cold War. As the United States demonstrates, the commitment to free trade sits uneasily with border security, particularly its counter-terrorist aspects (see Chapter 2 for further discussion).

However, the recent moves by the UK Government to tighten border controls did not just arise from the post-9/11 universe. They also resulted from the development of border controls as a highly politically charged issue. The default setting of the British public is for strong immigration controls along the lines of Australia but, as mentioned, the UK’s political and bureaucratic

elites have long been committed to a (relatively) liberal policy on entry and settlement. This is changing as a result of growing popular disaffection and the need to be seen as “strong” on immigration (see, for example, *Sunday Times* 2006; BBC 2007j). A great public and policy debate took place in 2007–2008 on the exact benefits brought by immigration with charge and countercharge and accusations of racism. The government argued strongly that immigration had brought economic and cultural benefits against those who argued that its effects on public services, crime, and culture were becoming irreversible (Home Office 2007; Channel 4 2008; BBC One 2008a; House of Lords 2008).<sup>7</sup> However, the move is for stronger controls, even though it might be framed in the government’s traditional liberal language. For example, Immigration Minister Liam Byrne argued in 2008:

Britain is not anti-foreigner ... Britain is a country that is comfortable with diversity and a nation that enjoys difference. But we want change. The public wants stronger borders. The public wants us to prevent illegal immigration by attacking its causes. The public wants us to hold newcomers to account when they break the rules, deporting rule breakers when necessary. But they also want a compassionate system. (Byrne 2008)

Having made this point, a number of important controls have emerged from the UK’s counter-terrorist policy. The 2001 Anti-Terrorism Crime and Security Act permitted the detention of foreigners suspected of being terrorists who could not be deported. The UK led the way in arguing that EU passenger data should be shared with the United States, with former Prime Minister Tony Blair (1997–2007) consistently arguing for cooperation with the United States. The UK allegedly cooperated in the evasion of border controls in the processes of extraordinary rendition and the 2003 Extradition Treaty was, according to critics, virtually written by the Americans and allows a fast-track extradition of suspects from the UK to the United States without even a semblance of a legal hearing. Some of these policies can be traced to the close relationship between Tony Blair and the former American President George Bush in the “war on terror” (Kampfner 2004). Others can be traced to the criticism the UK received for its lax attitude toward border security issues. The United States had joined with France in criticizing “Londonistan”—the term employed to denote the fact that the UK had taken a liberal approach to the residence in London of radicals from other countries

<sup>7</sup> The issues do intertwine. Norfolk (2006, October 21) details how Mohammad Sidique Khan, one of the 7/7 bombers, lived in Dewsbury, Yorkshire, a town which had, from 1991–2001, seen a 2% drop in the white population while the Indian population rose 25% and the Pakistani community rose by 60%. The town was also the European headquarters of Tablighi Jamaat, an organization labeled by French intelligence as an “antechamber of fundamentalism.”

who were not viewed as threats to national security by the UK since they were not engaged in provable criminal activity and certainly not plotting against the UK (Kampfner 2002). Finally, attempted terrorist attacks such as the 2006 airline bomb plot and the 2007 Glasgow Airport attack added impetus to the need for border surveillance and physical security in the transport infrastructure.

However, this tightening of controls has, and will, conflict with the UK's human rights commitments. One of the most controversial areas of constitutional debate has arisen out of the UK's highest court, the House of Lords. In 2008, the House of Lords declared that parts of the UK's counter-terrorist policy, particularly those sections that related to immigration, were in contravention of the European Convention of Human Rights, which was incorporated into UK law by the Human Rights Act of 1998. The main area of controversy comes from the UK's practice of deporting suspected foreign terrorists to countries where they may be tortured. The 2008 case of Abu Qatada provides an example of how this practice remains a controversial area and one in which the government has again lost with the courts.

A tightening of border security can be observed from 2003–2004 in terms of policy, law, and organizational development, culminating in 2008 with the establishment of the United Kingdom Border Agency (UKBA). But the current policy context remains characterized by inconsistency since it is buffeted by a number of conflicting variables. The following sections discuss how UK border security has been affected by terrorism, the structure of UKBA, and new developments in the area, and the charged debates on human rights that border controls have engendered.

## **The International Aspect of the Terrorist Threat**

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The UK government and security agencies were somewhat wrong-footed by the fact that the 7/7, 21/7, and a number of other major plots were generated by British citizens. Following 9/11 the government's counter-terrorist strategy had been outwardly focused. Speeches from then Prime Minister Tony Blair and other senior government officials stressed that the "war on terror" was aimed at international terrorism. The government's public official strategy was centered on countering *international* terrorism, and the Joint Terrorism Analysis Centre (JTAC), established in 2003, had as its aim the development, coordination, and dissemination of intelligence on the international terrorist threat. Indeed, just before the 7/7 attacks JTAC had *lowered* the threat level from *Severe General* to *Substantial*. Following the attacks the domestic basis of the jihadist threat was clearly evident. The security services had, of course, been aware that British citizens were becoming radicalized,

but it seems most official agencies were caught off guard by the actual nature of the threat posed by young extremist British Muslims.

In addition to the 7/7 and 21/7 attacks, plots included one in which large bombs made of fertilizer would be exploded in public places (prevented by the security services in Operation Crevice), the plotters receiving life sentences. Another involved the group headed by Dhiren Barot, which planned attacks in the UK (including the “gas limo” plot, in which a limousine filled with gas canisters would be exploded outside a crowded public area) and in the United States (in which the New York Stock Exchange and International Monetary Fund would be attacked). After the attacks were prevented by the security services (under Operation Rhyme) Barot received 40 years, the others 15 to 26 years (MPS 2007; BBC 2007d). Further, in 2006–2007 a group in Birmingham planned a kidnapping and beheading of a British Muslim soldier, the execution to be posted on the Web. The conspirators were convicted in 2008, the leader Parviz Khan receiving a life sentence. In 2006 a plot, apparently inspired by the 7/7 attacks, to blow up seven airliners in transit between the UK and the US was prevented. Finally, in 2007 a group of jihadists planned to detonate car bombs in London, including one outside a nightclub. When the bombs failed to detonate, one of the conspirators mounted a suicide jeep attack on Glasgow Airport (BBC 2008f) (see Box 7.1).

However, these plots did have an international component, which highlighted concerns over the UK’s porous borders as well as the impossibility of policing them effectively in real time. The main international component consists of the links between British Muslims and Pakistan, notably Mirpur province in Northeastern Pakistan, a center of radicalism because of its proximity to the conflict over the province of Kashmir (which is split between India and Pakistan). For example, in the recent planned beheading case (which also involved other offenses), two of the four individuals convicted of supplying terrorist equipment to Afghanistan had Mirpur backgrounds (BBC 2008b).

The second component lies in the presence of foreign radicals in the UK (“Londonistan”) who may have contributed to the radicalization of British Muslims. Abu Hamza, an imam at North London Central Mosque, stands as a prime example. Hamza was convicted in 2006 of racial hatred public-order offenses (threatening and abusive language) and a terrorist offense. He had come to the UK from Egypt in the late 1970s but had become radicalized in the 1980s by the Iranian revolution and by working as a translator for mujahedin leaders who were in London for medical treatment. He traveled to Afghanistan and Bosnia, returning to the UK in the 1990s, firmly radicalized. By the late 1990s he had gained effective control of the Finsbury Park mosque. He was under surveillance by the security services, but had extensive international links and was suspected of providing support to terrorists. The mosque was raided in 2003, but it was after the United States had publicly



**BOx 7.1 TARGETING TRANSPORT in FRASTRUCTURE:  
THE 2007 GLASGOW AIRPORT ATTACK**

“On June 29 last year two cars containing petrol, gas cylinders and mobile phone detonators were discovered in Central London. The next day [a] burning Jeep Cherokee was driven into the main terminal building at Glasgow airport” (Fresco 2008). The two incidents were connected. A network was involved in planning attacks in London, and two cars filled with petrol and gas had been placed outside a nightclub in Haymarket. However the trigger for the explosions, a mobile phone call, did not work because petrol vapor in the cars smothered the signals (Carrell and Jones 2008). The bombs were discovered, after which one of the group, Kafeel Ahmed, decided to launch a suicide attack on Glasgow airport. After attempting to crash into the terminal he threw petrol bombs, poured petrol around his car, and set himself alight. His brother, Sabeel Ahmed, a doctor living in Liverpool, knew about the attack after the fact, having received an email from his brother instructing him not to tell the authorities the truth. Sabeel was later convicted of withholding information, jailed for 18 months and agreed to be deported to India, his place of birth. He later threatened to sue because he had not been given a date for his deportation by the UK authorities (Dodd 2008b). Two doctors were on trial in late 2008 for their part in the attacks in London and Glasgow.

named him as a wanted international terrorist in 2004 that he was arrested and charged. Hamza’s case represents the developing jihadist networks in the UK, the concept of “Londonistan” (the security services and government came under some media pressure for not taking action against him), and the way in which the international and the national combined in radicalization. Apparently the 7/7 bombers had heard Hamza preach a number of times (for details of the Hamza case see BBC 2008a).

The third lies in the traffic between the UK, Pakistan, and Afghanistan, the now traditional path trodden by radicals seeking training or “blooding” in the conflicts there. Two of the 7/7 bombers, Mohammad Sidique Khan and Shazad Tanweer, visited Pakistan in 2004 and 2005, with Khan receiving training. In Operation Crevise, those involved had been radicalized by 2001 and had received training in Pakistan in 2003. In Operation Rhyme, Dhiren Barot, who was originally a Hindu Indian, had links with Kashmir going back to the 1990s, when he was fighting there (Carlisle 2007; BBC 2007d). Similarly, Parviz Khan, the leader of the group planning to behead a British Muslim soldier, was a conduit between mujahedin groups in Afghanistan and British



citizens raising money for them. Khan organized shipments to Kashmir before he planned to bring his radical activities to the UK (BBC 2008c).

The fourth international component lies in the small number of individuals born and raised abroad who have been involved in terrorist attacks in the UK, notably the involvement of Indian, Iraqi, and Jordanian individuals in the Glasgow Airport and attempted London attacks of 2007. Muktar Ibrahim, the leader of the 21/7 bombers, is originally an Eritrean, while two of the other bombers, Ramzi Mohammad and Yassin Omar, are Somalis, and Hussain Osman was born in Ethiopia. All four came to the UK in their teens (see Box 7.2).

These international aspects beg the question to what extent the jihadists are linked to al-Qaeda. Although Ayman al-Zawahiri claimed the 7/7 attacks for al-Qaeda, the international connections are *relatively* weak. Terrorist plotter Dhiren Barot was an al-Qaeda member, and he certainly moved with senior al-Qaeda members (Carlisle 2007) but al-Qaeda is not the central driver of terrorist attacks. Assertions such as, “Certainly there is strong evidence that from Pakistan al-Qaeda directed both the 7/7 2005 London bombings and the alleged plot to blow up US-bound aircraft from Heathrow in the summer of 2006” (Gregory 2007, 4–5), must be treated with caution. The fact that bombers attended training in Pakistan or received money from there tends to conflate a Pakistan link with an al-Qaeda link. The UK probably corresponds to the “franchise” model of al-Qaeda (Anonymous 2002): the movement does not direct UK attacks; rather, jihadists claim attacks for al-Qaeda. Indeed, as the official version has it: “The 7 July attacks highlighted—perhaps above everything else—the need to do more to tackle the radicalization of British Muslims in the UK” (ISC 2006, par. 128). Certainly, networks stemming from the UK–Pakistan nexus have driven radicalization, but without the long-term radicalization of young British Muslims this dynamic would not exist (Husain 2007).

To repeat the point, the specific international terrorist threat to the nation-state is only one factor in the tightening of UK border security. Certainly it has resulted from the UK’s close cooperation with the US in the war on terror, which saw former PM Tony Blair call for greater border surveillance across Europe, and from the clear desire of UK security services to know more about who is traveling to the UK and exiting it, particularly to countries deemed “at risk,” or traveling in patterns that might denote incipient or developed jihadist activity. Within this context counter-terrorism is clearly significant, since as the Government Cabinet Office (2007, 22) argues: “While terrorist-related movements account for a substantially smaller proportion of border traffic than movements relating to other threats, the political impact of terrorism is very high.” However, this is sited within border (in)security as a major general political issue, linked with asylum and immigration.

**BOx 7.2 THE 21/7 ATTEMPTED BOMBINGS:  
in TERN ATiOn AL Lin KS An D HOME-GROWN RADICALISM**

On 7 July 2005 (7/7) three bombs on the Underground and one on a bus in Central London killed 52 people and injured 700. Two weeks later (21/7) four men attempted three bombings on three tube trains and a bus. The detonators in their packs worked but did not trigger the main explosives. The four men escaped the scene, some of them having been challenged by other passengers and staff. A fifth fled without attempting to detonate his bomb, and a rucksack was later found abandoned. It was in the aftermath of these attempted attacks that anti-terrorist police shot dead an innocent man, Brazilian Jean Charles de Menezes in the Stockwell Tube station, mistaking him for Hussain Osman, one of the bombers. (The Metropolitan Police were eventually convicted under health and safety legislation for their actions in the shooting). The four bombers were quickly tracked down by police and security services, and eventually convicted and sentenced to a minimum of 40 years in prison. Their defense was that the attacks were an elaborate hoax designed to keep the debate about the UK's role in Iraq in the public consciousness (BBC 2008g). The fifth man, Manfo Kwaku Asiedu, admitted conspiracy to cause explosions. All four of the attempted bombers had come to the UK in the 1990s. Muktar Ibrahim, the leader of the group, had been born in Eritrea and had been radicalized in the 1990s, receiving terrorist training in Pakistan. Ramzi Mohammed was a refugee from the violence in Somalia, Yassin Omar was also born in Somalia, and Hussain Osman was born in Ethiopia. Yassin Omar's fiancé Fardosa Abdullahi was later jailed for three years for assisting his escape (Omar fled from London to Birmingham dressed in a burkha, where he was arrested). Hussain Osman fled by train to Rome before being extradited. His wife, Yeshi Girma was jailed for 15 years for assisting his escape (BBC 2007e, 2007f, 2007g, 2007h, 2008g). There were links between the 21/7 bombers and the 7/7 bombers. Muktar Ibrahim and two of the 7/7 bombers, Mohammad Sidique Khan and Shazad Tanweer, were all in Pakistan at the same time. Further, according to the BBC, "The 7/7 and the 21/7 bombs were similar in scientific principle but differed in detail. Both needed organic material to explode. The 7/7 bombs used black pepper and the 21/7 bombs used chapatti flour. Forensic scientists have found no record in official, scientific, or academic literature of explosives professionals ever building these kinds of bombs: they were just too dangerous and unpredictable to handle." This implies that both sets of bombers were trained in Pakistan by the same person (Cascani 2007).

## The Structure of UK Border Security

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### The UK Border

The UK has 142 civil airports (which handled 200 million passengers in 2003 and 230 million in 2005), 3,000 light airfields or strips, and 70 significant sea ports handling 53 million passengers and 580 million tons of freight per year (HMIC 2003; Shear 2007). The 48 largest ports and 30 major airports (plus the Channel Tunnel) account for 98–99% of all movements of freight and people into and out of the UK (Cabinet Office 2007). As mentioned, some 95 million individuals enter the UK each year, and there are a total of 218 million passenger journeys that cross the border each year, as does approximately half a billion tons of freight. As with other high-trading and often-visited nations such as the United States, this represents a formidable challenge for border security.

### Recent Organizational Changes

In organizational terms, border security reflects the traditional patterns of UK law enforcement. The UK has historically resisted the creation of overarching national law enforcement bodies. The UK did not develop a National Crime Squad (NCS), a body tackling serious and organized crime, until 1992, and then the organization was staffed by police officers seconded from the normal regional police forces (Doig 2005). The UK still has 43 police forces in England and Wales alone, and attempts to merge them into a set of “super forces” were successfully resisted in 2007. Where national organizations have been created there is often overlap. Border and immigration and smuggling issues until recently were dealt with by the Border and Immigration Agency (BIA) of the Home Office, Her Majesty’s Customs and Excise, the Inland Revenue, various police forces, and so forth.

However, over the last 15 years there has been a trend for the creation of national organizations. The Serious and Organized Crime Agency (SOCA) was created from the NCS and the National Criminal Intelligence Service and has recently incorporated the Assets Recovery Agency. The Inland Revenue and Her Majesty’s Customs and Excise were merged to create Her Majesty’s Revenue and Customs (HMRC), and at least one observer argued that the likely result of these changes would be the creation of another overarching organization concerned with border security (Doig 2005), which occurred in 2008 with the United Kingdom Border Agency (UKBA).

Policy discussion and review had pointed out that border/immigration was characterized by multiple agencies and needed more cooperation and coherence. A review of police Special Branch at ports and airports was influential in this regard, and by 2007 the Cabinet Office of the UK government had recommended the creation of a single agency dealing with border

security issues. In 2008 the UKBA was created, from parts of HMRC, ukVisas, and the Border and Immigration Agency. The UKBA deals with border security, immigration, and cross-border crime (smuggling and tax evasion) and has 25,000 officers, 9,000 of which are sworn law enforcement officers. It will link with other relevant agencies (police) at ports and airports and will also have an overseas liaison presence in an estimated 135 countries, following on from the Drugs and Airline Liaison Officers who have been present in many countries particularly since the 1970s.

If the UKBA is the main agency dealing with these issues, a number of other independent organizations still take a role. The UKBA works with police Special Branch (SB), the Security Service (MI5), HMRC, Department of Transport, and private security agencies. Special Branch (that part of the police tasked with counter-subversion) exemplifies this joint working. SB has always had an international focus. First established as Irish Special Branch in the late 19th century, it soon developed beyond this national remit (Ireland was then part of Britain, before most of the country except Northern Ireland gained independence in 1920) to focus on anarchists and other activists within the British Empire. Each of the 43 police forces of England and Wales, the Scottish police forces, and the Police Service of Northern Ireland has a Special Branch, although the largest are in Northern Ireland (a legacy of the counter-terrorist capacity required against republican and loyalist paramilitaries during “The Troubles”) and the London Metropolitan Police. Part of this capacity is specifically designated for ports and airports. The larger ports and airports have a permanent SB presence. They liaise with MI5, HM Revenue and Customs, and other relevant agencies.

## Policy Development

Responsibility for the development of border policy rests with the government, with of course the Prime Minister taking a lead if the issue becomes of particular political importance, a characteristic of Tony Blair, who often stepped into various areas to take the lead in policy formulation and certainly public discussion. Normally, however, responsibility rests in the Home Office, with the Home Secretary.\* Priorities and coordination are delivered through networks including the Joint Border Operations Centre, which joins the UKBA and police and runs the new eBorders system.

As mentioned counter-terrorism has not been the main driver for changes in UK border security, although where it has been influential it has resulted in major changes and has been controversial. The government’s counter-terrorist strategy (CONTEST) is divided into four strands (Pursue,

\* The Home Office deals with security, police, and immigration. Its sister organization, the Department of Justice, deals with prisons, sentencing, and probation.

Protect, Prepare, and Prevent). *Pursue* refers to disrupting (through deportation if necessary) or prosecuting terrorist activity; *Protect* refers to securing the UK's borders and, within the UK, its public and private infrastructure; *Prepare* refers to preparing for attacks, for example, CBRN; and *Prevent* refers to tackling the processes of radicalization. Border security comes under most of these, for example within Pursue, Protect, and Prepare, and the individual aspects of these overall strands are discussed now.

## Border Security in Practice

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### Screening and Blocking

The main development in UK border security, in addition to the creation of the UKBA, has been the eBorders program, which attempts to close the many loopholes existing in UK border security and attempts to establish a series of barriers not only in the UK but abroad. eBorders covers a number of programs, but as time goes on it will be one system for electronically monitoring the entry and exit of passengers into and out of the UK. Indeed, an important recent development in screening and checking has been the expansion of borders, effectively moving checks abroad as people apply to come to the UK. Individuals requiring a visa and seeking to travel to the UK as of 2008 are required to provide more detailed information at interviews with UK personnel and provide fingerprints. If applicable this is matched to their previous travel/visa record or will be used to build a future record. Those applying for visas will be matched against an existing watch list and rejected or labeled as “at risk.” Regulations have also been tightened on specific visas—for example, those on marriage visas now have to be over 21 years of age and those sponsoring family visas are liable for the upkeep and criminal activities of those they vouch for (politics.co.uk 2007). For those who are successful in settling in the UK, compulsory ID cards for foreign nationals began to be implemented from 2007 (politics.co.uk 2007) ahead of those being introduced for UK citizens.

However, what is important is the increasing screening of travelers whether they have a visa or not. The United States has led the way in this area, and travelers leaving the UK for the US or coming into the UK from the US will have had to provide information including fingerprints, photographs, and other information under the National Security Entry and Exit Registration System (NSEERS). In addition, the 2004 Madrid train bombings led the EU to accelerate proposals for data collection, risk analysis, and checking against watch lists. The EU is developing its own system, the Visa Information System (ICAMS 2005).

With regard to the UK specifically, the development of entry and exit monitoring as part of eBorders is known as Project Semaphore, which aims

to link “government agencies with travel operators and overseas transport terminals, to log, cross check and authorize every traveler coming into the UK” (Arnott 2004). Advanced Passenger Information (API) is core to this, and the system checks inbound and outbound passenger details against watch lists and apparently will cover 60% of passenger movements by sea and air by 2009 (Bowcott 2008). API covers “document type, issuing state, full name, travel document number, nationality, date of birth, gender, expiry date of travel document” (BIA 2008). According to the government in 2007, since Project Semaphore began in 2004 its surveillance had led to 16,000 risk alerts to relevant agencies, 1,300 arrests for crime, and an undisclosed number of counter-terrorism actions (Cabinet Office 2007). Approximately 30 million passenger movements were monitored in 2008. eBorders is expected to be running in full by 2014. This will be buttressed by PNR data, which involves a greater range of passenger information. The data is provided by travel carriers between 24 and 48 hours prior to entry/departure (BIA 2008) and will be used in the long term, with PNR data on individuals to be kept for 13 years (Statewatch 2007). Clearly, the expansion of surveillance raises human rights concerns, which are addressed later.

Technological screening is likely to move even deeper since other schemes are being piloted. The Iris Recognition Immigration System (IRIS) was launched in 2006 and covers Heathrow, Gatwick, Birmingham, and Manchester (Shear 2007). Individuals at the moment voluntarily sign up to IRIS. Their irises are scanned and placed on a database, and then subsequently they can move through security by looking at a camera, which matches their iris to the database (Public Technology.net 2006).

As mentioned, if this data is matched with a watch list, then an individual might be refused entry or exit, or permitted entry and questioned. Depending on the individuals concerned and other sources of intelligence, they might be left alone and surveillance mounted, similar to the policies adopted toward suspected drug traffickers. Intelligence product might arise from Special Branch, MI5, or MI6, which has a unit examining links between foreign nationals and British citizens.\*

Finally, the traditional form of check is that conducted by security personnel using their own discretion. Like their predecessors in Immigration, front-line officials of the new UKBA will engage in checks at airports and ports, and the UK Border Act of 2007 provides immigration officers with limited powers of detention. UKBA officials may spot a wanted or suspicious individual, and if necessary Special Branch officers may then take over.

\* Under the 2006 Police and Justice Act screening appears to be moving to domestic travel, reflecting concern with the domestic roots of radicalism and also the ambition for data collection on the part of official agencies.



In terms of freight a similar reliance on technology is evident. The Freight Targeting System, operational since 2007, uses manifest data and other intelligence to identify freight for search or surveillance (Cabinet Office 2007). A Franco-British agreement proposes the enhancement of existing screening for nuclear and radioactive materials, which began at UK ports and airports in 2004, with specific reference to the Channel Tunnel (BBC 2008d). A similar agreement exists with the United States (Shear 2007).

### **Airport and Port Security**

The border itself can of course be a target, as evidenced by the attack on Glasgow Airport in 2007 and the plan to blow up passenger planes in mid-air. UK airports are managed by a variety of agencies, some being owned by local government. The leading single organization, the British Airports Authority (BAA), manages seven UK airports (including Heathrow, Gatwick, Stanstead, and Glasgow) and spends £165 million per annum on security, and approximately 50% of staff are employed in security, 2,000 extra having been added between 2006 and 2007 (BAA 2007). Airline staff have received extra security training. Project Griffin provides anti-terrorist training to staff at Gatwick, the pilot project, with Manchester, Glasgow, and Wales to follow (BBC 2008h). As expected, special procedures were instituted during security crises. Following the alleged airline plots of 2006 (Operation Overt) passengers were banned from carrying liquids, since the plot concerned taking explosive devices consisting of hydrogen peroxide disguised as soft drinks on board several airliners (see Box 7.3).

The UK (in)famously has the greatest number of CCTV cameras per capita in the world, some 4.2 million cameras, one for every 14 people (BBC 2006). All major ports, airports, and rail stations are covered (as are all major privately owned public spaces, shopping centers, for example). The model for the UK is the “ring of steel” which linked CCTV to road blocks and databases in London and provided important data in tracking the PIRA bombers who exploded a device in Canary Wharf in 1996 (although this system is held to have had a preventative effect) (Harnden 2002). The route taken by the 7/7 bombers was plotted back after their attack, as was that taken by the failed 21/7 bombers. However, there are concerns over the quality of the cameras and the images produced, particularly since the evidence on CCTV as a preventative tool is shaky, to say the least, and its main importance is in providing data for tracking after the event. There is a long-term move to upgrade the UK’s CCTV, particularly at ports and airports, to provide images of evidential quality (Johnston 2007a, March 27).

Indeed the government announced a further development of transport infrastructure security in 2007 focusing on airports, major rail stations, and ports. Many of the physical security proposals are reminiscent of those



### **BOX 7.3 TARGETING TRANSPORT: THE “LIQUID BOMB” PLOT**

The liquid bomb plot highlighted a number of themes relevant to border security: the threat of attacks on mass transportation, the debate about whether the subsequent security measures were effective or too restrictive for commerce and passengers, and the links between radical plotters in the UK and Pakistan. The case also highlighted the classic need for evidence in terror cases to be tested before a jury. The simultaneous targeting of several airliners was seen as perhaps the most destructive planned attack since 9/11, but at trial, although serious convictions were achieved, the jury could not reach a verdict that a concrete plan had in fact been in operation. The bombs were supposed to be constructed of hydrogen peroxide disguised as soft drinks, but had not been assembled and the accused had not made any plans to travel.

The ringleader of the group, Abdullah Ahmed Ali, had been radicalized during charity work at camps in Afghanistan and by the failure of large-scale public protest in the UK to prevent the 2003 Iraq invasion. Ali and his network became the subject of MI5 surveillance. Part of the later controversy rested on the case of Rashid Rauf, allegedly a link between the network and al-Qaeda in Pakistan. Rauf had fled from the UK to Pakistan to escape criminal investigation for a murder he was suspected of committing. When he was arrested, the security services and police feared the network in the UK would hear of this and move ahead with their plot, and therefore the authorities moved before time to roll up the network. The defendants argued at their trial that they never intended to explode the devices. Their defense was that even the martyrdom videos they had made were hoaxes designed to influence public opinion, and the jury could not agree on a verdict on these charges. On the other charges, out of eight defendants three pled guilty to conspiracy to murder, and with regard to four the jury could not reach a verdict but they pled guilty to another criminal offense: conspiracy to cause a public nuisance. The eighth was found not guilty on all charges. The Crown Prosecution Service applied for a retrial in late 2008 on the charges the jury had failed to agree on (Cascani 2008). Following the trial, British Airways, Virgin Atlantic, and Ryan Air argued that restrictions on liquids should be ended. BAA and the government argued restrictions would remain since x-ray and other devices still cannot detect liquid explosives (see Cascani 2008a; Dodd 2008, September 9; Marsden 2008, September 9).

counter-terrorist measures adopted in Northern Ireland, including changing the layout of approaching roads to prevent easy access/exit for vehicles traveling at speed, instituting permanent and temporary barricades on similar principles, installing blast-proof glass and concrete, and marking out vehicle exclusion zones (BBC 2007i).

Police, including the police Special Branch, have a presence at airports and ports. Under ss44-47 of the Terrorism Act of 2000 a senior police officer can designate a specific geographical area as one in which stops and searches relating to terrorism can be carried out. Importantly, within these zones, police officers carrying out searches do not have to have *reasonable* suspicion, only suspicion. Since 2001 most of London has been continually zoned (these have to be renewed every 28 days) as have major British airports and, increasingly, major train stations. These powers are classic preventative tactics, and police officers will appear in major numbers at ports and airports, increasing the risk that potential terrorists will be swept up in stop and search (see Moran 2005, 343; Moran 2007). Over the 2006–2008 period more police spot checks, often using portable scanners, have been used at rail and port stations.

### **Incapacitating Suspected Foreign Terrorists Already within the UK**

Part Four of the Anti-terrorism Crime and Security Act of 2001 introduced perhaps the most controversial policy toward suspected terrorists seen after 9/11. Ironically this arose from an important human rights decision (*Chahal v UK* 1996) in which the court declared that an individual could not be deported if he or she faced a risk of torture in the country to which he or she was being deported. As a result Part Four of the Act allowed the Home Secretary to designate a foreign individual who could not be deported as a suspected terrorist and threat to UK national security. The person concerned could then be detained indefinitely. Fewer than 20 individuals were so designated, most detained in the high security Her Majesty's Prisons (HMP) Belmarsh and Woodhill. The individuals were free to leave the UK at any time, but if they remained in the UK they would face indefinite detention. Since a number of them faced torture in their home countries or had destroyed their documents, they remained detained in the UK. In 2004 this system was declared incompatible with the UK's human rights obligations by the House of Lords. It was replaced under the 2005 Prevention of Terrorism Act control orders. These were restraining orders issued on the same basis as ATCSA (that the individual was a suspected terrorist and threat to national security) but basically replaced prison with house arrest and various controls on communications. For example, some suspected terrorists on Control Orders were not permitted mobile phones or computers with Internet access,

had to remain in their place of residence for up to 18 hours a day, could not receive visitors without police permission, and had to allow the police entry to their place of residence at any time. There are approximately 18 individuals on Control Orders. Control Orders can now be applied to UK citizens also, but the majority have been placed on foreign individuals who cannot be deported, which was the rationale for the original 2001 Act. As of 2008, 15 control orders were in force, 12 of them on foreign citizens (BBC 2008i).

### **Asylum/Deportation/Extradition**

Asylum relates to terrorism in the manner in which a number of individuals later convicted of terrorism had in previous years received right of residence in the UK and while there had been the subject of interest by the French and US intelligence services. These included Algerian, Jordanian, and Egyptian individuals (Kampfner 2002). However, again with the rise in political controversy over asylum, tougher policies were introduced. Those claiming asylum or those entering illegally are detained in specific facilities while decisions and removal are instituted. This system has been criticized on human rights grounds. The system is still regularly criticized for its inefficient operation, but the government has made greater efforts to deport even those to whom residence or even citizenship rights have been granted.

In 2005, the British government set out a wide list of unacceptable behaviors that would be the basis for exclusion or deportation from the United Kingdom. Following the acquittal of four Algerians on terrorist charges, the Government detained them pending deportation (Moeckli 2008). Following the adverse ruling from the House of Lords on detention under the Anti-terrorism Crime and Security Act of 2001, the government re-examined the idea of deporting suspected terrorists and in 2005 alone cited 38 individuals for deportation (Moeckli 2008). Other Algerians suspected of links with terror cells were also held pending deportation. A number appealed, but six were deported in the 2006–2007 period (BBC 2007a). Other significant cases include Libyan nationals, and a number of high profile “preachers of hate” including Abdullah al-Faisal, deported to Jamaica in 2007 after being found guilty of soliciting the murder of Hindus and Jews in 2003 (BBC 2007c); Abu Qatada, the Jordanian cleric accused of being an extremist and terrorist and jailed pending deportation; and Abu Hamza, found guilty of soliciting murder and jailed pending extradition to the United States. In order to satisfy the restriction on deporting individuals to countries where they might face torture, the government signed memoranda of understanding (MOU) with these countries, which confirmed that those deported to them would be treated fairly. The UK government signed MOUs with Libya and Jordan, but this policy has still faced a number of challenges, dealt with in the section on human rights.

The 2006 Immigration, Asylum and Nationality Act allows the government to deprive citizens of their citizenship or right of residence if their presence is not conducive to the public good. “Once stripped of their citizenship, these persons will naturally be subject to deportation powers” (Moeckli 2008, 168–69). Other measures include the 2003 Extradition Act, which streamlines the extradition process, although the UK will not extradite an individual to a country on a charge for which he or she might receive the death penalty. The European Arrest Warrant also streamlines procedures for a list of offenses that includes serious offenses and terrorism.

### **Exit Controls**

From 1994 the Conservative government withdrew outbound controls and concentrated on controls on those entering the UK (Cabinet Office 2007). Following the 7/7 and 21/7 attacks temporary controls were reintroduced. Permanent monitoring in the UK is now being reintroduced via the eBorders program, and the EU has cooperated with the United States in Passenger Name Record (PNR) data-collection and sharing arrangements, instituted despite being voted against by the European Parliament (ICAMS 2005).

## **The Effectiveness of the New System**

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### **Organizational Change**

In response to the recent terrorist events, growing political concerns over immigration, and an awareness of the previous lack of coordination regarding border security, there have been a number of procedural changes to border security policies in the UK. The organizational changes to border security developed in tandem with the re-organization of the Home Office in order to reform immigration policy. Even after the creation of the UKBA (which has yet to bed down), the UK (like the federal US—see Chapter 2) still has a range of organizations working in security. While the centralization mentioned above is increasingly giving rise to large law enforcement organizations (SOCA, UKBA) the issue of “joined up working” (the mantra in the UK public sector for some two decades now) between the organizations is still extant, as is the issue of cooperation *within* them. Generally, the Special Branch and MI5 work well together. Indeed, one external inspection argued: “In some instances bilateral relationships between individual Special Branches and the Security Service are stronger than those with neighboring [police] forces” (HMIC 2003, 32). Following the controversies over “Londonistan” mentioned above, and particularly after the 7/7 attacks, MI5 has devoted far more resources to jihadist terrorism, and currently 2,000

individuals are under some form of surveillance, a number of these being foreign individuals who are legally resident in the UK or are UK citizens traveling regularly to Pakistan and elsewhere. This figure must be compared with the 1.8 million Muslims living in the UK.

Other agencies have histories of friction, including the police and HM Customs and Excise (now HM Revenue and Customs). Even after reorganization, the setup requires coordination between the Home Office, the Department of Transport, UKBA, MI5, police services, Special Branch, BAA, private airline carriers, and private security—a formidable task.

### The Technology of Screening and Blocking

As mentioned previously, the UK's immigration stance has always been *relatively* liberal, and this is institutionally reinforced as part of its membership of the EU to the extent that it promotes the free movement of people and goods. If monitoring and controls are to be introduced, this requires technical efficiency because of the sheer volume of people and goods coming in.

In technical terms, perhaps the greatest issue is whether the investment in technology will work. The government is placing a great deal of faith in this as a solution to border problems. Indeed, as one satirical overview of civil liberties in the Blair years points out: "New Labour's over-enthusiasm for law-making is almost matched by its mania for enormous computerized filing systems" (Atkins et al. 2007, 97–98). The question is whether this expansion in surveillance will work. As this author has argued elsewhere:

Surveillance is not constant, nor is it uniformly efficient. The 9/11 attacks demonstrate that surveillance/intelligence is not the panacea for the control of deviance ... Evidence on its effectiveness is conflicting and there are innumerable ways in which individuals and groups can subvert it. Surveillance brings with it information overloads and the reality that information is not seen as important at the time ... The image is not Orwell or the Panopticon; but one of bureaucratic sluggishness and bounded capacity. (Moran 2005, 351)

In the United States the government's watch list of suspected/risky individuals was instituted in 2004 and quickly grew to more than 700,000. However, according to an external inspection, it apparently "continues to have significant weaknesses," which actually might make the identification of terrorists more difficult (Nakashima 2007), and there is no reason why the UK system will not have similar difficulties.

As mentioned previously, under Project Semaphore, since 2005 30 million passenger movements have been monitored annually, resulting in 20,000 risk alerts and 1,600 arrests of passengers—by year: 125 in 2005, 629 in 2006, and 748 in 2007. No information is available as to any prosecutions or convictions

(Liam Byrne MP in answer to Michael Meacher MP, *Hansard*, 3 Mar 2008: Column 2088W). This is a low percentage, and in another official account the efficacy of the PNR intelligence was “proved” by a series of anecdotes (BIA 2008). The United States had even fewer matches, with the Department of Homeland Security arguing that “1,200 criminals and immigration violators” had been detected out of 63 million visitors (Statewatch 2007). Is the system using a massive technological system to find a small number of violators and an even smaller number of terrorists who could be detected via other methods, or is the system failing in terms of efficiency in identifying too few?

Similar debates are evident with regard to biometric technology. The IRIS system, which operates via unmanned gates at which passengers’ faces will be scanned and matched to their passports (if biometric) is a pilot one, and so far produces false positives of 3–5%. Bowcott (2008) points out, however, that in domestic sites in the United States (such as the Superbowl) the system had to be turned off due to the large number of false positives. Similar arguments are made with regard to the controversial ID card system—that is, that the technology is simply not there to support the aims for it, particularly in the era of mass transport.\*

Regardless of the controversies over racial/cultural profiling, the patterns of flights to Pakistan may be difficult to gain risk patterns on in real time, since the traffic between the two countries is so great. Chips in passports will provide more information in this area, but it depends on what programs are in place to analyze the data and then what is done with that data. What will bring benefits is the matching of entry and exit controls, a basic procedure which should never have been removed.

In principle, the UK situation should improve as more information comes into the system, watch lists are continually unified, and data-sharing agreements are instituted. However, this depends on the accuracy and availability of the relevant information. The controls are only as strong as their weakest point. Although there is much talk of “Fortress Europe,” the concept is a long way from reality. It is more difficult to enter EU countries now, but once inside the zone travel is easy, for example, under the Schengen Agreement (an area different from the EU zone but covering a large part of Europe). Further, there is likely to be a booming market in forged, properly chipped passports as a result of the new system.† The interviews taking place abroad as part of the expanding borders program have to cope with a high level of demand—how thorough can interviews be in identifying most of the individuals engaging in criminal activity?

\* See the critiques by Ross Anderson, professor of security engineering at Cambridge University, in a series of articles available at <http://www.cl.cam.ac.uk/~rja14/>.

† See the campaigning website NO2ID, <http://www.no2id.net>, for a robust critique of the policy, planning, and technology behind the UK’s ID card system.

## Transport Infrastructure

The provision of security at airports highlights the evident problems in reconciling security with commerce. The British Airports Authority states: “The challenge for airports is how to implement an increasingly complex set of rules to protect the safety of passengers, employees and partners while maintaining smooth and efficient airport operations, with minimal disruption to travel” (BAA 2007, 55), which is management-speak for highlighting the conflict between security and commercial business in an era of mass travel. Both airport management and airlines have faced criticism over the delays to passengers caused by security checks. Further, as in the United States, there are issues over the quality of the security being provided by private providers. Apparently, employees of private security firm ICTS UK were observed via undercover filming at Birmingham Airport sleeping and reading rather than checking luggage of passengers flying to the United States, failing to check passengers’ shoes, and leaving planes unguarded, following which the chairman of the US Homeland Security Committee argued that flights to the United States from Birmingham should be halted (Harper 2007). A Department of Transport airport and police investigation led to staff being sacked. Shortly afterwards, part of the firm was put up for sale (Harrington 2007). Indeed, the private management of airport security has faced scrutiny on a wider, structural level. The BAA has been criticized for a lack of investment in security at airports, and Joseph Stiglitz, for example, has argued that private airports have little incentive to invest in security measures due to the structure of their contracts in an “incompatibility of incentives” (Stiglitz 2006).

Finally, the institution of extra checks at airports not only risks hurting business but may actually bring its own risks. The Glasgow Airport attack saw the jeep involved less than 20 feet from queuing passengers (BBC 2008f), and critics have pointed out that long snaking lines of passengers waiting for a substantial period provide a perfect target for terrorist attacks. As Professor Alan Hatcher argued: “A well placed suitcase containing several kilograms of explosive ... would result in catastrophic fatalities and injuries as well as potentially destroying the infrastructure of the building” (Clement 2006).

The decade particularly following the end of the Cold War has been the era of cheaper mass commercial and recreational travel. Both government and private providers have encouraged this as part of the process of globalization. Following 9/11, security brakes have been applied but the issue is whether flights or airport infrastructure can be truly protected by a combination of public and private security in an era of voluminous travel with high passenger expectations coupled with a public view of terrorism as an issue which does not affect them.



## Human Rights

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Border security has always raised fundamental human rights issues, for a number of reasons. First, domestic law has always prioritized the status of citizens over foreigners attempting entry or being resident in the nation state (see Cole 2004; Ross 2004; Moeckli 2008) and this can conflict with international human rights laws concerning the free movement of goods and people and rights of refuge. The idea of “Fortress UK” or “Fortress Europe” worries human rights advocates. However, movement and settlement is, in historical context, as widespread as at any time since the 19th century. Further, these processes have always had qualification: countries have never been “revolving doors” particularly where criminality or national security issues are concerned. The issue arises as to what qualifications are placed on those coming into the country or residing here. Second is the issue of controls and surveillance actually applied to UK citizens’ movements in and out of the country and the data retention and sharing involved in this. Third is the concern that the special powers related to border security (such as public order powers which may be used to protect transport infrastructure) are being used unfairly. Both with regard to citizens and non-citizens is the idea of whether rights are being infringed disproportionately and whether border security is part of a *securitization* or *criminalization* agenda. The former refers to the way in which wider and wider areas of life are viewed as relevant to security; the latter, more critical, is the idea that large swathes of the population, or indeed the whole population, are viewed as potential criminals (Story 2005; Furedi 2002). These debates can be seen in the areas dealt with below.

### Human Rights and Those Non-Citizens inside the UK

For those suspected of terrorist activity, the most controversial aspect of the treatment of foreign nationals was the detention system introduced under the 2001 Anti-Terrorism Crime and Security Act. As mentioned previously, this legislation permitted the executive to declare foreign citizens as international terrorists or threats to national security, following which they could be detained in high-security prisons. They were permitted to leave the UK at any time. However, many faced a risk of torture in their home countries (due to their suspected terrorist activity) or had no documents. If they stayed in the UK they would remain in detention. Hence the system was termed “a prison with three walls.” The regime was appealed, and the case reached the House of Lords in late 2004. Their Lordships declared the system discriminatory and in contravention of the European Convention of Human Rights. The government had to change

the system and replaced it with Control Orders under the 2005 Prevention of Terrorism Act. These orders were issued on the same basis as the original system (that is, the Home Secretary declared an individual an international terrorist or a threat to national security). However, instead of imprisonment, a Control Order effectively constituted a restrictive house arrest. However, these orders were again challenged on human rights grounds, and the government again saw judgment against them, although not for the system as a whole but on the individual restrictions involved in a Control Order (Walker 2005). For example, the courts decided that a period during which the Controlee would have to remain in his or her house was in contravention of the ECHR if it ran to 18 hours rather than 16 hours (*Secretary of State for the Home Department v JJ and others*, UKHL 45 [2007]). The controversy over Control Orders persists, although one of the major human rights challenges with regard to border issues has been resolved. Detention was previously only aimed at foreign nationals; now UK citizens can be placed under a Control Order, but this leaves standing the general human rights issues with regard to Control Orders—that individuals are effectively given punishment (restrictive house arrest) without having been convicted of any crime.

### **Human Rights and Mass Travel**

Moving away from specific categories of people, there is also concern about the general surveillance of traveling populations, which has accelerated in the post-9/11 period. This is encapsulated in the term *dataveillance* to cover the increasing collection of information on individuals' movements as a matter of course or for general purposes of security, following which it might be "mined" for specific information:

Governments are not just collecting individuals' personal information and checking it against information about known terrorists, or those suspected of terrorism on "reasonable grounds." They are using it to assess "risk levels" for all of us, and sharing it with foreign agencies, with little or no control over how those agencies will use the information (ICAMS 2005, 2).

The increased collection of passenger data, often driven by the United States but in Europe championed by the UK, particularly under former PM Tony Blair, is seen as contravening rights to privacy and security of personal data (ICAMS 2005; for the UK see [www.privacyinternational.org](http://www.privacyinternational.org)) and has been challenged in a number of areas. For example, in 2008 the BAA announced the fingerprinting of all incoming and departing passengers at Terminals One and Five at Heathrow Airport ostensibly to avoid individuals switching details with domestic passengers. Following a complaint by the NGO Privacy International

to the Information Commissioner, and following the Commissioner's public statement that passengers should only accept fingerprinting under protest, BAA suspended the scheme. Critics were particularly concerned over the disproportionate nature of the scheme and its contravention of the 1998 Data Protection Act (Privacy International 2008a, b).

Linked to concerns over the growth of dataveillance is the issue of whether it is taken to a more specific form and aimed at certain types of travelers or travel. The United States was criticized for racial/ethnic profiling after 9/11 when it devised a list of "at risk" countries, travelers from which would be subject to extra data collection and monitoring in the US (see Cole 2004, ch. 3). However, in 2007 the US government raised the idea of making British Pakistanis apply for an entry visa to visit the United States. This was publicly opposed by the UK Foreign Office, which stated: "We will oppose any measure based on broad categories of religious, ethnic or other criteria, and will continue to emphasize the current risk-based approach" (Weaver 2007).

### **Asylum/Deportation/Extradition**

One of the criticisms in this area is the manner in which non-citizens are automatically seen as problematic in terms of the risk discourse that dominates criminal justice policy making. Some critiques can go further and see a latent or overt "criminalization" of immigrants, with non-citizens almost treated in basically the same manner as criminals. As Story argues in terms of the United States:

The themes that dominate crime policy are the themes that dominate asylum and immigration policy—rational choice and the structures of control, deterrents and disincentives, the opportunism of self-interested individuals, the threatening underclass and the failing, overly lenient system (2005, 10).

Similar criticisms have been leveled at the UK. The tougher detention policies for asylum seekers or those about to be deported have been criticized on human rights grounds. A series of external inspections found the security, facilities, and support at a number of detention centers wanting (see Cascani 2004; HMCIP 2005, 2006).

The most controversial area has been the issue of suspected foreign terrorists. The inability of the UK government to deport such individuals led to the controversial detention without trial systems mentioned previously. Following the difficulties of these systems the UK government made repeated efforts to renew deportation of suspected terrorists. (Again, this has also been affected by wider political issues such as the failure of the criminal justice system to deport "ordinary" criminals, who should have been deported

on finishing their sentences but instead were released into the UK (see BBC 2007k). The government appeared to score a success with Abu Qatada. However, Qatada won his appeal against deportation to Jordan on human rights grounds, the case centering on the risk of torture evidence being used in proceedings against him and despite a Memorandum of Understanding (MOU) guaranteeing his fair treatment having been signed with Jordan in 2005. In 2008 Abu Qatada was granted bail although involving a 22-hour curfew (BBC One 2008b). In another ruling in 2008 judges also decided two Libyans could not be deported due to risk of torture, a decision which apparently also meant that the deportation of ten other Libyan nationals would be cancelled (BBC 2008e). Similarly, Abu Hamza successfully appealed against his deportation to the United States again on the issue of evidence.

If this is one area where the government has been stymied by human rights concerns, in other areas those concerns have been sidelined. One is the specific extradition relationship between the UK and the United States. Under a treaty signed between the two countries, in effect, if a request is made by the UK to the United States to extradite a suspect in a criminal investigation, the UK must demonstrate reasonable suspicion (probable cause). However, if the United States wishes to extradite a suspect from the UK the procedure has been streamlined to such an extent that the United States does not have to provide reasonable suspicion. In addition, the UK citizen does not receive a hearing to assess the evidence. Probably the most infamous case to date has been that of the “Nat West” or “Enron” Three, the British businessmen accused of financial offenses in connection with Enron’s collapse in 2002. The three were not subject to criminal investigation in the UK but were nevertheless extradited to the United States in 2006 after finally losing appeals against their transfer in the House of Lords.\* The treaty has since been used for other criminal suspects including terrorist cases. The controversy over the imbalance in the treaty was highlighted by the wording of the document, which appeared to have been drafted in America with the word “offence” continually spelled in the US manner as “offense” (see Atkins et al. 2007, 159–179).

## Conclusion

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UK border security has been clearly shaken up in terms of organizational change and the attempt to introduce a coherent “in and out” system under eBorders. UK border security has faced severe criticism for being a contradiction in terms, and many of the criticisms as presented here are, in fairness,

\* In November 2007 the three pled guilty to one count of wire fraud in exchange for charges being dropped. They received 37 months in prison (Herman, 2008).

justified. Those either on the left or right supportive of the freer movement of goods and people felt the system was too restrictive; others of the center or right felt the system was too lax, but many other observers argued that even on its own terms the system was ramshackle. Partly this stemmed from the lack of inter-agency coordination. This has partly stemmed from an ideological and policy commitment by successive governments to relatively free movement. It was not 9/11 that led to major change in the system, nor was it solely the 7/7 attacks which raised the issue of the international activities of UK terrorists; rather, it was the massive migration into the UK in the last decade that made immigration a politically explosive issue, which saw the Labour government's seesawing between liberal and restrictive discourse and policy and finally in the era of al-Qaeda opting for tighter controls.

These controls raise questions of effectiveness and human rights issues. In terms of the former, the UK's virtual and physical borders will continue to be buffeted by the UK's major global economic, political, and personal links and will continue to deliver less than promised if they rest on an over-reliance on technological surveillance rather than human intelligence. Probably the main human rights concern is the rapidly developing surveillance architecture, which in the new universe of the "risk society" (Beck 1992; Feeley and Simon 1994) is targeting everyone, a universe in which all individuals and movements are viewed as suspect until demonstrated otherwise, and where the logic of such a system of thought requires ever-expanding surveillance systems (Furedi 2002). Individuals thus have increasing packages of data traveling invisibly on their backs. Other issues will center on the fact that in the absence of the simple power to deport suspected foreign terrorists and the evidence to convict them, the government has had to introduce a number of cumbersome policies to "risk manage" foreign nationals which have fallen foul of human rights standards and cast a shadow over the UK's human rights commitments.

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**The Middle East  
and Oceania**

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**III**



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# Australia and Border Protection Morphing Racial Exclusion into Terror[ism]

# 8



SONIA MAGDALENA TASCÓN

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## Contents

Introduction	276
The Border	280
The Australian Border	282
The Australian Way of Life	291
Australia's Border of Terror	293
Australian Responses to Terror[ism]	297
The Strange Case of Dr. Haneef	298
Conclusion	300
References	303

## Introduction

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Since the unfathomable horror of September 11, I have witnessed a community being dragged through the maze of media, politics and fear (Chong 2006).

Australia is a nation whose relative isolation has produced conditions where the threat or act of terrorism has always been minimal, and indeed as a material event has been non-existent, as the following statement from a recent federal government discussion paper mentions: "Australia can draw little from its historical experience with terror to understand and meet the current challenge. Unlike many European and Asian countries, twentieth-century Australia lived relatively free of the scourge of terror" (Commonwealth of Australia 2004, vi).

The "reality" of terrorism, as a tangibly material event has, therefore, not eventuated within Australian soil before or during the period of time termed "the war on terror," or what this book names as the era of al-Qaeda. Australia has simply not been faced with a terrorist attack either of the one-off type such as the Oklahoma or Madrid bombings, or of the more insidious and ongoing Northern Ireland, or FARC (Colombia), or Basque separatist type.

The border protection responses that occurred within Australia after the September 11, 2001 (hereafter referred to as 9/11), attacks on the World Trade Center in New York, and may be attributed to the al-Qaeda threat, therefore need to be prefaced differently here. The responses must be seen within the context of other events, both immediate to September 11 and al-Qaeda, and also of much more longevity historically. This understanding is crucial for, in turn, understanding the series of events that followed 9/11 within Australia. This is because, if the threat could not be made sense of within a framework of lived experience that could then provide the event with a material authenticity through complex understandings due to their actual memory, then what we had in Australia as the response to the 9/11 attacks was a set of reactions only vaguely associated to this event, or at most tenuously related to it, and only so through a set of emotional links that recalled other fears not entirely of the terrorist type. Indeed, it may be said that the lack of experience with terrorism, the lack of experiential engagement with the multiple dimensions of such, and its non-presence in the historical annals rend the subsequent consequences that emerged with an intensity that might not have been there had this experience been present. This is because an imagined threat can be as powerful, if not more so, than one that has become a material reality and understood in its manifold variables. But in the case of Australia, it became an intense reaction more than anything because the fear that event engendered became associated with another anxiety much more developed and practiced over time. For Australia, 9/11 evoked a sensitivity that at the time of the attack was already heightened by its tangibility in the bodies of

unauthorized asylum seekers arriving by boat. This event in turn was associated to a more generic anxiety in Australia as the “outside” confronted the “inside” with a lack of control it had always believed itself to hold. The “outside” for Australia was always radicalized given its geographical positioning, and so the fear of the outside was always a fear of “the other.” Historically this fear has been expressed in various ways, one of those the call to “populate or perish” in 1941 by the then Immigration Minister Arthur Calwell—which meant with people of European descent—driven by the pervasive fear of “the yellow peril,” or those to Australia’s north. It is a fear, nonetheless, that has driven much public policy, opinion, and debates, as we will see later.

Intense fear can become a generalized reaction when a new event may be seen to be in the general category of that which already causes anxiety. The responses of avoidance and attack are then evoked for the new event as if it were that which produced the memory of anxiety, or trauma, in the first place. Fear can also be given manifestation—can indeed be more fully developed—when practiced in the imagination without concrete experiences; recall our fears after watching a horror film as a child. These images become as if real experiences to be evoked when facing a similar set of circumstances. In either case, the emotions produced will be powerful, forcing the mind to face the possibility of a void, of a loss of meaning from the loss of what allows us to produce meaning: significant people or beliefs/values. The memory or trauma that Australia carries as a memory is, therefore, not terrorism per se, but that which could readily be associated with terror because it was already embodied as an external threat and hence fear, and has always existed as a specter of horror, in the shape of a radicalized “other.” As I will discuss later, the fear of the “yellow peril” and the imperative to “populate or perish” arise purely out of this nebulous anxiety to be able to control a border that is essentially radicalized, and that was under a vague threat of being overrun, being crossed through invasion, by that radicalized other.

As I will also cover in more detail later, Australia has been practicing its own brand of border protection since the British colonial presence, premised largely on radicalized exclusions. Although race is a problematic term which has its origins at the time of the Enlightenment in the terms in which we use it today (Hannaford 1996), it has also shifted over time from meanings of biological determinism to cultural determinism (Balibar 1991; Stratton 1998; Markus 2001). I will use it to mean a culturally constructed category for marking people as having pre-established physical or cultural features. Furthermore, as a category that is used to perform actions (racial discrimination) it is usually applied as a way of excluding—in a variety of ways—those who display these features. It is important to note that in the current versions of this way of marking for exclusion it also has strong religious elements, so that, for example, in the cases of Jack “Jihad” Thomas, an Australian who converted to Islam, the full extent of the counter-terrorism laws could be applied due to this latter fact.



Race is most salient to foreground in relation to Australia's responses to al-Qaeda after 9/11, as it is a thread ever-present in many of Australia's responses to external threats. This nation's history is filled with instances of attempting—and succeeding—in drawing and sustaining a border that establishes a clear radicalized outside and imagining a community inside defined by its racial homogeneity. It is a nation premised differently from others because of its geography, but also because it has managed for a very long time to control both its geopolitical *and* its socio-cultural borders largely through state and bureaucratic management. While we may imagine that this is an ideal situation for any nation to have, this same ability to control the borders to such an extent has produced an isolationist anxiety unmatched elsewhere. This national anxiety, used to form Anthony Burke's central argument in his book *In Fear of Security: Australia's Invasion Anxiety* (2001), has been mentioned by others (Hage 2002; McIntyre 2003) as a defining theme for this nation. It arises out of two factors: Australia's place among largely Asian nations; and its own epistemological origins, which may be said to be directly out of the European Enlightenment, when "the border" becomes a clear and definable entity, and controls its logic or central imperative.

Although, as I will discuss below, border control, or border protection, became significant lynchpins for the Howard government from 1999 to 2003, during the time of the "boat people" when asylum seekers began arriving in greater numbers by boats, some form of radicalized border protection has been occurring within Australia throughout its history. It is of course significant that it is prototypically within immigration laws and practices that the border is defined and maintained. The counter-terrorism laws to which the al-Qaeda threat gave rise must therefore always be seen within the backdrop of the ways in which the immigration border became imposed, because this was the site within which terror was defined for the Australian experience. The border at the time of 9/11 was in the process of being reshaped because of "boat people" and immigration, although terrorism gave it legitimacy it could never have had otherwise. In effect the counter-terrorism laws became readily radicalized (under the new version of "race" mentioned above, which includes religion now) so that in two instances when they were used most forcefully—in the cases of Jack "Jihad" Thomas and Dr. Mohammed Haneef—they were used against two individuals who were readily recognizable as "other," although one (Jack Thomas) was an Australian citizen converted to Islam, while the other was an Indian doctor fulfilling Australia's shortage of doctors. In the first case, of Jack Thomas, the laws have collapsed on him the full weight of the border, and his movements have been severely curtailed, although he is no longer imprisoned, and the legal case against him has been questioned. In the case of the latter, which I will cover in more detail later, he was ejected beyond the border. In a strange twist of the application of the radicalized border

that includes religion but may disregard national affiliation, the cases of Mamdouh Habib and David Hicks, both Australian nationals, show the ways the new border acts in reverse through the ready surrender of their rights as Australian citizens to the United States' own set of border reshaping in Guantánamo Bay, represented as traitors.

Australia's responses to al-Qaeda and this new wave of terrorism must, therefore, never be separated from its history and geography because in the latter lie the seeds of what occurred after 9/11, not in the 2001 event itself; it is, indeed, significant that 9/11 occurred on the tail-end of the *Tampa* incident (the cargo ship which rescued asylum seekers off the coast of Western Australia in August 2001, and whose captain refused to take them back to Indonesia as requested by the Australian government, producing a stand-off for a number of days), which permitted the easier passage of the "Pacific Solution" immigration laws *and* the counter-terrorism laws by conflating "boat people" with terrorism. The al-Qaeda attacks, then, simply intensified a pre-existing anxiety about invasion by "the other," an invasion that has never materialized and remains as a traumatic memory insofar as the colonization of this place had occurred as an act of invasion of [another] other, the Indigenous peoples of this place. Indeed, Ghassan Hage (2002) makes explicit mention of this memory as a possible undercurrent motivator for the forceful ejection of the "boat people" of 1998–2003, in relation to a fear of the boat as iconic symbol of invasion.

Fear of the "other" thus became that which drove much of Australia's response to terrorism, a nebulous yet ever-present apprehension in the collective imagination, posing an undetermined threat of invasion ready to be deployed at any given moment. And deployed it was both for political purposes and for more generalized ideological purposes to return Australia to an earlier, less pluralistic vision existent prior to the establishment of the policies of multiculturalism in the mid-1970s. This chapter documents the events post-9/11 in terms of a response by a particular culture to something that occurred beyond its own domain of existence, but made sense of from within its existing framework of meaning; that is, as a cultural phenomenon. For this I will rely largely on the media as cultural texts, as this was the primary way in which most people made sense of these events. The role the media—itself not an objective or homogeneous entity—plays in the way any event is made sense of by the broader population, is an important one, acting as mediator of knowledge, reproducer of dominant narratives, but also interjector of such (O'Shaughnessy and Stadler 2003; Schirato and Yell 2000). It has, therefore, an integral role to play in how events are read and interpreted, and it is often the first port of call for most people to be informed about events. In this chapter I will rely primarily on the print media, as often most news are given broader and comprehensive coverage here.

Before I turn to a more descriptive outline of the border protection responses within Australia, however, I wish to turn the discussion to more theoretical and historical dimensions. As already mentioned the specific responses by Australia cannot be understood but within this historical context. But before that I want to first turn to those epistemological factors I mentioned earlier as forming part of the factors contributing to these responses also, or how the border has come to be imagined in modern times. Both of these factors are central to understanding how Australia responded as it has done since colonization in 1788, but also how this history continues to reverberate in present decision making.

This book is concerned with the ways various nations have responded to the threat of terror[ism] with laws or practices to ensure the protection of their borders, and hence the safety of their citizens. This chapter focuses, as already mentioned, on the cultural. If we see *the cultural* as that which formulates the very frameworks within which we function and understand the world, the ideas as well as the practices which circulate us within a network of meaning-making, then the cultural provides for us the broadest understanding of the significance of some events over others, for example, the collective commemoration of the 9/11 events and the Bali bombings (October 2002 and October 2005) over the Jakarta Marriott Hotel (August 5, 2003) and the Jakarta Australian Embassy bombings (September 9, 2004). The very concept of borders, therefore, needs to be scrutinized under the cultural, because it is here where our understandings of the importance of borders arises. Since borders as we know them are a very modern construct, and guide notions of security over insecurity, let us explore this concept a little further before moving on to their modern application in the Australia context, woven through with ethno-religious strands as they have been here.

## The Border

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The border as we understand it in modern times delineates between the spaces where security reigns, and beyond which the opposite exists, or terror. This is because *the border* has become an important place and concept in modern times: a something tangible and real that bounds a world of safety and familiarity, but beyond which lies an unclear unknown, as places of risk and death. The border clearly delineates the limits of what is “ours,” and beyond which lie “others,” a line, a limit, an edge. A “border” is “the line that separates one country, state, province, etc., from another; frontier line; brink, verge, and most tellingly “frontier of civilization” (Dictionary.com n.d.). It is both a limit and a division. It is, therefore, a something that delimits between objects, and makes distinctions between them; this may allow clear classification and therefore in clear differentiation an easier description between

things, objects, people, areas, etc. The border as able to clearly delineate *between* things, however, as a clear classificatory marker for differentiating between them, does not become an important concept until modern times. Before the time when this concept becomes important, most important were the similarities between them, or what Michel Foucault calls *similitudes* (Foucault 1970/2002). In modern times *the border* acquires dimensions of precise and radical differentiation between things in ways that had not been present before. That is, until approximately the 18th century\*—the time of the Enlightenment—much of our existence, at least in the Western world, had been experienced in the subject-object relationship of undifferentiation, including the human subject. These were deep epistemological and ontological shifts, which had cultural consequences. No longer “drawing things together” but “discriminating” (Foucault 1970/2002) meant that objects were no longer seen as part of each other, and that the human subject no longer saw him or herself that way either. The rational human, the Cartesian *cogito*, in his autonomous state of knowing, separated from all other life and “identical to itself” (Vivian 2000, 306) was given shape at this time (Taylor 1989; Witt 2000; Dresden 1968; Kelley and Popkin 1991). That is, *the border* not only confines objects/subjects to eternal separation from each other, but also delineates a clear “inside” (organized by the logic of identity or “the same”) from an “outside” (defined by its radical differences to the “inside”) (Taylor 1989). As Taylor discusses, notions of “insides” and “outsides” in such radical separateness do not come to be understood in the ways we do in modern times until after the Enlightenment.

This has had profound effects on the way we imagine the connection or relationships between human beings and “others,” whether those others are of the non-human or human world. *The border* comes to have a particular configuration, but also gains a status in meaning-making not present prior to these epistemological shifts; it becomes an important classificatory articulation in modern times. In this new rigid form the border comes to be fully expressed in political terms through the birth and development of the nation-state, approximately at the time of the Treaty of Westphalia in 1648, when clear boundaries began to be made between political entities. These clear geopolitical boundaries began to encompass, furthermore, an “imagined community” (Anderson 1991) organized by the principles of internal “sameness”—or identity—and gave rise to modern nationalism (Hobsbawm 1990; Bhabha 1990). Internal coherence defines nation-building in modernity and must resolve internal incoherence—diverse interests and

\* There is some dispute as to when this process becomes marked enough to be named a cultural shift, some arguing that it began in the Renaissance (Foucault 1970/2002; Taylor 1989), while others see it as occurring in the 14th century (Dresden 1968; Kelley and Popkin 1991), or even earlier, in the 13th century (Witt 2000).

differences—through the formation, circulation, promotion, and reproduction of stories that bind within a distinct set of geopolitical and socio-cultural borders. These collective stories as cultural narratives allow these borders to be monitored, controlled, and reproduced, and produce the conditions for the sustenance of internal homogeneity and a perception of unity (Bhabha 1990; Hobsbawm 1990; Pease 1997; Kramer 2003).

The logic of identity, “a new, quite recent development” (Bauman 2004, 16; also Bauman 2008), is premised on ideas of internal coherence, sameness, and unity (Gellner 1983), but above all to “oneness,” the “imagined community” defined by some imagined set of common features. Identity, or homogeneity, then, begins to clearly define the “inside” in opposition to the difference of the “outside.” Identity, furthermore, is driven by the perceived need for unity, which may only be achieved through one set of common features, since difference defines the “outside.” Internal coherence is then seen as only able to occur through an allegiance or assimilation to this one set of common features; difference is a failing, a deterioration into anarchical void. Inside then equates with homogeneity, while outside equates with strangeness, difference, and inferior; the two spheres are to be kept separate as they are incommensurable. In this conceptualization of radical oppositions or what is termed as the binary organization of the world (and the hierarchical placing of things is vital to this dualistic logic as one side is always superior to the other), the threat of invasion by the “outside” becomes ever present, as it is that which is in opposition to the inside and is standing at the verge waiting to engulf the inside.

While most cultural groupings display some form of differentiation from others outside its group, it is not until modern times that the radical forms of separation and rigid maintenance of such a distinction becomes possible or imaginable. Technologies such as immigration documentation (visas and passports), bureaucratic management, and technologies of surveillance become particularly important in the monitoring and maintenance of the rigid border of modern times.

## **The Australian Border**

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Australia was born as a modern nation-state from within the context of the European Enlightenment. This means that the border as it has been imagined and maintained within Australia was transferred via British colonization in the format as described above. Although to enter into a detailed history of Australia’s trajectory since colonization is beyond this paper, a discussion of the ways in which it has sustained the border is important. The theme of “oneness” is clearly important as this was discussed above as a theme in the modern border. Distinct separation from “the other” is also central, as this

“other” is not just those who lie beyond its geopolitical borders (since there are clearly those who are not “other,” such as those of Anglo descent), it must be other by way of the features they display; this is most tangibly expressed racially, whether read at any moment biologically or culturally. How the border is made to perform oneness as internal coherence or homogeneity, as well as distinct separation from what is different, or “other,” is usually by way of exclusions and this, moreover, through technologies of migration. That the central organizing principle of oneness, of unitary homogeneity, remains important to the present day is clear in the following letter published recently as “Letter of the day” in a popular afternoon newspaper distributed freely in Victoria, particularly to train commuters, the *mx*. With the title “Diversity has one main language” the writer bemoans the fact that electoral information is provided in a number of languages, saying:

I don't want anyone, regardless of citizenship status, voting if they can't speak English well enough to understand the issues. I'm appalled that people who are not sufficiently committed to Australia to learn English are forced to vote. I love Australia's multiculturalism ... Learning English should be free and mandatory ... The US has given up the fight and 48 of the 50 states now produce almost everything in both English and Spanish (*Diversity* newspaper, 2008, 14).

The assumption is that one language is the natural state, that knowing that language suggests both political knowledge of the nation's significant events, and a cognitive ability therefore to produce appropriate decisions; but more importantly, knowing that one language displays “commitment” to this nation. To what extent political engagement (as distinct from political participation, which may have to do with a range of different factors, as explored by McAllister and Makkai 1992) occurs across the distinct groups in Australia is debatable, although research looking at political knowledge among Australian-born youth suggested it was rather minimal (Long and Boyer 1994). Political knowledge cannot, in any case, be made contingent on adherence to one language, and this, again, to commitment to this nation. The point to be made here, however, is that “oneness” is perceived to be the natural state and that the existence of another language to the “one main language” on the cultural (as politics forms part of the framework within which ideas reside) scene is tantamount to competition and not enrichment of that cultural landscape. (Similarly and interestingly, as will be discussed a little further below, the sudden and quite vocal appearance of a right-wing political party at the 1996 federal elections, capturing a disaffected electorate with their anti-multiculturalism and -Indigenous reconciliation platform, was named One Nation.)



From its inception this nation excluded its Indigenous inhabitants through an act of denial and invisibility, with a declaration of *terra nullius* (Latin: “empty land”). These peoples did not gain full recognition within the polis until 1967 with a referendum that granted them full citizenship and associated rights. Until that time Indigenous peoples were under the direct jurisdiction and management of various state acts and bureaucratic bodies; their rights to freedom of association, movement, and adequately paid work were limited. This was the first act of exclusion practiced by the nascent nation, but it was not the last. In the 1850s, during the gold-rush years, a number of riots and attacks on Chinese gold-diggers led to their expulsion and were directly responsible for the Migration Restriction Act of 1901, or the infamous White Australia policy. In this, the first Act of the newly independent nation, Australia sought to include explicit mention of racial categories to be excluded for migration purposes. Britain disallowed this due to its burgeoning economic and political relations with China and Japan, and so Australia included a policy that enabled the authorities to require any applicant to undergo a dictation test in any European language. This allowed the exclusion of applicants deemed to be unsuitable who may be fluent in English, as many people from Hong Kong, India, and Rhodesia (now Zimbabwe), Kenya, Nigeria, and other regions colonized by the British were. The dictation test was only intended to exclude non-Anglo entrants (Jupp 2002). As the pool of Anglo-Celtic migrants dwindled after the First World War, Arthur Calwell (Australia’s first Minister for Immigration) called for the need to “populate or perish” in 1941, which was in direct reference to the fear of invasion by the “yellow peril” to the north of Australia, if this country were not populated by European peoples. The immigration thrust shifted and widened and Australia began to allow entry to other European peoples, but largely to those who could fit the racial characteristics of the Anglo races (Jupp 1998; Stratton 1998).

The White Australia policy was not formally dismantled until the 1970s with the introduction of multiculturalism, after widened immigration, particularly after World War II, had produced an Australia populated by a wide array of different peoples, if mostly of European descent. Multiculturalism was to celebrate the co-existence of these various peoples, and for the first time acknowledged the strengthening that could occur from difference, rather than being divisive. Indeed, multiculturalism became a significant nation-defining narrative in subsequent years, and Australia’s experiment with it was internationally recognized. One thing which has to be mentioned, however, in relation to this policy is that while it was an attempt to accept and acknowledge the enriching dimension of the differences introduced by the widening scope of the migration net, it was largely intended as social engineering, in order to manage these differences (Hage 1998;



Stratton and Ang 1998; Lopez 2000). That is, the policy had arisen as a result of a fear that difference would fragment and dishevel the fiber of the nation and lead to unmanageable divisions. Multiculturalism was, in effect, an attempt to cohere difference, rather than allowing it to exist to introduce new ways of doing things at a fundamental level; it became a celebration of food and dance and little more. Many writers in this field mention the limits of multiculturalism as arising from a sense of liberal tolerance rather than an intrinsic acknowledgment or granting of real political participation to the inherent strengths of difference. Although multiculturalism acted as a significant nation-defining narrative and had become entrenched among many groups within Australia (Tascón 2008) by the time of the 9/11 attacks, there had been growing resentments for the perceived economic and political displacement of low-income groups in favor of newly settled communities, seen to be directly attributable to the affirmative actions enabled by multiculturalism. These resentments were finally given voice and validation by the election federally in 1996 of two people who were to remain significant in Australia's political scene for over a decade: Pauline Hanson as the leader of her party, One Nation; and John Howard, the leader of the Liberal Party. Both of these individuals, elected from a platform clearly reaching out to these disgruntled Australian "battlers," sought above all else to regain the perceived losses under multiculturalism, to regain the privilege to define the Australian border in essentially homogeneous ways.

By this stage in Australia's history, however, blatant racial exclusion could not be visibly practiced, since federation Australia could only apply race<sup>\*</sup> as a category for distinguishing between people in indirect ways, something that Jupp (2002, 8) alludes to in the following:

The Act of 1901 nowhere mentions race or the White Australia policy ... This illuminates one of the stranger features of Australian immigration: the consistent denial by officials of something which everyone knows to be true—from "There is no racial discrimination" to "Detention centres are not prisons."

From this time exclusion was made on the basis of "culture" and is crystallized most clearly at the time of the "boat people" of the period 1998–2003. At this time the comment that this nation could not admit "people of this

\* We need to remember that race as a social category is not used any longer as a biological marker, but in recent times has moved to what is termed "culturalisms" (Balibar 1991; Stratton 1998) and so now claims for racial exclusion are made on the basis of "culture" although in practice exclude similar groups of people.

type” is made repeatedly, as in the following newspaper excerpt, made at the time of the “children overboard” affair of 2001<sup>\*</sup>:

Tuesday, October 9 / P.M. Howard: A refugee flees persecution or flees a country more than anything else in the name of the future of his or her children and anybody who would endanger the lives of their children in that kind of way, I find it hard to accept. I certainly don't want people of that type in Australia, I really don't (Kingston 2001).

This brings us finally closest to the point being made here; that is, that the border in Australia had been developed around a homogeneity that relied heavily on a fear of the other as a possible invasive force, which then went on to feed the “terror” of terrorism. The extent of the anxiety around this racialized other who may at any time invade becomes apparent with the amount of public dissemination that occurred as more and more boats began arriving on Australia's western and northern shores carrying asylum seekers.

In 1999 a trickling of newspaper items began to appear and grow in number over 2000, covering the topic of a new wave of “boat people,” asylum seekers who were arriving by boat unannounced, this time largely from the Middle East: Iraq, Iran, and Afghanistan representing over 75% of all arrivals in 1999 (DIMIA n.d.). From that time until the “Pacific Solution” policies of 2001, the nation appeared consumed with few other issues but the “refugee” question. Aside from the numerous newspaper articles, editorials, and letters to the editor, the electronic media also allocated an increasing amount of air space to the issue. Much energy was expended in the public arena around this new “phenomenon”: in drafting and enacting policy, defending it, disseminating it, and attacking it; in analyses of attitudes, time volunteered to help refugees, writing counter-arguments to the government's position, political lobbying, organizing events, etc. (see Box 8.1).

What is of significance from all of this is that boat arrivals at their peak did not correspond to anything close to the public perception as revealed in a 1998 poll where “the average Australian overestimated by 70 times the number of boat people arriving each year in the country” (Marr and Wilkinson

<sup>\*</sup> In October 2001 a boat laden with asylum seekers began to sink in waters off the western coast of Australia while the Australian Navy was present. No media had been allowed to go to the site, and photos were released by the government to the media which the government suggested showed clearly that children were being thrown in the water by the parents in order to evoke the assistance of the naval officers. As the photos were ambiguous at the very least, questions were asked as to the veracity of the interpretations made by the government. While the government continued to declare this interpretation as the true one a subsequent enquiry showed that this was not so, and further, there were serious questions raised as to who knew, and how soon, that the photos did not represent parents throwing their children into the water. As a result of the enquiry the Minister for Defence was implicated directly and was forced to resign.

### BOX 8.1 PACiFiC SOLUTiOn AnD BORDER PROTECTiOn BiLL

Nowhere were the effects of 9/11 felt more strongly in Australia than its approach to immigration, illuminating the naturalness with which the border, terrorism, and “the other” coalesced almost immediately. Some of the most singularly noteworthy pieces of legislation of this time, directly attributed and connected to the post-9/11 landscape in Australia, are those that were collectively named the “Pacific Solution,” and the changes to the Migration Act under the Border Protection Bill. They were a set of increasingly harsher laws that “creatively” reshaped Australia’s border to simultaneously retain the sovereign border and yet withdraw it for the purposes of Australia’s international obligations. While it has often been called a shift of the migration border, it was in effect a shift that would and could only affect those who sought asylum in Australia. As these were pieces of legislation that occurred over a considerable time, and they continue to be debated in parliament, I will set out the changes in the Migration Act as a timeline with a brief explanation of each:

- 26 August 2001 – *Tampa* (Norwegian cargo ship) picks up 438 Afghan asylum seekers 140 kilometers off the northern coast of Christmas Island, whose own boat was sinking. Australian authorities refuse to allow *Tampa* entrance to Australian waters in spite of repeated calls for medical assistance for injured and distressed asylum seekers.
- 29 August – *Tampa* enters Australian waters without permission and on same day Prime Minister tables Border Protection Bill. This Bill, to have retrospective effect to the morning of that day when the cargo ship entered Australian waters, was to enable the government to have wide-ranging powers in relation to foreign ships, including:
  - Remove any ship in the territorial waters of Australia,
  - Use reasonable force to do so,
  - Provide that any person who was on the ship may be forcibly returned to the ship,
  - Guarantee that no asylum applications may be made by people on board the ship.

(continued)

- 30 August – Senate rejects Bill
- 1 September – Agreements with Nauru and New Zealand for *Tampa* asylum seekers to be taken to each country for processing further.
- 2 September – Agreement with Papua New Guinea for the transshipment of asylum seekers through Port Moresby
- 26 September – Senate passes a number of bills relating to border protection:
  - Migration Amendment (Excision from Migration Zone) Act No. 127 20
  - Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act No. 128 2001;
  - Migration Legislation Amendment (Judicial Review) Act No. 134 2001;
  - Migration Legislation Amendment Act (No. 1) No. 129 2001;
  - Migration Legislation Amendment Act (No. 6) No. 206 2001; and
  - Border Protection (Validation and Enforcement Powers) Act No. 126 2001.
- These bills, overall, were intended to diminish the obligations Australia had to onshore refugees under the United Nations Convention Relating to Refugees by excising territories for migration purposes, reducing the possibility of granting them permanent status, allowing indefinite detention of asylum seekers, and increasing penalties for people smugglers, among other terms.
- The excision of Australian territories for migration purposes meant that onshore refugees arriving in these offshore territories could no longer claim refugee status from Australia, and furthermore were to be processed offshore in Manus Island and Nauru in detention centers built and run by Australia. Both of these measures have been unofficially termed the *Pacific Solution*.
- December 2007 – newly elected Prime Minister promises to close Manus Island and Nauru. Mandatory detention remains in place, however.

2004, 48). And this was the time when the discourse of border protection first became formally articulated\* by the federal government, and the events of late 2001—"boat people" and 9/11—eventually led to the then-unlikely re-election of John Howard's Liberal government. Border protection, therefore, has always been of vital importance to Australia, but for reasons extraneous to terrorism.

Let me make one final diversionary comment before heading into the actual responses to "terror" within Australia, to a short discussion of "the boat." While this may seem a rather oblique diversion, in order to fully understand Australia's intense responses to "terror" we must understand that which fed the current terror. Fear of the outside, fear of "the other" that is outside, of invasion by that other who pervades the unknown outside is consistently present in Australia as an island because the way to breach the physical border is by boat. The boat becomes an iconic symbol that represents the possibility of such an invasion most patently, and hence became deeply central in the easy acceptance by the wider population of the border protection measures taken after 2001, including the counter-terrorism laws introduced over 2003–2005. Marr and Wilkinson (2003, 48) assert that "the problem for boat people was always the boat: the symbol of Australia's old fears of invasion." The fear of invasion has been mentioned by others as a deep driving motif in Australia's collective psyche (Hage 2002; Burke 2001; McIntyre 2003). One newspaper article of 1990 makes the explicit connection between the arrival of "boat people" and the invasion fear: Buried away in the recent Gareth Evans blueprint on Australia's regional security was a paragraph about the dangers of "unregulated population flows." Continued economic and political dislocation, war, repression and famine in the countries to our north, the document noted, could produce new flows of boat people "on a massive scale—beyond the ability of civil or military authorities to prevent." The warning, largely ignored at the time, gave expression to one of the most deep-seated fears in the Australian psyche, that this country of 17 million people may somehow be overrun by Asia's "teeming, breeding millions" (Jenkins 1990).

A memory, a trace, had been left in relation to the boat; the possibilities it carried. Being located in a region that was racially so distinct from those who colonized Australia remained in the collective psyche as an anxiety—a fear—that those racial others could do the same in turn (Hage 2002; Burke 2001).

The arrival of unannounced boats loaded with people whom the nation needed to admit—to at least consider their claims of asylum—has certainly always produced heightened responses suggestive of deep emotion. From the first boat in April 1976, with five men from Vietnam (Viviani 1980), through to the peak of 14 in the month of November 1999 (DIMIA n.d.), with 1,245

\* The website for the Department of Immigration, Multiculturalism and Indigenous Affairs (now the Department of Immigration and Citizenship) set up a specific section entitled "Border Protection" in 2001.

people from various places, but mostly Afghanistan, Iraq, and Iran, Australia appears to have been deeply troubled by “boat people.” As former diplomat of the 1970s Bruce Grant said of that first boat: “For Australia, history and geography had merged, causing a shiver of apprehension” (*The Boat People*: 1979).

With each subsequent wave—which in 1976 began with the Vietnamese, in the early 1990s brought the Cambodians, and in the late 1990s and the beginning of the 21st century brought the people of the Middle East to our shores—energies were expended by official government bodies and by the wider community in disseminating or expelling the “problem” of “the refugee.” One of the most telling anecdotes in understanding how “the boat” and “the other” conflate with the fear of invasion as a deep-seated collective anxiety was the way in which *refugee* became associated with *asylum seeker arriving by boat* within Australia, unlike anywhere else. This became apparent as I lived and carried out research at Columbia University, New York, in 2004, when I asked people working with refugees how refugees were regarded within the United States; I also did a search of the national and local newspapers. It was soon evident that within the United States the terms “refugee” or “asylees” (as asylum seekers are called in the United States) carried no negative connotations, only of compassion. I was told, however, that those who produced similar explosive emotional responses were the “illegals,” or border-crossers from the south, that is, Mexicans and Latin Americans in general who crossed without documentation. A similar phenomenon emerged within the United States as in Australia, in both cases only in relation to those who cross the border without bureaucratic controls.

In the “boat people” events Australia’s history, anxieties, and aspirations became conflated as they affronted the possibility of sustaining a rigid border. As the nation faced the reality and the symbolism of the destruction of the World Trade Center, boats arriving laden with [largely] Middle Eastern asylum seekers having breached the formidable maritime barrier that had previously stood between Australia and the forbidding world, the lower-level apprehension became intensified to a fever-pitch terror as the two events conjoined. The challenge to “decide who comes to this country and the circumstances in which they come” (election slogan of the Liberal party in the 2001 federal elections, when they were re-elected) was then an anxious re-assertion of an apparent loss of the ability to control the border from this racially embodied external threat, and retain its internal homogeneity. With each major “boat people” incident the government’s stance became harsher, and with the 9/11 al-Qaeda attack all of Australia’s fears came together and invasion by “the other” became a tangible imagining embodied in these unannounced arrivals carried by the one vessel that may breach the fluid border—or moat—protecting this nation from such. Just as the airplanes as a piece of transport technology could be used to destroy the

central cultural symbol for the United States, so the boat, another piece of transport technology, could be used (and had always been feared to do so) to destroy the “oneness” as the Australian “way of life.”

## **The Australian Way of Life**

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“The Australian way of life” as somehow a unified integral concept—an identity in modern terms as described above—seemed to be under threat by the “boat people,” and then by “boat people” as possible terrorists (Zard 2002; Nguyen 2004; Guterres 2005). Although the issue of a national identity has been an ongoing one for the independent life of this nation, it was not until the events surrounding boat people that it gained status and importance as never before; after this time “Australian values” gained intensity in discussions and eventually was made policy via a test given to citizenship applicants, and applied from 2007. Boat people, coupled with September 11, and the compounded anxieties, brought to the fore the articulation of “the Australian way of life” as that which is clearly at stake. As we saw above, “boat people” had already been articulated as not “the sort of people” the nation aspired to include, even if the basis on which this comment was made was later shown to be unfounded. The protection of “the way of life,” not only under threat by boat people now, but by an indeterminate menace that may strike at any moment, led the federal government in 2001 to draft policies that shifted the migration borders under what has been ironically termed the “Pacific Solution.” While extensive and sweeping in relation to the claims for asylum and refuge that may be made on Australia, the most substantial changes under this set of policies was to disallow asylum seekers arriving on outlying islands such as Christmas Island or Ashmore Reef from claiming refugee status through Australia’s obligations to the United Nations Refugee Convention (1951) and its Protocols (1967), and to detain arrivals beyond these newly contracted migration border. In one deft movement a zone was created which became a migration no-man’s-land, a legal void where human rights had no place. The border was contracted inwardly and retained its ability to exclude the unwanted. The law was, and continues to be, made to fulfill ideological needs. Pickering et al. (2007, 29) mention the law in relation to terrorism as “a weapon to be used against individuals and communities understood to be enemies,” and Kitson (1971, 69) on the same topic of terrorism and the legal system, condemns it as “another weapon in the government’s arsenal ... [that has] become little more than a propaganda cover for the disposal of unwanted members of the community.”

This imperative, most emphatically applied and developed with “boat people,” was enhanced and magnified with September 11. By the time of the Bali bombings of October 2002 and then 2005, “the Australian way of



life” became the most important value to protect. The Bali bombings occurring in Bali’s busiest entertainment precinct were aimed at the predominantly Western tourists, and killed 88 Australians of the total 202. Although September 11 is the time when Australia “felt” the reality of terrorism, it was not until the Bali bombing of 2002 that terrorism was made “ours” (and this even though other bombings have been more directly targeting our interests, such as the bombing of the Australian Embassy in Jakarta on September 2004; this is not commemorated). This was partly because of proximity, but mostly because Bali has been traditionally Australia’s recreational playground, and hence a de facto proprietary relationship exists with the island. Being able to travel to Bali for a cheap holiday is part of “the Australian way of life.” The Bali bombing of 2002 is commemorated annually, as are the 9/11 bombings. In 2005, on the third anniversary of the 2002 bombings, *The Age* newspaper reported that

The ceremonies in Canberra, Melbourne, Sydney, Perth, Adelaide and Brisbane will coincide with a special service in Bali, which Foreign Minister Alexander Downer will attend. Parliament will be delayed for an hour, until 10 am AEST, to allow MPs and senators to attend the service. In Melbourne, a permanent memorial ... in Sydney, photographs of 20 victims of the 2002 bombings have been added to a permanent memorial at Cooee Beach in time for a service there today (Services 2005).

The Bali bombings were seen not only as significant enough to remember every year, the commemorations resulted in permanent memorial spaces across a number of sites in Australia, as well as time allocated for parliamentarians to attend the ceremonies. Two weeks earlier Bali had been wracked with yet another bombing, although a smaller number of Australians were killed (3 of the 25). By the third year of its occurrence the Bali bombings had become a significant cultural marker in Australia, not of a triumph but a loss that went beyond the number of lives lost (these events as cultural events are never about numbers; they remind us of something deeply significant, recall us to a fundamentalism we had “forgotten”). This event stood as a monument for much more than numbers; it was the announcement of a loss: of innocence, of an assuredness of control that had never been quite fully present; mostly, of certainty, in a world Australia had been able to reproduce for 200 years with little disturbance even if with much underlying racial violence.

For Australia the grief was intense, compounded as it was by other factors. What these factors are become apparent in the following comments, made by a club leader of a community in New South Wales who lost 20 of its members in the 2005 Bali bombings, at the second commemorative ceremony:

It would be nice for those responsible for the bombings to hear such super positive news that our club continues to generate—how strong we are, how many young Australians we're developing with our passion and enthusiasm for the Australian way of life ... I assume their goal has been to fill us with hatred and fill our lives with misery (Cazzulino 2007).

This defiant yet defeated statement composes a stance that at once acknowledges the connection to the terrorists in the forced acquiescence to their "goals" and in their pain which can ultimately be made sense of through the terrorists hearing that their goals were not achieved.

What is at stake is far more significant than the loss of lives; it is a fear of a loss of a "way of life," and one that involves psychically and culturally not the bodies of the dead, but what they represent. The club, then, also represents a nervous reassertion of a line, a deft maneuver to produce a re-division where a connection had taken place. The club reclaims the border—a whole "way of life"—for those who will be its practitioners, within which are the places of safety because familiar and known, but more importantly imagined as unified; and as in opposition to that outside wherein lies terror. The two sides need to be made incommensurable in this conceptualization; they are at war and there can be no reconciliation between them, like the war between languages expressed by the letter writer above. When the world is imagined as being "one or the other" but not both or more at the same time, this occurs; only war is possible. The only comments that may emerge are those such as of the Prime Minister after the 2002 Bali bombings:

Australia stands ready to fight in a worldwide war on terrorism, including any military action against Iraq, "in the name of the scores of Australians who were killed in Bali," the Prime Minister, John Howard, pledged yesterday (Allard and Baker 2002).

While these comments must in part be read as being appropriated for the justification to follow the United States in its war against Iraq, we must also read into them the anxious desire to return to a dream of unified action behind a border of sameness, reasserting a clear line where the enemy may be imagined and treated clearly and tangibly, as being beyond it. The terror[ist] is "out there" but where out there is, is no longer possible to ascertain unambiguously, yet in modernist mode, this "out there" must be pinned down, as clearly as the "inside."

## **Australia's Border of Terror**

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The threat and the act of terrorism have been minimal, and indeed non-existent, as a material act within Australian soil, and yet post-9/11 elicited

a sustained polemic as well as legal responses within the community which are incommensurate with its substantive existence. Most other Asia-Pacific nations have either already endured or are closer to a clearer and more tangible reality of terrorism due to their geographic location or socio-cultural demographics (Acharya and Acharya 2007), yet their responses have been various and in no measure as strident as those that occurred in Australia. Australia's response to terrorism, therefore, would seem an overextension of events in "real" terms, one that encounters and encompasses domains of the emotions and the sensate states rather than of clearly defined areas of rational grasp. This is nowhere clearer than in the language and images that have formulated our publicly enunciated discourse on terrorism: its definition as terror, and as a war between good and evil. As this language enunciates an attempt to make clear binary distinctions out of an event that is ungraspable, it is a return to a way of thinking that allows the inside and the outside to be clearly delineated, allows for the modern border to be reasserted onto a phenomenon that evades such fixing.

Modern terrorism is said to be different from "old" terrorism in that it does not exist within clearly defined borders or categories of material existence, and hence is pervasive, ubiquitous, and inhabits our real worlds as well as those of the imagination (Borradori 2003; Doran 2008). Although there is some dispute whether there is such a thing as "new" terrorism (Crenshaw 2006; Pickering et al. 2007; Zalman 2008) others see that there are enough differences to suggest a shift (Hénaff 2008; Doran 2008): in the past it was localized (terrorists' grievances and goals referred to a specific place) and tangible (focused on specific material demands), for example, territorial claims, sovereignty rights over a land mass, etc. The demands could be achieved immediately and concretely once negotiations could be established. Even where demands were/are broad ranging, as in the case of FARC in Colombia, the attacks have largely been localized and contained geographically. For the purposes of this chapter, however, the debate is a moot point as in Australia terrorism has been *felt* and acted upon as a pronounced inversion of certainty because of the ambiguity with which it is now imbued. Here it has been felt as an amorphous, pervasive terror, as an asymmetry that evades control. This is the stuff of terror, so now it is no longer an act of defined "isms"—an established and clear set of beliefs bounded and coherent in traditional terms. The incoherence such an interpretation brings is made salient by the following statement in a discussion paper produced by the federal government of Australia in 2004 on the topic of the changed nature of terrorism:

Australia must also now face the threats of ambiguity and the unknown. This is part of the "asymmetric" nature of terror. This transnational terrorism works through loose networks rather than through hierarchy or within borders. It is neither dependent on nation-state sponsors, nor responsive to conventional

deterrents. To defeat one is not to defeat all. It is constantly evolving, with a capacity to regenerate and adapt where its forces are degraded. There will be new individuals, groups and networks that we simply do not know about (Commonwealth of Australia 2004).

This becomes a particularly pronounced dilemma in Australia, so used to bureaucratic and legal management of its social and political spheres; the control of its “inside” as well as of the “outside.”

The fear is all-pervasive because it is “asymmetric” and invades this place with its ambiguity. It therefore accompanies our waking as well as sleeping hours, our public as well as our private spaces, and our material and imaginary worlds. This amorphous menace, unknown and self-generating, erupting without previous framework for its identification, engenders emotions of panic, of absolute dread because it has potentiality rather than actuality; it can be lurking everywhere and anywhere, invading any space and any body, rather like the creature in the movie *Alien*. And indeed, a number of personal anecdotes from the time of the September 11 attacks related this event as approximating the watching of a film (Baudrillard 2003). Its spectacular nature is intended; this new form of terrorism is “terror” because it is amorphous and all-pervading. Yet we are complicit in it, we feed it and provide it with its techniques, its technological abilities, and possibilities of making display; our worlds have provided the training and the know-how (not only for those who perpetrated the September 11 attacks, but also to others who then use it to retaliate), together with our ability to “read” these events in ways that the new terrorists require of us: with terror.

New terrorism remains mostly symbolic and “does not fit into the means-ends logic of terrorism ... it is an example of pure punishment for the supposed evils committed by a people or civilization” (Doran 2008, 9). It is spectacle (Baudrillard 2003), as “terrorists have adapted to a simulation culture; their acts are staged for the media” (Wilcox 2003, par. 14). It relies on the spectacular nature of the event to penetrate into psychic spaces as much as any real space it is intended to occupy and destroy; it exists to inflict damage; death and mayhem are its message; civilian casualties the means to producing the message and the spectacle (Hénaff 2008). Yet the responses that may be produced within traditional parameters are as a “war” of clear opponents, as a binary whose border is clear: the “war on terror,” and a war of “good versus evil.” In these terms we are all participants in the terror act by making it possible, by being one of the sides needed for it to exist, acceding to its authority, and acknowledging its existence and presence, yet redeemed through this artfully adept division that deftly produces a border where terror denounces such. There is a schizophrenic pirouette of sorts that occurs then, being made an integral part of its existence, being drawn into its everyday apparition, yet required to be its demise, acknowledge its multiple

voices, yet needing to return it to the world of knowns or material categorical clarity. So, the border does not really exist for terror[ism], yet is being forged in its old format for instant comprehension and assimilation, yet being asked to fear it at a level of incomprehensibility and all-pervasiveness. And this is exactly the movement we are led to, a double act of incomprehension yet absolute invasion (in the possibility of it at least) and clear grasp of it in order that those who act appear to be acting for something we vaguely understand to be good. In this modern phenomenon of terror[ism] we are objects of its multiplicitous existence, yet cannot make sense of it unless in binary terms of “inside” and “outside,” “them” and “us,” “evil” and “good.” And so we do not need to understand it fully, we only need to attend to its message within the realm of incertitude, of a discomfort that transgresses all yet is fastened securely by recurring acts of spectacular violence viewed by us, and comprehended by us, drawing us all in now but only in a way that is itself ambiguous; and hand over agency to others who are as baffled by its vagueness yet mediate its representation in ways that are palatable because we are able to feel in control of that border that delineates so clearly where “we” stop and “they” begin.

The above is perfectly illustrated by a brief prepared on October 2002 by a senior analyst for the Australian federal government considering the ways the Bali bombing differed from others:

The first is that while terrorist attacks, internationally, are usually quickly acknowledged by the perpetrators in order to gain profile and political advantage, those behind bombings in Indonesia have rarely claimed responsibility. This tends to breed competing, ever more complex theories and explanations.

The second, related feature is that the various sources of conflict, political, criminal and personal, tend to become intertwined in a way that makes simple answers about motives and perpetrators very difficult to discern. Thus, while one group may, for example, plant a bomb using material obtained from the military, it may attempt to have blame shifted to another group while expecting that a third element, their real target, will understand the actual motive. The bombing of the Jakarta Stock Exchange is an example of the complexities of determining ultimate responsibility ...

But investigators may well find that understanding this attack is complicated by a range of complex forces and motivations. The lack of unequivocal evidence adds to the uncertainty created by such acts and increases the difficulty of ensuring that they are not repeated (Sherlock 2002).

These are the comments of a peoples perplexed beyond their comprehension, encountering a phenomenon that is either unfamiliar up to that moment, or unfamiliar in its current formulation. For Australia at the time, it was both.

## Australian Responses to Terror[ism]

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The responses within Australia to this disconcerting set of circumstances—the ungraspability of modern terrorism, and its ambiguous and “asymmetrical” nature—has been to produce a set of laws that somehow attempt to provide a modicum of control; so extreme in their control in fact that scholars and practitioners in these fields have termed them “draconian” (Amnesty International 2006; Pilger 2005; Planned terror 2005; Chong 2006).

Between 2002 and 2005 a substantial number of bills were introduced and passed in Federal Parliament to either amend existing acts such as the Crimes Act and the Telecommunications (Interception) Act, or to introduce new laws such as the Anti-Terrorism Act and Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act. This was to enable the management of terrorism on many different fronts, from surveillance to telecommunications, to the incarceration and holding of suspects for longer than was possible previously, to aviation security, etc. Of greatest concern within this community, raising much discussion and debate, were the laws that permit the holding of suspects for much longer than ever before, as Tony Jones, television presenter of *Lateline* in the ABC television network, mentioned on September 12, 2005, describing the latest list of counter-terrorism laws that were being proposed:

The new laws envisage holding terror suspects for up to 14 days without charge. Suspected terrorists could be subject to 12-month “control orders” and compelled to wear tracking devices. Equally controversial, a law against inciting violence, which Mr. Howard says would “address problems with those who communicate inciting messages directed against other groups within our community, including against Australia’s forces overseas and in support of Australia’s enemies (Jones 2005).

These were major changes to the civil liberties Australians enjoyed prior to 2002, and involved granting extensive powers to policing authorities under the total number of legal changes in this period. What is of direct interest to this paper is the relative ease with which these laws were passed, although this had much to do with the fact that the government of the time had a very clear majority in the Senate, enabling total legislative freedom to do this. It is, of course, important to note that this government had been in power since 1996 and had retained its legitimacy and popularity on the continuation of its stance begun with the border protection era beginning with “boat people.” The fear Australians felt at the time, fuelled by a political machinery that understood this apprehension, gave this particular government an ongoing majority mandate at the federal level on the back of an anxiety which the population saw as only being

able to be managed by the strong, harsh, uncompromising stance taken by that government.

John Pilger, a Australian journalist now living in England, makes mention of what he saw as the relative small dissent within Australia as these laws were being introduced and passed, as he compared it to England:

In this country [England], the highest judiciary, the Law Lords, have made it clear they're almost certainly not going to let Blair's so-called anti-terrorist measures through. One of the Law Lords, Lord Hoffman, has said that Blair's anti-terrorist measures are as dangerous as terrorism itself. You see, these judges know that in all the years of Irish terrorism in this country, when we had a prevention of terrorism act, not a single terrorist was caught under these anti-terrorist measures. The whole thing was ended in the end by politics, or when people were brought to justice, it was because of good policing (2005).

In Australia the belief that somehow dilemmas and disturbances are resolved or allayed through stronger bureaucratic management has largely been effective, at least in providing the perception of control. The Australian people are accustomed to having their problems regulated away: so multiculturalism as an acceptance of difference was introduced through deliberate governmental policy; so the "problem" of the refugee was resolved through legal changes to the shape of the border. Although there are a number of cases where the application of the counter-terrorism laws led to unlawful arrests or charges that were later modified or overturned, and most of these dealt with people of Muslim background or of Middle Eastern origin (except that of David Hicks, but his was a case of disavowal by the Australian state in order to exclude him from entering this border), here I will finally take up a case that highlighted both the fact that the counter-terrorism laws were used for political purposes and that migration law was ultimately invoked in order to fulfill these. This was the case of Dr. Mohamed Haneef.

### **The Strange Case of Dr. Haneef**

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In the Parliament of Australia Parliamentary Library website, under a section titled "Terrorism Law," Dr. Haneef's case is described thus:

Terrorist car bomb attack on Glasgow Airport (UK). On 29 June 2 car bombs were defused in London. On 2 July Dr. Mohamed Haneef was arrested in Brisbane and charged on 14 July with recklessly providing assistance (a mobile phone SIM card) to a relative later charged over the UK attacks. On 16 July, after being granted bail by a Brisbane magistrate,



Dr. Haneef has his 457 work visa revoked by the Immigration Minister and is held in detention pending his committal hearing on 31 August. On 27 July the Director of Public Prosecutions after reviewing the material withdraws the charge. The Immigration Minister returns Dr. Haneef's passport and he returns to India to visit his family on 28 July (Parliament of Australia 2007).

This event received much media coverage as allegations were being made against this doctor, recruited to Australia due to the chronic shortage of doctors while his pregnant wife and family remained in India. Without going into the details of the case, the charge of recklessly providing support to a terrorist organization, made ten days after his arrest and his continued detention, was not able to be substantiated, and his detention without evidence provided significant media discussion. He was to be held until he could be tried, but on July 16, 2007, a Brisbane Magistrates Court provided bail as the magistrate, Ms. Jacquie Payne, found

The case against [Dr. Haneef] as told to me on Saturday, was a SIM card which belonged to [Dr. Haneef] was left in the United Kingdom with his second cousin with whom he was residing. There was no evidence before me the SIM card was used in any terrorist activity.

Further, the SIM card was given to the UK suspect 2, more than 12 months ago, and, in relation to the element of the offence there have been no submissions to support the element of the offence that the defendant was reckless, other than that he was living with UK suspects 1 and 2 and he gave the SIM card to UK suspect 2 (Barns 2008).

And her reasons for granting bail:

The Crown does not allege that the defendant has any direct association with any terrorist organisation and further [concerning] the provision of the resource, the SIM card, the defendant ... was reckless as to whether the organisation was a terrorist organisation.

There is no evidence or submission that the SIM card was used or associated with any terrorist attack or activity other than being in a vehicle that was used in a terrorist attack (Barns 2008).

Not long after this—in fact a few hours later the same day—Dr. Haneef's visa was revoked by the Minister for Immigration Kevin Andrews “on character grounds.” David Manne, Refugee and Immigration Legal Centre lawyer in Melbourne, was reported in the ABC News online website as making these comments:

Speaking to ABC Radio's *AM* program, Mr. Manne said the visa cancellation power was designed to be used only in emergencies, where a person posed a significant threat to the country.

But he said that it appeared Dr. Haneef's visa had merely been cancelled because he was related to at least one of the bombing suspects arrested in the UK.

"In essence, it would appear that this power is so broad that the association can be for all intents and purposes completely innocent, where someone has no knowledge, no intent or no involvement in any criminal conduct and yet if they have family ties with this person who they're associated with, they won't pass the character test," he said (ABC News online 2007).

This case highlighted a number of things, but mostly for this author it was the ongoing and integral role that immigration—by way of being the most effective bureaucratic means at the modern nation-state's disposal of keeping out the stranger—has in protecting the border. Even when the counter-terrorism laws could not be recruited to enact the wishes of the government to perform a public demonstration of their effectiveness in protecting those inside the border through a racialized spectacle of punishment and thereby justify their necessity, migration law was invoked and applied in a travesty of its intended use. This spectacle of "the other" in a supposed but very tenuous connection with a terrorist act appeared perfect for the purposes of exclusion to atone the counter-terrorism laws and the amount of disquiet they had raised in the Australian community. Here was an "other" for whom, it seemed, exclusion was natural because historically it had been so. Ultimately only immigration laws could be applied to exclude him. The nation had returned to its first act of independence as its final act of defiance, and invoked an historical right to enact on the bodies of "the other" the onus of liability and accountability and ultimately of exclusion.

## Conclusion

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The discourse of "border protection" in Australia had its origins outside of September 11; that is, while it was manifested in its fully formed shape from these events, border protection had already been discussed and begun to be shaped by events separate to, but certainly added to, by the 9/11 attacks. For Australia, therefore, the construction of what became for other nations a concern directly related to terrorism, and as it related to national security distinctly associated with this, here it was something already being debated in relation to other events: "boat people," but also with a cultural memory of events older than this. In the "phenomenon" of the boat people in Australia were the direct antecedents of what was to become intensified and justified

with the 9/11 attacks. The “boat people” events had dimensions that melded with 9/11 and acted to rigidify further a border already solid: to more clearly reject the stranger who arrives uncontrolled, announced, and unwanted, as they breached the border without the required controls; furthermore, a border crossed by a group of people whose racial characteristics were already subject to severe controls.

September 11 and the indirect threat of al-Qaeda, therefore, became generically and readily extended to Muslim peoples in Australia because the fear of their presence had already begun to be felt in the bodies of “boat people” given that most of the latter were of Middle Eastern origin and Muslim; and these ejections and emotions of anxiety connected to other ejections, rejections, and fears continuously practiced over 200 years. In the bodies represented by the current threat of terrorism was the most recently realized fear of (not) retaining a border where a clear “inside” and “outside” are kept separate.

This theme as a fear has a temporal and spatial context—a history and a geography. Australia was colonized, the land was taken over from others, with the arrival of people in boats who saw in this forbidding land a place to punish their own for wrongdoing; it began as a place of harsh treatment. It is a nation that was colonized at the height of the Enlightenment and its ideas, and the people introduced into this land comprised mostly criminals and administrators. It began as an extension of England’s need to manage deviance. The nation was to become aware of its place in the region later, when Chinese people entered during the “gold rush”; it was possibly this, among all other incidents—even the presence, battles with, and dispossession of Indigenous peoples appear to have produced few twinges of discomfort (Haebich 2000, 2002)—that began to make Australians self-aware and vulnerable.

The racialized border had its most recent manifestation at the time of the Cronulla (a Sydney suburb) beach riots, when terrorism and racial/cultural characteristics came together. In December 2005, Lebanese-Australians were attacked and told to leave Australia by white Australians in a well-orchestrated display of nationalism, as redress for perceived slights, at this beach. The connection between Lebanese people and terrorism was made and then Prime Minister John Howard made these comments in response:

Attacking people on the basis of their race, their appearance, their ethnicity is totally unacceptable and should be repudiated by all Australians irrespective of their own background and their politics ... I believe yesterday’s behaviour was completely unacceptable but I’m not going to put a general tag [of] racism on the Australian community ... It is impossible to know how individuals react but everything this government’s said about home-grown terrorism has been totally justified. It is a potential threat. To suggest that one should remain silent ... knowing what I know because that might antagonise someone else is a complete failure of leadership ... I think yesterday was fuelled by the always

explosive combination of a large number of people at the weekend and a large amount of alcohol (Davies and Peatling 2005).

The connection between racialized bodies and terror[ism], however, had been occurring for some time prior to the comments above being made; “boat people” had had this label placed on them earlier and were the direct antecedents to Australia’s border protection.

The imperative of the modern border—which has been applied in Australia rigidly through the bureaucratic means of immigration policy—remains to clearly classify and precisely articulate and delineate one entity in contrast to another. Yet while the border is imagined and an attempt to impose it as a clear line that distinguishes between one thing and another, its experience is otherwise; it is in fact forever shifting and wavering. One has merely to think of the geopolitical borders that delineate the nation-state historically to realize this; they have never remained static. Examples are too bountiful to require extensive illustration; simply recalling the history of the Balkans or of Africa after World War II or the number of border shifts in Afghanistan as it became the site for colonial wars in the 19th and 20th century suffices here. The national borders we have today will change yet again, and have indeed been reshaped on economic and cultural fronts through the forces of globalization and the ascendancy of the trans-global corporation and exportation of other cultural forms.

Within Australia the border has similarly wavered both internally and externally, even in the face of bureaucratic controls. While immigration has been the central bureaucratic technology for controlling the border, it was also used as a tool for admitting a number of “others,” largely driven by its anxiety of invasion. Although the numbers allowed for maintaining these groups are in the minority, and therefore “manageable,” their level of socio-political power is severely limited. Unlike in other countries, the cultural terrain in Australia has been radically altered by these immigration trends. What has been at stake primarily as a constant in the Australian context is the fear that “others” will invade this space as the British once did; invade it by “otherness.” This nation’s emergence from the heart of the Enlightenment drove its definition as needing to be guided by oneness, unity, and homogeneity, and tight control of its geopolitical and identity border, in order to keep clear separations between “inside” and “outside.” Australia’s relative isolation has simultaneously enabled the idea[s] of homogeneity and rigid control to remain largely untested and unchallenged, while always being unsettled by the presence of “others.” Al-Qaeda, therefore, did not pose a direct threat to Australia’s border, nor can it be said to be the sole motivator for the raft of legislation that transformed the internal border to one where fear governs many public interactions and control of freedoms are now rampant. This nation’s responses to terror[ism] have instead been heavily laced

with a fear that the “outside” is “inside” and that the stranger has permeated this homogeneous [b]order. The current manifestation of this fear is but a continuation of that which has permeated Australia’s history with exclusions that go beyond terror[ism].

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# Iran—Borders of an Islamic Republic in the Middle East

# 9



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## Contents

Introduction	308
Iranian Political Geography and Common Borders	310
Strategic Classification of International Borders and Status of Iran's Borders	311
Conception of Borders and Border Control	313
Conception of Borders in Islamic Theology	313
Border Controlling in the Classical Islamic Law	319
Conception of Borders in Iranian Mythology	320
Policy Makers and Border Security Authorities in Iran	321
Policy Makers	321
The Supreme Council for National Security	321
The Country Security Council	322
Executive Organs	323
Ministry of Intelligence	323
Police	324
Custom Organization of the Islamic Republic (COIR)	325

Security-Threatening Factors in Iran Borders	326
Drug Trafficking	326
Goods Smuggling	328
Terrorism	329
Oppositional Groups	329
Religious-Tribal Extremists	332
Legislative and Executive Measures for Security of Borders	333
Legislative Measures	333
The Anti-Terrorism Bill	333
Anti-Money-Laundering Act	334
Regional and International Cooperation	335
Executive Measures	339
Preventive Measures	339
Logistical and Intelligence Support for Armed Forces on Eastern Borders	340
Expansion of COIR Tools on Border Points	340
The National Anti-Terrorism Committee	340
Excavation of Canals, Earthworks, and Border Guardhouses	341
Training of Special Airline Security Guards	341
Creation of Border Markets	342
Covert Suppressive Operations	342
Conclusion	343
References	345

## Introduction

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Iran, one of the world's oldest continuing civilizations, is located in the tumultuous border region between the Middle East and Asia and shares hundreds of kilometers of border with the war-torn nations of Afghanistan, Iraq, and Pakistan. Iran's territory covers half the coastline of the Persian Gulf, including the Strait of Hormuz, through which much of the world's oil supply moves (*CIA World Fact Book* 2008). It borders the Caspian Sea, the Caucasus in Central Asia, and South Asia, where a great deal of the world's heroin supply is produced, several major terrorist groups are based, and huge reserves of oil and gas are just beginning to be extracted.

Historically speaking, however, borders in the Middle East are one of the most artificial ones in the world since, apart from Egypt and Iran, these borders were merely drawn on the sand during the 19th and 20th centuries by the imperial powers of Britain and France while expressing their rivalries. Before that, the borders in this region did not have such strong political ramifications, as to a large extent they were the expression of cultural differences

between Iranians, Turks, and Arabs. It was the discovery of oil that created competition and rivalry concerning control of this resource, which has consequently turned the Middle East into one of the most volatile regions suffering from constant, multi-faceted forms of crisis.

Iran, one of the largest countries in the region, with immense geo-political importance, shares borders with 15 countries. Many of these countries until the 18th and 19th centuries were part of Iran, and were lost to the superior military might of either Russia (Azerbaijan) or Britain (the western part of Afghanistan); hence, these countries still share a strong cultural and historical identity with Iran, which adds to the complexities of its relation with its neighbors.

In addition to the geographic position of Iran within the Middle East, the Islamic Revolution of 1979 fundamentally changed Iran's political and security affairs domestically, which in turn has had a noticeable impact on its regional and international influence. For more than two decades, the Islamic Republic of Iran has been radically trying to re-define its geopolitical borders within the Middle East on the basis of the religious unity of followers of Islam, and increasingly exhibits a hostile approach to Western countries, in particular to the United States and Israel. But now it seems this ideological-revolutionary concept has been shifted to a nationalistic strategy. The export of revolutionary Islam beyond the borders of Iran is no longer the dominant discourse in Iranian national, regional, and security affairs (Takeyh 2006).

Undeniably, Iran has emerged as a significant regional power, and its future direction will play a pivotal role in the economic and security affairs of what much of the globe reasonably considers the center of the world (Albright 2000). The combination of political repression and economic underdevelopment, increasing presence of American and NATO forces all around its borders, militant tribal and sectarian conflicts, deep ethnic links on all sides of its borders, terrorist insurgency, and a steady advocacy for Islamist networks has made Iran a formidable threat to the stability of the Middle East, one of the main oil- and gas-supplying regions of the world.

Since September 11, 2001 (hereafter referred to as 9/11), Iran's borders have become permeated by Taliban and al-Qaeda cells that are dug into tribal areas between Iran, Pakistan, and Afghanistan. The instability around its borders affords suitable opportunity for international criminal organizations involved in narcotics trafficking to use Iran for their criminal activities within the region, specifically moving heroin out of Afghanistan, through Iran, and into Europe (Ekovich 2004).

This chapter will primarily highlight the political and Islamic-law contexts of border security in Iran, viewing specific issues of border security and ongoing regional concerns from an Iranian perspective. The aim is to

provide a framework for understanding border security as perceived by an Islamic state that is generally outside conventional Western study.

## **Iranian Political Geography and Common Borders**

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Iran is approximately 1.6 million square kilometers in size and shares its 5,440 kilometers of borders with Iraq and Turkey to its west; Afghanistan and Pakistan to its east; many countries newly formed after the collapse of the USSR, such as Azerbaijan, Turkmenistan, and Armenia, to its north; and some of the world's most influential Arab nations such as Kuwait, the United Arab Emirates, Qatar, and Oman to its south (*CIA World Factbook* 2008). About one third of Iran's 4,770-mile (7,680-kilometer) boundary is seacoast.

Since the fall of 1980, when Iraqi military forces invaded Iran (the Iran-Iraq War), the Persian Gulf has been the center of political transformation along with important international economic developments, particularly with respect to the world supply of oil. This region has been continually witnessing reciprocal consequences of international crises, which have led to an abundance of violent conflicts (International Crisis Group 2004). Eight years of widespread and destructive war between Iran and Iraq, the Iraqi invasion of Kuwait, and most recently the intervention of American and primarily Western military forces in Iraq and Afghanistan demonstrates how this region has experienced significant conflict over the years. Most of these conflicts, such as the Iraqi invasion of Iran in 1980 and the invasion of Kuwait in 1990, were a result of boundary and territorial claims to re-map existing national boundaries (International Crisis Group 2004). Iran, being a powerful player within the region, has claim to approximately 2,400 kilometers of shoreline and 5,400 kilometers of land border (Panahi 2003). This sizable territory provides Iran the ability to play a significant role within this sensitive geo-strategic theater. An example of how Iran's geography and territorial holdings impact regional and global stability and security would be the waterway of the Hormuz Strait, situated within the Persian Gulf and within Iranian territorial waters. It is through the Strait of Hormuz that much of the world's oil supply transits. Should Iran ever close this waterway, it is conceivable to imagine that the international markets would experience a sharp downturn as a result in the reduction in global oil supplies.

Having Pakistan and Afghanistan as its neighbors, Iran's eastern borders have special status in the post-9/11 era. According to recent surveys, Afghanistan is currently the world's leading producer of illegal narcotics, with more than 93% of the world production of opium (heroin) emerging from the region (UNODC 2007a). Most of the Afghan-Iran border in the southwest and the Pakistan-Afghan border in the south are virtually uncontrolled by government forces. As a result, it is suspected that there are

hundreds of unofficial border-crossing points between Afghanistan, Iran, and Pakistan, which smugglers and traffickers alike are believed to frequent (UNODC 2007a). In addition, because of severe and ongoing economic, social, and political turmoil within bordering Afghanistan, human trafficking and illegal immigration through Iran's borders have increasingly been seen as a national security threat by the Iranian leadership.

Kurdish populations in the west and northwest (the borders with Iraq and Turkey) have had their own problems for a considerable period of time (Besikci 2004). Traditionally, because of the close relationships between Iraqi Kurds and the Iranian government, the entrance of opponent Kurds to Iranian borders has consistently caused special security concerns for Turkey. Similarly, opponent Kurd settlement in Iraq and Turkey has proven a significant concern for Iran's border authorities. During the eight-year war between Iran and Iraq (1980–1988), and in the subsequent unstable post-war period, opponent militant groups such as the Kurdish armed parties together with the Mujahadin-e Khalq Organization (MKO) have threatened the security of Iran from inside Iraq. As a result of these armed militia groups being allowed to exist within Iraq, the borders between Iran and Iraq have remained a virtual war zone ever since the early 1980s, continuing today.

During the intervention of Allied forces in Iraq, Iranian officials admitted that al-Qaeda members and other terrorist groups crossed through Iran's borders to Iraq, but the claims continually announced by U.S. political and security officials that Iran equips them financially or with weapons are very controversial. On the opposite side, Iranian officials have consistently charged Western countries for failing to control the movement of militants and arms from Iraq into Iran. A specific account of these grievances is the attacks on the Iranian border cities of Ahvaz and Dezful by militants living within Iraq, where hundreds of innocent Iranian civilians have been killed or wounded. These mutual accusations have made the Iraq War into a strategic struggle between Iran and the United States (Hersh 2007). Therefore, such issues related to the Iran-Iraq border are of high importance for the security and stability of the whole Middle East.

### **Strategic Classification of International Borders and Status of Iran's Borders**

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There are four criteria that can explain the strategic place of borders:

1. Number and style of differences, apparent and hidden enmity on the two sides of the borders;
2. Number and dimensions of weak and tough wars and irregular troops' motives;
3. Amount of economical and commercial exchanges; and
4. Homogenous/inhomogeneous tribal, cultural, and religious communities.

Considering these four criteria, there are three types of borders worldwide:

1. *Secure borders between brother, friend, or allied nations/states.* Not only nations/states that share a common border, but that also have no fear of their neighbor taking arms against them, and can expect amicable economic and social exchange. These borders, which traditionally begin to decline over time (Karimipour and Kamran 2001), are themselves classified into two groups:
  - a. *Secure borders of the historically allied.* Such as the U.S.-Canada, France-Belgium, and Australia-New Zealand borders. None of Iran's borders are in this situation; and
  - b. *Secure borders of the strategically allied.* Such as the borders of Western European countries and the China-North Korea, Russia-Mongolia, and Thailand-Malaysia borders. Iran's borders are not classified in this category, either.
2. *Strategically threatened borders.* These kinds of borders are functionally the opposite of secure borders. The neighbors never feel comfortable with one another. Examples of strategically threatened borders include the India-Pakistan border, Greek-Turkey border, and Israel's borders with Lebanon, Syria, and Egypt. Iran's last frontiers with the Soviet Union and Tsarist Russia, as well as with the Ottoman Empire, are included in this category.
3. *Topical-threat border.* Although neighboring states within these types of borders typically are not inclined to attack the other, there does exist an atmosphere of insecurity due to illegal trafficking of humans, smuggling of weapons, transiting of narcotics caravans, or conducting of anti-governmental insurgencies. Examples of these types of borders include the Iran-Pakistan border, Iran-Afghanistan border, Iran-Turkey border, and the Iran-Iraq border. All of Iran's borders typically fit this category (Karimipour and Kamran 2001). Global examples of this category could arguably also include the U.S.-Mexico border and many of the Western-Eastern European borders. Over the decades, the movement of smuggled and trafficked people and contraband has become commonplace both along the U.S.-Mexico border and the Western-Eastern European



borders. However, in the aftermath of 9/11, the United States and the Western European nations have all increased a militarized presence along their boundaries with increased patrols and new technologies meant to inhibit the illegal crossing of illegal migrants and contraband goods (Karimipour and Kamran 2001).

## Conception of Borders and Border Control

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### Conception of Borders in Islamic Theology

In Islamic classic jurisprudence the conception of what constitutes a border differs substantially from the current understanding and meaning of this term. In Islamic discourse on nation-territory, the subject matter is *Dar al-Islam*, which literally means the House of Islam, but technically means a land, a society, a country, or a territory that is under Islamic rule; and *Dar al-Kofr*, which literally means the House of Infidels, but technically means a land, a society, a country, or a territory that is not under Islamic rule. These two notions have nothing to do with the modern geographical boundaries commonly understood in most Western cultures. So, when the traditional Muslim jurist engages in a discussion about guarding and protecting borders, what is mainly referred to is the protection of *Dar al-Islam* from *Dar al-Kofr*. In other words, borders are viewed as separating people or lands based on their religious beliefs and not as an established geo-political boundary. It implies that the people who have accepted Islam as their faith system are inside the metaphoric boundary of Islam and those who do not believe in Islam are outside this boundary (*Dar al-Kofr*). As such, there is no difference whether a Muslim is living within a *Dar al-Islam* or *Dar al-Kofr* state: they view themselves as living within the state of Islam regardless of their geo-political proximity. Indeed, there are legal differences between those unbelievers living inside Muslim society and those outside.

The concept of an “Islamic nation” is distinguished from the concept of a “nation state” in that the “nation state” emerges as a result of negotiated physical boundaries that represent a sovereign territory, whereas an “Islamic nation” is grounded on the inhabitants of an area observing Islam (Hashemi 1995). To Muslim jurists, Islam is viewed as a cosmopolitan faith system, in that Muslims represent many races living throughout the world. In technical terms, an Islamic nation is a collection of people who pray to one god (Allah) unanimously toward Mecca five times a day. Their scattered distribution throughout the world has created a cosmopolitan community of followers and believers of Islam. In addition, some Muslim scholars have distinguished between “ideal status” and “present status” with regard to border issues within the modern era. In ideal status, geo-political boundaries have

no legal implication. However, considering the widely accepted notion of the modern nation-state system, the acceptance of current geo-political borders is unavoidable until the time that Muslim society achieves that ideal and favored status where all followers of Islam enjoy one common land (Amid-e-Zanjani 1998). Therefore, the conventional rules concerning the movement of Muslim people across boundaries (visa requirements, passports, travel cards, etc.) have been temporarily implemented by Islamic nations. However, the ultimate aim of the Islamic nations is to establish a United Nations in a united land in which the Sharia is the only applicable law and geo-political boundaries and frontier limitations are eliminated and irrelevant.

Considering today's geo-political reality, Muslim scholars are reluctant to provide new fatwas that oppose the present status of Muslim borders in order to facilitate peaceful relations with "others" through mutual agreements; they are forced to abandon their idealist conception of borders in an attempt to recognize the existing geo-political borders that exist between "them" and the "other" nation states. But still the untold story in this recognition is that they view these mutual agreements with non-believers as a temporary solution. Their long-term goal is to open the way for the cosmopolitan prophetic mission of Islam to span the world (Amid-e-Zanjani 1998).

One of the historical events used to provide legitimacy for the physical borders of Islamic Government is the deed of conveyance that the Prophet signed with his opponents who were residing around Mecca. It is regarded as the most important political document in the history of Islam. This famous treaty, named Al-Hudaibiya Peace Treaty (circa AD 628), was signed between Quraysh, the ruling tribe of Mecca, and other Muslim groups especially from Medina, Mohammad's base. According to this treaty, the parties agreed to suspend war and aggression between one another for 10 years and committed themselves to providing social security and public peace in all parts of Arabia (Brill 1987). Under this treaty, if someone of the Quraysh tribe ran away from Mecca and became Muslim, joining Muslims outside of Mecca's authority, Mohammad must return him to Quraysh. But if one of the Muslims ran away toward Quraysh, the government is not required to send him\* back to the Muslims. Muslims and Quraysh can sign any agreements with any tribes they want. Mohammad and his followers could return to Medina according to this treaty, and the following year could freely return to Mecca and visit the holy house of Allah, Ka'bah, provided they not stop more than three days and not carry any weapon(s), with the exception of a

\* Martin Lings, in *Muhammad: His Life Based on the Earliest Sources*, says soon thereafter a woman of the Quraysh, Umm Kulthum, escaped from Mecca and joined the Muslims in Medina; her two brothers came to Muhammad, asking that she be returned "in accordance with the agreement between him and the Quraysh at Hudaibiya." But Muhammad refused to let them have her, and Quraysh accepted his refusal without protest—since there had been no mention of women in the treaty (Ling 2006).

saber, which is a passenger's weapon (Vaqedi 1994; Tabari 1990). This peace pact signed by the Prophet Mohammad and representatives of Quraysh is the best example for the recognition and stabilization of physical borders within and throughout the Islamic world. Although the Prophet's mission and invitation is cosmopolitan, the best evidence for claim of universalism of the Prophet Mohammad is his letters and invitations, which have been sent all around the world by him (see Box 9.1).

To most Muslim traditional jurists, there is no concept of perpetual peace with infidels. However, considering the current global political climate, Islamic nations could face damaging relations if they do not attempt to maintain peace with non-Islamic nations. Because the goal of Sharia is to ensure a sense of security and peace throughout Islamic society and to create a convenient base for the global presence of Islam, the Islamic rulers are able to make temporary peace agreements with the infidels. According to traditional Muslim jurists, although the Prophet signed that above-mentioned peace treaty and made it obligatory for his followers, the ultimate goal was to prepare the way for future universalism of Islamic faith (Habibi 2005). Muslims believe God sent the Holy Qur'an to instill peace and harmony within the Islamic world (through submission to God). Muhammad's goal was to establish universal peace under the Khilafat. The Khilafat in essence was meant to provide security of life and property for non-Muslims under the Dhimmi system. Although initially meant for those described as the "people of the book" (Jews and Christians), some Muslims extend this to include Zoroastrians and Hindus. However, there are many Muslims who disagree with this interpretation and hold that adherents of these faiths cannot be Dhimmi. The Muslim ideal of universal brotherhood is the Hajj (pilgrimage to Mecca) prescribed by

### **BOX 9.1** iSLAMiC Un iVERSALiSM

A historical example is the following letter to Khosrau II, Emperor of Persia (Hamidullah 1985):

In the Name of Allāh, the Most Beneficent, the Most Merciful. From Muhammad, the Messenger of Allāh to Chosroes, king of Persia.

Peace be upon him who follows true guidance, believes in Allāh and His Messenger and testifies that there is no god but Allāh Alone with no associate, and that Muhammad is His slave and Messenger. I invite you to accept the religion of Allāh. I am the Messenger of Allāh sent to all people in order that I may infuse fear of Allāh in every living person, and that the charge may be proved against those who reject the Truth. Accept Islam as your religion so that you may live in security, otherwise, you will be responsible for all the sins of the Magians (Zoroastrians).

Islam. Each year close to three million people from around the world assemble in Mecca to perform Hajj and worship God. Because everyone is dressed in Ihram clothing, worshippers are not able to be distinguished by their wealth or status, but rather are equals worshipping together.

Overall, we can say that although in previous eras the issues of land and land borders have been founded on ideological and rigid Sharia interpretations, in the more recent theories of Islamic Law the modern notions of boundaries have become accepted in various forms. In modern Sunnite religious jurisprudence (the mainstream in Islamic faith) we find the elimination of some special conditions of Islamic rule such as being from Quraysh, the acceptance of diversity of the state's theories, the diversity of political borders, the acceptance of nationalism, and even the recognition of federalism and tribalism within the world of Islam. These are all new ways of thinking within traditional Islamic theology. According to the new theories, the unity of the Islamic world is confined to the unity of nation(s) (Ummah) and not the unity of Muslim governments. As a result, besides keeping the diversity of national governments in the Islamic world, they have taken cultural unity as a background for political, economic, and even disciplinary area inclination (Feyrahi 2003). Although new theories of Shia Islam\* do not have any stipulation about the modern theories of state, some religious scholars have discussed constitutional theories within Islam and have elaborated on border issues as national entities, not necessarily as a by-product of a belief system or religion (Feyrahi 2003). For instance, Mahdi Haeri Yazdi, a leading contemporary Muslim political philosopher, goes even further in his interpretation of Islamic doctrine of state and gives special theoretical importance to *Shahr* (City) and *Sarzamin* (Land) as general shared places for Muslim communities. He argues that states are a joint property for all nationals irrespective of their beliefs and Muslims have to transform their current notion of unified Ummah to a contextual political thought that is based on geographical surroundings, city, and land. He strengthens the rights of people and republicanism for the first time in Shia thought (Haeri Yazdi 1995). In his view the diversity of the Islamic governments is authentically Islamic, and the establishment of various Islamic governments on the basis of secular political geography is valid under the Sharia (Kadivar 2000) (see Box 9.2).

The establishment of a type of government based on the theological doctrines of Shia's Fiqh in Iran under the leadership of Ayatollah Khomeini is an illustration of how the notion of governance can and does incorporate a complex blend for a modern Islamic state. Secular arguments alongside the theological

\* Islam is divided into two main faiths, Shia (Shi'ite) and Sunnite. The Shia represent the majority in Iran, Iraq, Azerbaijan, and Bahrain, and have as well large communities in Lebanon, India, Pakistan, and the Persian Gulf states (Momen 1987).

### BOX 9.2 iRAn -U.S. COn FLiCT

Border security issues in the post-9/11 Middle East context is dramatically linked to more than a quarter century of Iran-U.S. conflict. Presently Iran is ironically a close neighbor to the United States in the Persian Gulf, Afghanistan, Iraq, and Central Asia. They have been in an uneasy chronic conflict since 1980, inherited from the takeover of the U.S. Embassy in Tehran by the Iranian radical students' movement and the hostage crisis lasting 444 days. This conflict has been continuing during the last three decades and has significantly impacted the escalation of security affairs in the region.

As a reaction to the hostage crisis, during the first Gulf War between Iran and Iraq (1980–1988), the United States leaned heavily toward Saddam Hussein, even though Iraq was the aggressor and made significant use of poison gas during the fighting. Though in the aftermath of 9/11 Iran was eventually in cooperation with NATO in the removal of the Taliban regime in Afghanistan, the U.S. president unexpectedly declared Iran as part of an “Axis of Evil” and pursued “the war on terror” in Afghanistan and Iraq while confronting Iran in both countries. However, as Iran’s nuclear crisis intensified and the situation in Iraq and Afghanistan worsened, the U.S. administration, this time with Russia, China, Great Britain, France, and Germany (the 5+1 Group) refocused attention on Iran under a new policy called “transformational diplomacy.” Simultaneously, the U.S. administration repeatedly made reassurances that the possible use of force remains real, as “all options are on the table.” Meanwhile, former and current Israeli officials have called on Western powers for immediate military strikes against Iran. Obviously, the current complexities in Iran-U.S. relations with regard to ever-intensified Iran-Israel-Arab conflict could set the whole Middle East in a disastrous direction. Without having Iran as a partner for peace, an eventual exit of NATO from the Afghanistan and Iraq crisis may allow the whole security situation in the region and beyond to deteriorate.

reasoning for the establishment of an Islamic Government in the modern era are reflected in different principles of post-revolutionary Constitutional Law. Articles 3, 9, and 152 of the Constitutional Law emphasize the importance of protecting the sovereign territory of Iran, and Article 154 states that no other nation can interfere with the internal affairs of the country.

In spite of existing secular terms such as national sovereignty and interests, Islamic idealism has remained the dominant political ideology and foundation of political life for the Islamic Republic of Iran in the 1980s and even

most of the 1990s. During these two decades there have always been a number of significant security issues within Iran that can only be explained by traditional-theological notions rather than modern secular terminologies. For example, Iran continuously reaffirms that such issues as Islamic nation, *Omm al-Qora* (motherland of Islam), leadership of the Islamic World, and assistance to the indigents of the world (*Mostaz'afin*) are priorities of its foreign policy agenda. It should be added that in various articles of Constitutional Law (Articles 3, 16, 11, 152, 154), the Islamic Republic of Iran has made itself responsible toward the Muslim world by including wording that addresses all those Muslims throughout the world impacted by a perceived arrogance from Western nations, especially the United States and Israel. For the revolutionary leaders of Iran, conventional national borders are considered only marginally. Soon after the revolution, Iran began to consider even areas outside of the conventional borders of other Islamic nations as its own. For example, Iran felt obliged to lend military support during the Balkan War in favor of the Bosnian and Herzegovinian forces, arguing that the majority of the Bosnian people were Muslims and therefore it was justifiable for Iran to aid their cause.

The notion of global borders in the context of the Islamic Revolution has also been mentioned in many speeches of the Ayatollah Khomeini. For example, Khomeini (1990) stated: "We have announced this fact in our foreign and international politics that we are and also were intending to extend the penetration of Islam in the world and decrease the amount of dominancy of the world colonizer! Now if the servants of America call it the policy of expansionism and the idea of establishing grand Islamic imperial, we do not care at all." The post-revolutionary attempts to ideologically redefine the political geography of Iran and the Muslim world were done according to two classical doctrines of Sharia, namely the doctrines of Invitation and *Nafy-e Sabil* (negation of any hegemony over Muslims by non-Muslims). Revolutionary leaders were repeatedly referring to these doctrines to justify their offensive and interventionist foreign policy. The underlying premise of this policy was to stand for the rights of all oppressed people of the world and invite them to accept Islam and revolt against corrupted worldly governments under the motto of "Neither East, nor West, but Islamic Republic!" Therefore, in accordance with this doctrine and as recommended by the Ayatollah Khomeini, the Islamic Republic of Iran called for the establishment of a powerful Islamic global front to defend the interests of the oppressed peoples across the globe (Khomeini 1990, 20/238).

The domination of ideological-revolutionary policies has weakened the attention of Iran around the real political geography of the ancient Persian realm, where Iran represented a cultural center for Middle Asia. As a consequence of this foreign policy shift combined with Iran's efforts to export the Islamic revolution to neighboring countries, the new Islamic system of Iran



has greatly neglected the sensitivity of border issues between other Islamic nations such as Iraq and the Emirates. Since the Iranian revolution, it has become evident that this neglect has resulted in Iran having strained relations with its neighbors.

However, the reality of the destructive eight-year war with Iraq along with its vast social and political consequences has decreased the credibility of the Islamic system outside Iran's territory and automatically inclined the gravitational center of national policies toward national geography. This forced shift has gradually offered new discourse in the arena of security policy that is more a national than a mere Islamic discourse. Close cooperation with the United States in removing the Taliban and working with Russia without attention to Chechnya Muslims are examples of this new discourse. Increasingly, Iranian leadership has become engaged in talks with other Islamic nations in regard to how Iran can better serve as a key player in regional stability and economic development. From this, attention toward methods of keeping war damages in check and possibilities of maintaining stability have again found their place at the top of national security affairs. The reasons for this change might be found in the economic crisis and security instabilities of the post-war period, as the Islamic Republic borders came across with serious challenges, such as the wars in Afghanistan and Iraq, where anti-Shia groups like al-Qaeda have re-emerged, confronting a heavily militarized Persian Gulf, instability, and violent conflicts in tribal areas with Pakistan, which confronts Iran's security with radical Islamic tribalism and organized international criminal groups. The complexity of border issues has greatly affected the ideological-revolutionary discourse on regional security within Iran's policy-making centers and helped form a gradual shift in the foreign policy of Iran (Zarei and Pour Ahmad 2006). Today, in light of these changes, most of the revolutionary leaders of Iran emphasize the regional geo-political power of Iran rather than abstract Islamic ideas. Although Iran uses Islamic terms in its defiance of Western countries regarding its nuclear ambitions, even the current nuclear conflict of Iran has been obviously shaped through nationalist vocabulary rather than religious terms.

### **Border Controlling in the Classical Islamic Law**

In Islamic legal discourse, border control is called *Rabat* and border controllers are called *Morabetin*. In Islamic law, *Morabatah*, or border controlling, is considered the same as or even better than practicing Islamic worship. According to a narration by Salman Farsi quoted by the Prophet: "One day of Rabat (border controller) in the way of God is better than prays and fasts of Ramadan Month and the one who dies when controlling borders in the way of God will be rewarded like Mujahid (combatant) in the Hereafter" (Mohageg Helli 1969).



In other references of classical Islamic legal texts, one form of jihad is a jihad for defending Islamic borders (Namazi and Shahrodi 1998). In *Kanz Al-Omal*, an Islamic Law commentary, under the title of *Bab Al-Rabat* [*Book of Border-Controlling*] there are various *Hadiths* from different narrators which illustrate the importance of border controlling, and describe the best practices for border guards. In this book, the work of border controllers has been regarded better than praying in the sacred places such as Mecca and the Prophet's Mosque (*Kanz Al-Omal* 4/324).

Besides the divine value of border controlling in Islamic law, the traditional Muslim commentaries have focused on border controlling itself as a cultural-political phenomenon that is under the discretion of an Islamic ruler. The ruler has the duty to safeguard the borders for the better practice of Islamic values. Maverdi, a prominent classical legal policy scholar, stated in his famous work, *Ahkam Al-Soltaniyeh*, that it is the public responsibility of Islamic rulers to take great care in safeguarding their borders so as to preserve and advance Islamic values. He mentions ten priorities for the ruler, which include the protection of religion, conflict resolution, and the "protection of Islamic territory and defending its borders," among others (Montazeri 1990).

### **Conception of Borders in Iranian Mythology**

In Iranian mythology, Iran originally was the name for a universal culture, a world's city. The borders were established after violent conflicts between kings when power formed the basis of the newly developed discourses. In *Shahnameh* [*The Epic of Kings*], one of the most important classic mythological books, we see that the uprising of the blacksmith Kaveh against Zahak (who had occupied Iran) was successful and Fereydoon became King. In this mythology King Fereydoon had the characteristics of being just, as stated in *Avista* (the book of Zoroast), which are *good words*, *good deeds*, and *good thoughts*. According to this mythology, as Fereydoon became King, borders were removed and peace and solidarity spread around the world. Peace continued until he divided his land into three parts in order to leave land to his sons. Iran was given to Iraj, Rome to Salm, and Touran to Tour. As a result of drawing such borders, power relations gradually emerged and by his death established themselves in the strongest terms between countries (Safa 1973).

Hence, after Fereydoon's death, history continued on two parallel trajectories:

1. As a movement that aimed to remove borders and return to the ideal land of freedom and prosperity, and
2. As a power relation with foreign lands and within Iran, which manifests itself as the Hafvad worm, which is the manifestation of power

and its characteristics which were concentration, superfluity, and satiety, which eventually leads to death.

Whenever power relations become domineering and Iran's existence becomes endangered, social movements return to bring Iran back to life: when national borders are challenged and violated, Arash (the archer) becomes the symbol of the defense of borders. Whenever Iran is threatened by a foreign power, Rostam becomes the symbol of resistance. Also, it is often internal despotism establishing a power relation with outside powers that poses a threat to the life of the country. In such cases, social movements, like Kaveh, emerge and unite the people in order to save the country.

Which one of these processes should become the sole process in the history of Iran? Ferdowsi, the purveyor of Iranian mythology, not only believed Iranians should not give their land to enemies, but he also believed they have to continue their movement until they once again find their ideal country. Iran was, at the time of Fereydoon, a country without hunger, disease, agedness, or suffering.

Ferdowsi was well aware of the laws of emergence and spread and death of power, and knew well that no power will die voluntarily. It has to be made to die, through not providing for the needs that are necessary for its existence and expansion (just as the two snakes that had grown out of the shoulder of Zahak and had to be fed with the brains of two children everyday). Hence, if there is no resistance and if there is no movement for the re-discovery of freedom and independence at an individual and social level, then it is possible that the death of power becomes contemporaneous with the death of a society. That is why Ferdowsi warned: "Iranians! To neglect making movements against those who make borders can lead to the death of a nation and the history of Iran." That is also why he argued: "If there is no Iran, may my body be vanquished, and in this land and nation no one remains alive."

## **Policy Makers and Border Security Authorities in Iran**

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### **Policy Makers**

#### ***The Supreme Council for National Security***

According to Article 176 of the Constitutional Law of the Islamic Republic of Iran, the Supreme Council for National Security is the highest authority on security affairs for the nation and is mandated to support the national interest, protect the achievements of the Islamic revolution, and maintain national sovereignty. The functions of this Council include determining the defense and national security strategies within the framework of the general policies commanded by the Leader, and coordinating activities in the areas

relating to politics, intelligence, social, cultural, and economic concerns specific to the nation's general defense and security policies. Exploitation of materialistic and intellectual resources of the country along with internal and external threats falls into the third main responsibility of the Council. This Council is composed of the heads of the three main branches of the state's power, the Chief of the Supreme Command Council of the Armed Forces, the officer in charge of Planning and Budget Affairs, two representatives nominated by the Leader, the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Information, and a minister related to the subject, along with the highest ranking officials from the Armed Forces and the Islamic Revolution's Guards Corps. The Council constitutes a sub-council for defense and national security policies proportionate to its responsibility. The president or one of the members of the Council who has been appointed by the president is in charge of the leadership of each branch. The approvals of this council are in effect only after the confirmation by the Leader. This Council is the most powerful body in terms of the nation's counter-terrorism strategy; it leads the nation's nuclear program and deals with all internal and external security issues. For instance, in Article 24 of the Draft Law on Counter-Terrorism it is stated: "In order to follow enforcement of the articles of this law and make necessary harmony between army, government and public organizations for prevention and fighting against terrorist threats and crimes, the National Counter-Terrorism Committee will be constituted under supervision of the Supreme Council for National Security." This Committee is composed of representatives from the Ministry of Defense with support from senior ranking officers from the Armed Forces, the Ministry of Foreign Affairs, the Ministry of Interior Intelligence, the Ministry of Justice, the Ministry of Economic and Property Affairs, Legal Assistance, and the President's Congress Affairs.

### ***The Country Security Council***

According to the first article of the Law on the Defining Responsibility and Organization of the Country Security Council of 1983, in order to evaluate main and subordinate incidents and circumstances of internal security and to adopt preventive security plans and decisions, the Security Council under the supervision of the Minister of the Interior is in charge of the following tasks:

- Assessing security, political, and socially sensitive events within the country to rapidly determine a course of action and assist in any required amendments that may be warranted by the leadership
- Specifying the general policies of security inside the country within the framework of approved laws

According to Article 2 of this law, the security of the nation is the responsibility of the Ministry of the Interior, and in cases of necessity, also the Army and Sepah (Islamic Revolutionary Guards), who will assist and coordinate with the Ministry of the Interior to address specific internal security concerns for the nation.

According to Article 3 of this law, besides the Ministry of the Interior, one of the Supreme Leader's councilors from within the Supreme Defense Council, the Head of the Army, the Chief Commander of Sepah, the Minister of Intelligence, and the Chief of Police are all members of the Security of the Country Council. This Council has a deputy called the Deputy of Security and Discipline, who has the sub-offices of the Chief Office of Border Affairs and Chief Department of Law Enforcement Forces Affairs.

## **Executive Organs**

### ***Ministry of Intelligence***

According to the first article of the Law on Formation of the Ministry of Intelligence of the Islamic Republic of 1983, the Ministry of Intelligence was established in order to acquire and develop internal security information, foreign information, and information concerning the protection of the state and anti-espionage concerns. This ministry is tasked with acquiring sufficient and necessary information concerning the status of internal and external enemies in order to restrain and defend against them. This article obliges all ministries, organizations, and institutions to provide the Ministry of Intelligence intelligence information related to their specialized areas. According to Article 10 of this law the Ministry is given vast powers, including acquiring and collecting news and information, analyzing and classifying information on internal and external affairs, and discovering plots of subversive activities, espionage, sabotage, and riots intended to compromise the independence and territorial integrity of the country. Furthermore, the Ministry is tasked with protecting the news, state information, and government documents, and with offering necessary intelligence services to state organizations and deputies in a timely manner so as to coordinate with other government departments to safeguard the nation's interests. Regarding the range of jurisdictions stipulated in this law, the Ministry of Intelligence is the main body in almost all issues related fully or in part to security matters. The personnel of this Ministry are among those who strongly believe in the political system of Iran, in particular with the theory of Islamic government (*Velayat Faqih*). The head of this Ministry has to be a member of the clergy who normally is confirmed by the Supreme Leader of the Islamic Republic of Iran. Supported by military and disciplinary forces (army and police) this Ministry is responsible for issues of border security, especially with regard to terrorist acts, oppositional activities,

fighting organized crime, and cases of kidnapping and doing mischief or illegal human trafficking along Iran's borders. For instance, regarding the fight against al-Qaeda, the only reference in Iran, which rarely discloses information in this regard, is the Ministry of Intelligence.

### ***Police***

Historically in Iran, until 1828 the protection and control of borders and settlement of the border disputes were solely in the hand of tribes and local governors. It was in 1946 that the Chief Office of Border Control was formed and received the responsibility for controlling borders under supervision of the Ministry of the Interior. In 1947, the Chief Office of Border Control was subordinate to the Ministry of War. Again in 1963 the border-controlling organization separated from the Ministry of War and became subordinate to the gendarmerie. After the Islamic Revolution of 1979 the responsibility for protection of the borders was assigned to the gendarmerie. Iran's gendarmerie had nearly 74,000 members in 1979 and was subordinate to the Ministry of the Interior. Its law enforcement responsibilities extended to all rural areas and to small towns and villages with fewer than 5,000 inhabitants. But in 1987, the control of approximately 400 kilometers of the eastern frontier was transferred to the Islamic revolutionary committees, which replaced the gendarmerie (Zarghani 2007). To reflect revolutionary and ideological aspects of state, in 1991 the gendarmerie, revolutionary committees, and national police were united into a single organization called the Disciplinary Force of the Islamic Republic (NAJA).

According to Article 2 of the Law on the Formation of NAJA, the NAJA is considered an armed force headed by the Leader and reports to the Ministry of the Interior. The head of the NAJA is appointed by the Head of All Forces and the Supreme Leader. The NAJA is in fact Iran's federal police force.

Article 4 of this law has defined the tasks of the NAJA as "guarding and control of the Islamic Republic of Iran's borders, performing the approving border agreements and protocols, safeguarding rights of the Islamic government and residents of the Islamic Republic of Iran in relation to border issues." The NAJA also has the responsibility for controlling passports (except political and official service passports) and manages the entrance and exit of both Iranians and foreigners (with the coordination of the Ministry of Foreign Affairs). In the case of foreign nationals under diplomatic coverage, the Intelligence Ministry controls the entrance and exit of foreign nationals and is also responsible for issuing documents related to their passports.

The responsibility to use disciplinary force and control, as well as the settling of border issues and disputes, has been moved to the NAJA's border control headquarters. This new mandate for the NAJA was recently approved by the Supreme Leader as a means of addressing contemporary sensitivities in relation to Iran's borders, and as such the Headquarters of Border Control

was converted to the Border Control Commandership (Zarghani 2007). The national army is also working together with the NAJA in bordering provinces. But the main offensive operations are being carried out by the second army of the Islamic Republic (the Islamic Revolutionary Guards [Sepah]) (see Box 9.3).

### ***Custom Organization of the Islamic Republic (COIR)***

COIR is responsible for the enforcement of import-export rules and regulations at border points, seaports, and airports with regard to all goods, including the goods included under the title of firearms, ammunition, and explosives. The legal procedures for the lodging, registering, and checking of customs declarations and supporting documents relating to firearms, along with other rules governing warehousing, are provided for in Chapter 3 of the Executive Directive of the Customs Law (Articles 65 to 72). Also, under Par. 3 of Article 40 of this law, the importation of weapons and firearms, including their parts and components such as gunpowder, detonators, shots, bullets and other ammunition, dynamite, and explosives and incendiaries, is prohibited. In line with the provisions of the Notes to Chapter 93 of the Harmonized System, the importation and export of firearms and ammunition, as well as their parts and components, is prohibited and requires prior authorization from the Ministry of Defense and Logistical Support of the Armed Forces.

Under the Act of Imports and Exports, declarations and prior authorization for any cross-border movement of cash, negotiable instruments, precious stones, and metals are also required. This Act governs cross-border exchanges and transactions, and COIR is responsible for controlling any such movement and ensures compliance with the law. According to Article 26 of the

#### **BOx 9.3 A TWO ARMIES LAN D**

Iran has two unusual parallel armies with 545,000 personnel in active service: *Artesh* (the national secular army) and *Sepah* (the Revolutionary Islamic Army). *Sepah* is the product of the Islamic Revolution, for the Islamic leaders of the country had no trust in the national Army, which was one of the largest armies of the region, inherited from the Shah regime and equipped with the latest products of the U.S. arsenal. *Artesh* is mainly responsible for normal situations on the borders, while *Sepah* conducts unassimilated operations on the borders, such as operations against Baluchi radicals on the eastern frontiers and against Kurds on the west. Despite severe ideological pressure on the *Artesh* to make it compatible with revolutionary ideals, there is a constantly concealed conflict between both armies.

Custom Affairs Law of 1971, this organization is tasked with checking any goods exchanged via land, sea, or air transportation coming from outside Iran. Regarding passenger control measures on international flights, Iran, as a member to the Chicago Pact, is obliged to obey the provisions of this pact to ensure aviation safety and security. Also, at border markets or emergency and temporary harbors, the entrance and exit of goods and passengers are done with the supervision of COIR. In addition, under the “Unification of Entrance and Exit of Goods and Services of Country” article of 2003, the legislative power of COIR to control all exporters and importers involved in shipping goods into and out of Iran is attained. Those exporters and importers who fail to comply with the requirements of COIR are considered to be engaged in smuggling.

With regard to international developments toward unified regulations and facilities for clearance and transit of goods (in particular, the International Convention on the Harmonization of Frontier Controls of Goods of 1982) and to streamline administrative procedures and remove cross-border technical barriers, COIR has a variety of powers with respect to the establishment of security measures within Iran’s borders so as to combat the smuggling of goods and weapons, human trafficking, and the unlawful importing and exporting of other prohibited materials and goods.

In some parts of Iran’s 2005 report submitted to the Counter-Terrorism Committee of the United Nations, it is admitted that interventions by Iran’s customs authorities have increased. This report states that COIR shares information with the World Customs Organization through the Customs Enforcement Network (CEN) and the Regional Intelligence Liaison Office for Asia and Pacific in Beijing on cases involving the seizure of smuggled goods, including illegal narcotics. Iran has also signed agreements with many other countries around the world with respect to the exchange of customs-related information, including customs violations and smuggling of contraband goods. Furthermore, the Iranian Civil Aviation Organization has adopted the necessary security measures for the protection of its airports based on the latest rules and recommendations introduced by the ICAO. Finally, the Islamic Republic of Iran’s Ports and Shipping Organization is responsible for the protection of ports and offshore installations, in coordination with the armed forces and law enforcement agencies of the country (UNODC 2005).

## **Security-Threatening Factors in Iran Borders**

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### **Drug Trafficking**

Within Iran, there are over a million people believed to be addicted to opium (i.e., heroin). This fact, officially admitted by Iran, has been blamed on drug



trafficking from the Pakistan-Afghanistan borderlands into Iran. Iran is the main consumer of Afghan opium. Historically, Afghanistan's drug industry was a component of the United States' Cold War policy within the region. In order for the United States to fight its Cold War against the Soviet Union during the invasion of Afghanistan in 1979, U.S. intelligence and military forces supported the Afghans and other Muslim jihadists in their resistance to Soviet occupation. This support thereby furthered the West's interests within the region without it taking overt military action. The drug production and trade in this region was easily ignored for the sake of the war against communism. Since this period, the tribal areas between Iran, Afghanistan, and Pakistan have become the world's top opium producers, currently supplying over 70 percent of the world's heroin (UNODC 2007a). Apart from the root causes of this narcotic production within the countries neighboring Iran, there is no doubt that the production of drugs and the trafficking through Iran's borders or distribution inside Iran have caused irreparable security, political, economic, and human damage to Iran itself. From a report of the Deputy of Counter-Narcotics in 2003 (Hashemi 2002), some of the aspects of Iran's narcotics plight are illustrated below.

Subject	Period	Amount
Drugs discovered	1979–1999	2,228,380 kg
Narcotics files in courts	1997–2001	1,305,323
Killed during fight against narcotics	1997–2002	3,255 soldiers
Civilian victims during fight against narcotics	1988–2007	10,000 persons
Death resulting from using drugs	1994–2002	6,167 persons
Anti-security and support events in east of country	1996–2002	20,000 incidents such as violent insurgency, kidnapping, etc.
Hardware expenses for keeping the borders immune of drug entrance and transit	1988–2007	ca. \$210 million
Average consumption of narcotics	In one year	Up to 8,000 tons

In recent years, the largest province in Iran, Khorasan, which neighbors Afghanistan, has been steadily confronting violent conflicts with armed smugglers in the form of murder, kidnapping, and robbery. This conflict has dramatically impacted the security and welfare of the Iranian people (especially children and women) within some bordering districts, where violence is a common occurrence. The range of this conflict has not been limited to the eastern provinces of Iran either, but has also penetrated the central and western regions, threatening Iran's national security. Between 1999 and 2001, insecurity and violence also expanded to the center of Khorasan province, Mashhad's mountains, and other cities such as Chenaran, Quchan,

Esfarayen, Sabzevar, and Neyshapour. Some armed gangs of smugglers have entered Golestan province, disseminating violence and crime. During the years 1996–2001, more than 3,500 people were taken hostage by these groups, with almost 210 people being killed. Best estimates indicate that 7,625 members of these armed groups have passed across the borders with Afghanistan (Ebrahim Bay Salami 1998).

In recent years, the Judiciary of the Islamic Republic has been excessively using the death penalty in the form of public hangings of those arrested in relation to transborder smuggling and trafficking. In governmental language they are called *Ashrar*, an Arabic term used for those who uses violence in public and who fight with the authorities of the Islamic governments. The common perception of Iran's judicial authorities is that when dealing with members of these armed groups it is warranted to suspend the human rights of these criminals in the interest of the state. Trials and convictions for those accused of participating with these armed groups are summary and quick.

### Goods Smuggling

Over 85% of Iran's revenue is generated through the oil sector, and hence the economy is largely marked as inefficient. In order to reduce the harmful consequences of state monopolies and in the name of supporting internal economic development, the Islamic Republic of Iran has sharply restricted imports, mainly by placing high duties on foreign goods. Under these economic conditions and considering the emergence of a consumer society within Iran, the smuggling of foreign goods has become common. For instance, in 2005 Iran's chief of police estimated that over \$6 billion worth of goods such as computers, electronics, tea, and cigarettes were smuggled into the country from other Persian Gulf countries—mainly Dubai (Al-Arabiya 2008). Because of the existence of extensive subsidizations in most sectors of Iran's economy, petroleum products, pharmaceuticals, breads, and many other goods (items that are imported into Iran with governmental subsidization) are being smuggled to neighboring countries by Iranians wanting to afford a consumer lifestyle. Considering that the gasoline prices in Iran are less than 35 cents per liter, smugglers are able to make a significant profit by illegally exporting petroleum out of Iran. This offers one example of how internal subsidization has sparked the smuggling of goods out of Iran.

Although the fight against smuggling has been a main security concern for the Iranian government, it is still a daily occupation for those inhabiting Iran's border regions. According to statistics offered by COIR, automobiles, machinery, alcoholic beverages, textiles, chemical materials, and spare parts constituted the majority of smuggled goods into Iran between 2005 and 2006

(Letter No. 22/83/253/344073 dated 1386/12/28 by the Islamic Republic's COIR). Also, the most smuggled goods from Iran during this period were gasoline, oil products, petrol, gold bullion, and food products (Al-Arabiya 2008). Statistics also show that in 2006, the number of people suspected to be involved in smuggling was 45,139, with around 12,736 having been arrested and convicted (Al-Arabiya 2008). According to this same letter, in the first 11 months of 2007, there was a 10% decrease in the number of cases involving smuggling, yet a 23% increase of people convicted of smuggling (12,736 to 15,738 convictions). In the Hormozghan province, the main center for goods smuggling because of its proximity to central international commercial points such as Dubai, during 1991 to 1994 more than 70,000 people were captured by border police for the transportation of smuggled goods (Hormozghan provincial, letter no. 10, 7-1374). Furthermore, during the years of 1985 to 1994, there were a total of 39,784 judicial cases involving smuggling within the province (Karimipour and Mohammadi 2005).

## **Terrorism**

### ***Oppositional Groups***

Although the Iranian Revolution of 1979 was inherently a popular non-violent event, Iranian society has witnessed a wave of violence between the Islamic government and different political opposition groups from 1980 to 1988. Mostly these conflicts took place at the bordering provinces, sometimes extending beyond Iran's borders. During the first years of the revolution, revolutionary border forces battled with Marxist-Stalinists of Kurdish and non-Kurdish groups in the border cities in Torkaman Sahra and Kurdistan. Later, since 1981 the MKO (Mojahedin-e Khalq Organization) also resorted to armed struggle against the ruling clergy, which led to a bloody confrontation resulting in a large number of deaths and casualties and much property damage, during this period.

After the brutal reaction by the regime and drastic actions including murder, executions and imprisonment of its members by the Iranian government, the main members and advocates of the MKO initially fled to Europe, but later took refuge inside Iraq. Since 1982 most of the terrorist actions within Iran have been planned from within Iraq by exiled members of the MKO. This armed oppositional organization until the end of the war was involved in cross-border attacks against the Iranian armed forces. Still its major military action took place in the summer of 1988 at the end of the war, when with the support of Iraq's armed forces, especially the air force, it launched a major attack and tried to take over some major Iranian cities in the west in an attempt to bring down the Iranian government. This operation, which was called "the Eternal Light," took place when Iran had accepted

a cease-fire with Iraq based on the UN Security Council's Resolution 598, which was meant to end the eight years of devastating war with Iraq.

The MKO's forces, known as the National Resistance Army, succeeded in breaking down borders and penetrating deep into the Kermanshah province of western Iran. However, their speedy advance came to a halt when Iranian armed forces quickly smashed the ill-conceived and poorly executed attack, handing the MKO a severe defeat. It is remarkable that despite the American view of Iran, which describes it as being a member of the "Axis of Evil," both the EU (Official Journal of the European Union 2005) and United States (U.S. Department of State 2007) list the MKO as a terrorist organization. There exists overwhelming evidence that the former Iraqi regime supported the MKO militarily, financially, and politically and that the organization until very recently continued to perpetuate acts of terrorism both inside and outside of the Islamic Republic of Iran. In the 2007 Country Reports of the UN Counter-Terrorism Committee, it is stated that "in the last 3 decades, the MKO terrorist organization has perpetrated more than 612 terrorist operations in Iran or against the Iranian interests outside the country, including through hijacking, abduction, bombing and indiscriminate terrorist attacks against civilians" (UNDOC 2008).

On other side of Iran's border with Turkey there is another separatist opposition, which through military means aims at unifying the Kurdish regions in Turkey, Iraq, and Iran into a country. This group, known as the Party for a Free Life in Kurdistan (PJAK), is active within the northwestern part of Iran, where it attempts to offset Iran's internal security through acts of terrorism. Presently the PJAK is the most noted armed group within the western borders of Iran, especially in the provinces of Ilaam, Kermanshah, Kurdistan, and West Azerbaijan. The PJAK is comprised of the Labor party of Turkey's Kurdistan, or PKK, and openly supports and promotes the ideals of Abdullah Ujalan, their Stalinist leader in prison in Turkey.

The PJAK has emerged as a result of the exile of opposition Kurdish groups from Iran, groups such as Komoleh and the Democratic Party of Kurdistan. The political base of these parties resides mostly in Europe rather than in Kurdistan. This physical distance causes a lapse, one might say, between theory and practice, which as a result has helped the creation of armed radical groups within Iranian Kurdistan. That, also, has created difficulty for the leaders of autonomous regions of Iraqi Kurdistan, as both Talebani (the current president of Iraq) and Barzani (the head of Iraqi Kurdistan) and their supporters had the systematic support of the Iranian government.

Although the PJAK does not have as strong a political background or popular support as other main Iranian Kurdish groups, these to a large extent have postponed their armed struggle, and hence it is this group that causes security tension in the western borders of Iran. Through a security agreement between Turkey and Iran, both countries share a common security approach

with regard to this group. This strong mutual security cooperation made the PJAK vulnerable. In August 2007 Turkey's Foreign Minister defended Iran's external operation against the PJAK in northern Iraq by stating that Iran had the right to defend its borders. In response, the Iranian Foreign Minister approved Turkey's attack against the PPK on November 3, 2007, during a meeting in Istanbul.

Obviously, there is a strategic convergence and a consensus around border security matters among the governments of Iran, Turkey, and Syria, specifically concerning the repression of the opposition Kurdish groups, especially the PKK and PJAK. The Kurdish opposition groups have therefore encountered extensive pressure and are increasingly under military and political pressure to abandon their armed and terrorist methods. Furthermore, as the West cannot afford to openly lend its support to these violence-oriented groups and violate its commitment to struggle against terrorism at large, these organizations' lack of political insight has led them to waste their energy and resources in a struggle without any promising outlook, hence the number of Kurdish people trapped at the border regions in continuing misery.

Ironically, unlike the existing hostility between the Iranian government and armed Iranian Kurds, friendly relations with Iraqi Kurdistan are on the rise. Iraqi Kurdish officials have an autonomous regional government that allows them to build political and economic links with other nations such as Iran. A large part of the Iraqi Kurdistan economy depends on imports from Iran. With these current strong economical ties, if Iran were ever to close its border with Iraq, the Kurdistan economy would surely be negatively impacted. Iranian products such as appliances and electronics flood Kurdish cities, and petrol smuggled in from Iran helps Iraqi Kurds overcome high oil prices. The security affairs of Iraqi Kurdistan are so interconnected with Iranian security concerns that Iraqi Kurdistan is not in a position to support armed Iranian Kurds in their conflict with the central government. If Iraqi Kurds decided to support Kurds in Iran, they would be forced to seek political and economic support from other neighbors, such as Turkey and Syria, which is, given the current situation, highly unlikely. Still such an economic and political shift could lead to clashes among Kurdish political parties so that those controlling areas bordering Turkey and Syria could gain an upper hand over the parties based near Iran.

Therefore, Iraqi Kurds are tolerant of the opposition groups located in northern Iraq as long as they do not engage in military actions against Iran. Regarding the PJAK, the Iraqi Kurd officials are cooperating with Iran to control this group, which is based high in the mountains. However, Iran, while deeply worried about its own Kurdish population seeking autonomy, from time to time accuses Iraq's Kurdish regional government of failing to crack down on Iranian Kurd opposition groups in northern Iraq.

But what complicates the picture in this area is again the chronic conflict between Iran and the United States. Like in the battlefields of Afghanistan, Iran and the United States have their conflicts within Iraqi Kurdistan as well. The Bush Administration increasingly made aggressive stances on Iran's involvement in Iraq, and this has given Iran's authority reason to assume that the PJAK may be receiving American support and backing. In January 2007 American troops captured five Iranian officials in Iraqi Kurdistan. Tehran says the five were diplomats, whereas Washington claims they were agents plotting attacks against the United States and its allies in Iraq. This American operation put the Iraqi Kurds in a difficult position of carefully balancing between Tehran and Washington (BBC 2007c).

This issue has resulted in other security concerns along the borders of Iran, where the PJAK is the only active armed group. This reality has the potential for creating an atmosphere where the Iranian government perceives their amicable Iraqi Kurdish neighbors as a possible security threat. The other aspect of this complex security issue involving the PJAK is that while the United States wants the Iraqi government to comply with Turkey's demands to repress PKK fighters in order to prevent attacks on Turkish military targets, the PJAK still is able to continue to operate against Iran from the Iraqi side of the border—which, currently, the United States occupies militarily. The Iranian government thereby understandably supports its claim that the PJAK receives American support. Despite the fact that America has turned a blind eye to the military activities of the PJAK and their territory in Iraqi Kurdistan, which they control, the group has been condemned by other nations for violating human rights. In September 2007 the PJAK itself announced that during August 2007 it killed 108 Iranian soldiers and injured 31 others (Mianeh 2008). The numbers might be a sheer exaggeration, but the fact is that it is the boasting of an aggressively violent act, which has alarmed human rights organizations.

### ***Religious-Tribal Extremists***

A mixture of harsh policies against religious minorities in the eastern border regions under an Ahmadinejad presidency, the rise of religious radicalism among the Sunnis in these regions, illiteracy, tribal extremism, and the drug smuggling industry has resulted in an increasing threat to security for Iran along its border with neighboring Pakistan. In the southeast of Iran, radical Sunni militants, very similar to al-Qaeda, claim the central Shia government has constantly discriminated against their populations. The activities of Sunni militants, together with organized criminal groups who smuggle opium out of Afghanistan, have created a very insecure situation for the region. Between 2007 and 2008 there has been a reported increase in kidnappings aimed both at civilians and Iranian officials, terrorist acts, road blockages, and human trafficking. This area in southeastern Iran is one of the



poorest and the most violent provinces of Iran. The area is one of the main routes for smuggling drugs from Afghanistan to Europe and the scene of frequent gun battles between drug smugglers and Iranian security forces. A number of Iranian soldiers have been ambushed or kidnapped over the past few years (BBC 2007c).

A militant bandit-radical group called Jundallah—or Army of Allah—is the most active terrorist group in this area. Since 2006 the activities of this group have intensified within the bordering cities, including various terrorist acts in Zahidan, the center of Sistan-Baluchestan Province, in particular on the border roads of this province. While they cross borders to commit terrorist acts inside Iran, the families of this group live in border areas of Pakistan and Afghanistan. Iran claims this group is affiliated with al-Qaeda; Jundallah, however, claims they are the victims of the Iranian government's oppression and discrimination, as well as political and economic neglect. The Jundallah states that they are fighting for the social and religious rights of Sunni Baluchis in Iran. In 2006 during a very organized insurgency, in an attack at a checkpoint in this bordering area with Pakistan this group blocked the highway between Zahidan and Zabol (Shia city of Sistan) and killed more than 20 people, including government workers and officials (BBC 2006). This extremist group was notified by its intelligence service that government automobiles were moving from Zabol to Zahidan; dressed in the uniforms of the Iranian Police Force, members of this group stopped them, asked their religion, and killed most of them just because of their Shia faith. The group filmed the scenes of killing as well as the taking of some of the passengers as hostages, whom they transported to the border of Iran and Pakistan. In another incident this group detonated a roadside bomb in the Zahidan region, which killed the majority of military passengers aboard a transport bus. This kind of attack, hitting an elite force in daylight in an open street, and its size and nature, was shocking for Iranian security forces (BBC 2007) and provided the Iranian government with further reason to enforce its harsh policies in this border region.

## **Legislative and Executive Measures for Security of Borders**

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### **Legislative Measures**

#### ***The Anti-Terrorism Bill***

The Anti-Terrorism Bill that was finalized on November 19, 2003, by the Cabinet of Ministers and submitted to the Parliament for final ratification is still pending in the Judicial Commission of the Majlis (Parliament). This Bill is composed of three chapters (general concepts and definitions, jurisdiction and rules of court, and penalties) and 23 articles. The first chapter (general



concepts and definitions) defines terrorism and different cases of terrorist crimes on the basis of international conventions. This draft law also specifies that every deliberate violent act against internationally protected persons; sabotage in public and private assets and facilities; dangerous acts against aviation and airliner security; hijacking; wrecking and damaging vessels; financing terrorism; etc., are criminalized. Also in this draft the method of recognizing groups and organizations as terrorists has been formulated. In the second chapter (jurisdiction and rules of court) legal proceeding of criminals convicted of terrorist acts is defined. In the third chapter penalties for these criminals are defined. Specifically, Article 24 outlines the criteria for the enforcement of this Bill and for coordinating among concerned authorities for prevention and provisions of suppression of terrorist crimes, the National Anti-Terrorism Committee, composed of all competent authorities under the auspices of the Supreme National Security Council, will be established.

According to the Criminal Procedures Act, prosecution and investigation of terrorist crimes fall under the Jurisdiction of Revolutionary Courts. Since 1995, the mandate of the Revolutionary Courts has been vastly expanded and now includes jurisdiction over various categories of offenses, including crimes against national security, narcotic drugs, anti-governmental actions, and what is called “waging war on God and corruption on earth,” terrorism, state-related embezzlement, bribery and profiteering, and all other acts that undermine the system of the Islamic Republic of Iran. The rulings issued by primary revolutionary courts, although final until 1988, can now be appealed in the courts of appeals or the Supreme Court in accordance with the New Rules of Criminal Procedure. Such rulings can also be requested to be reviewed according to special powers of the Chief of the Judiciary. Moreover, given the importance of the cases related to terrorist crimes, Articles 62, 63, and 64 of the New Rules of Criminal Procedure introduce a special measure which requires that all such cases shall be referred to and heard by the relevant competent courts in the capital (Tehran). Many judges of revolutionary courts have background in security and intelligence services.

### ***Anti-Money-Laundering Act***

This law has been in effect only since March 2008. The international pressure on Iran to combat money laundering escalated in the aftermath of 9/11. The Financial Action Task Force (FATF), a 34-nation group established by the Group of Seven industrial nations in 1989, has also voiced concern that Iran lacked a comprehensive regime to tackle money laundering and combat the financing of terrorism. Furthermore, the United States in its efforts to isolate Iran over its nuclear program has been urging governments and international firms to cut business and other ties with Tehran, stating that Iran is an active promoter of terrorist groups. While adamantly denying these allegations Iran has recently approved laws meant to combat money laundering.

Under Article 12 of this Act money laundering has been defined as crime. According to this Act the Supreme Council for Fighting Against Money Laundering will be established under the office of the First Vice-President with the membership of all departments identified by the Iranian leadership. In other provisions of this Act, individuals, institutions, and organizations are required to ensure that they comply with the Act and do their part in combating money laundering. In the final article, details of cooperation with other countries on fighting against money laundering have been defined.

### ***Regional and International Cooperation***

Regional and international cooperation by Iran can play a significant role in the international struggle against terrorism. From time to time there are positive signs that the Iranian political system is willing to show its interest to fight terrorism and organized crimes at a regional level. An example of this is Iran's recent ratification of security cooperation agreements with Italy and Saudi Arabia (UNODC 2007a). These agreements generally include provisions for cooperation in combating crime, terrorism, and money laundering; the surveillance of borders and territorial waters; and the designation of working committees to implement these provisions. Iran has also signed agreements on security cooperation with Kuwait, Bahrain, Yemen, Azerbaijan, Belarus, and Bosnia (UNODC 2007b). The 2007 Country Report of the UN Counter-Terrorism Committee mentions in detail that Iran has entered into conventions and agreements with its neighboring countries as well as others to promote its commitment in fighting terrorism and securing its borders (see Box 9.4).

The following represents an overview of Iran's attempts to engage and address various security issues.

*Cooperation plan in the framework of the Economic Cooperation Organization (ECO):* The ECO meeting, held on November 1, 2006, in Tehran, has been considered to be a turning point in enhancing regional cooperation on anti-crime and counter-terrorism measures.

*Cooperation plan in the frame of Iraq's neighboring countries:* Regarding security and counter-terrorism issues Iran is cooperating with Saudi Arabia, Syria, Egypt, Bahrain, Iraq, Turkey, and Jordan within a special international framework for the meetings of the Interior Ministers of Iraq's neighboring countries plus Egypt and Bahrain. The first session of these meetings was held in Tehran on November 30 and December 1, 2004. The Islamic Republic of Iran is also a party to the protocol on cooperation for fighting terrorism and organized crime as well as enhancing border security that was signed among Iraq and its neighbors, plus Bahrain and Egypt, in the second meeting of the Interior Ministers of Iraq's neighboring countries in Jeddah on September 19, 2006.

#### **BOx 9.4 THE DILEMMA OF THE KURDS ALONG THE BORDERS OF THE MIDDLE EAST**

1. Kurds are the fourth-largest national group in the Middle East and over the last five decades have become a major factor in the region's future stability. They have resided in the hills and mountainous parts of today's western Iran, eastern Turkey, eastern Syria, and northern Iraq since Xenophon's day.
2. There are between 15 million and 20 million Kurds living in contiguous regions in the Middle East. Greater than the population of present-day Iraq, even the lower figure makes the Kurds the world's largest ethnic group without a state of its own. The Kurds are a non-Arabic people who speak a language related to Persian. Most adhere to the Sunni Muslim faith.
3. The new Kurdish political momentum created by the U.S.-led war in Iraq and the falling of the Saddam Regime, in 2003, has caused a sense of post-Cold War issues to come to the forefront of Middle Eastern concerns, especially from Iranian and Turkish security perspectives (such as the challenge of breakaway ethnic movements, human rights, treatment of minorities, democracy, cultural autonomy, federalism, and possibly the creation of new states out of the territorial unity of the old). The Middle East borders with self-determined, progressive, and pro-Western Kurdistan in Iraq might be in transformation
4. Although the Kurds across the borders of Iran, Turkey, Syria and Iraq are all fighting for an independent Kurdistan, they are divided into various political parties which are sometimes against each other. For instance, while the Kurds of Iran are in armed conflict with the central government in Iran, the Iraqi Kurds are friends of the Islamic Republic.
5. Various Kurdish guerrilla forces regularly served the external powers as an instrument to weaken local regimes. The British helped foment trouble in Turkish Kurdistan in the 1920s; the Americans and the Israelis supported the Kurds against the Iraqi Baath regime in the 1970s; and the Syrians have periodically assisted Kurds against Turkey and Iraq. Iran, under both the Shah and the ayatollahs, enlisted the Iraqi Kurds in Tehran's geopolitical struggle against Iraq. And Baghdad in turn has regularly supported the Iranian Kurds against the Islamic Republic. Almost invariably, however, once the Kurds no longer served the immediate political goals of the external powers, they have been abandoned.

*Cooperation plan for reinforcement and support of post-Taliban Afghanistan government:* Terrorism and drug trafficking efforts are mutually reinforcing each other between the borders of Iran and Afghanistan. Based on ideological hostilities between Sunni radicals and the Shia faith, Iran has been officially supporting the new government of Afghanistan to counter the terrorism threat. In the context of cooperation with the government of Afghanistan on the fight against drug trafficking, Iran has commenced the training of the Afghan Anti-Drug Police Force members, which has further enhanced border cooperation between the two countries and promoted intelligence and operational cooperation with Afghanistan. In this direction, Iran has constructed numerous border stations, which have been handed over to the Afghan border police (Fars News 2006).

Further, to enhance regional capacities for cooperation, a quadrilateral intelligence committee composed of the representatives of Iran, Afghanistan, Pakistan, and the United Kingdom, with Germany serving as observer, has been set up and has thus far convened several meetings. Within the framework of the UN Border Project a trilateral cooperation between the Islamic Republic of Iran, Pakistan, and Afghanistan is expanding and strengthening. On May 8, 2008, the trilateral meeting between ministers from the Islamic Republics of Afghanistan, Iran, and Pakistan was held in Tehran. The result was an agreement on measures to strengthen border cooperation between the three countries in order to stem the flow of drugs from Afghanistan. Three countries agreed to improve cross-border telecommunication exchange on counter-narcotics. Further, they agreed to intensify the interdiction of precursor chemicals under Operation TARCET. UNODC will provide training and equipment for this purpose. Iran will also commit to establishing a permanent Secretariat for the Triangular Initiative and a regional center for intelligence exchange, through UNODC's assistance (UNODC 2008).

Iran is also an active participant within the Paris Pact. The Paris Pact has enhanced regional cooperation and could contribute to further restricting the activities of drug traffickers and terrorist groups in the region. Although limited in nature, the Paris Pact is a first step toward ongoing cooperation and contact between Iran and the UNODC in the fight against drug trafficking out of Afghanistan.

*Security agreement between Caspian Sea countries:* According to Section 22 of the letter of agreement signed in Tehran in 2007 during the meeting of authorities of the seashore countries of the Caspian Sea (Iran, Russia, Kazakhstan, Azerbaijan, and Turkmenistan) all five countries consider international terrorism, separatism, oppressive interventions, extremist and also illegal exchange of narcotics, weapons, and other forms of transnational organized crime as threats to security of the world community and international political stability. Under this Agreement, all sides are committed to unconditionally convict terrorist actions as criminal offenses apart from

motives, forms, and manifestations anywhere and by anyone, especially those actions that threaten peace and security of the area. All sides also admit that terrorism should not be connected to any religion, nationality, ancestry, or racial groups.

Under Section 23 of the Agreement, all parties confirm their support for extensive mutual or multi-lateral cooperation in the fight against terrorism, illegal trade of narcotics, weapons, and transnational organized crimes with the use of key and coordinating roles of the United Nations.

*Security cooperation pact with Saudi Arabia:* As a result of two competing faiths within Islam (Sunni and Shia Islam), Iran and Saudi Arabia are engaged in a rivalry as both try to expand their influence over other Muslim nations. Any joint approach to security and peace between these two leading Middle Eastern countries might strongly affect other bordering countries. In particular, in order to change the current unstable situation in Iraq and Afghanistan the world community is in urgent need of cooperation by these two countries. Since June 2001 there has been an unusual and relatively functioning security agreement between Iran and Saudi Arabia. According to Article 2 of this agreement, both countries are committed to preventing and combating organized crime and terrorism. They agreed to coordinate their anti-terrorism and organized crime activities through the following fields of cooperation: to exchange information about people and groups related to organized crimes and terrorism; to exchange experiences about time, place, situation, style, and method of organized crimes and terrorism and necessary legal measures for the prevention of such acts; to exchange experts and specialists for expanding common mutual cooperation about scientific research in the field of criminology and crime detection; to hold common police education with the agreements of committed sides; to organize and exchange joint working groups about the scientific research in criminology and crime detection; and some other areas.

According to Article 3 of the Agreement both sides are committed to coordinate their activities in order to make the best use of their resources. For that reason they will regularly discuss their cooperation in the following fields:

1. Fighting against human trafficking and smuggling goods at borders
2. Cooperating in the field of rescue operations at sea
3. Preventing any hostile political activities by opponents of each of two countries in another country

*Security agreement with Turkey:* To coordinate their efforts against subversive activities along the borders and exchange of information about terrorism, Iran and Turkey established the High Security Commission in 1988. The High Security Commission has thus far held eight sessions and

many others at sub-commission working level. As a result the Iran-Turkish border has been closed to the activities of PKK elements and illegal movements. In the last security meeting between authorities of the two countries, there were talks about a security contract to hold regular security meetings between them. Although reportedly this contract has been finalized, the exact content has not been announced yet. Turkey's Interior Minister announced that in this new type of agreement both sides have emphasized the necessity of deepening and continuing the mutual security cooperation. In another part of this announcement it was indicated that because of the increase in terrorist activities in the area that have caused losses to both country, Iran and Turkey are committed to solving this mutual problem through exchange of information and security cooperation (Tabnak 2008).

*Security cooperation agreement with Italy:* Considering the radical ideological content of the Islamic Republic, this agreement can be considered exceptional. According to Article 1 of the Agreement, the parties are committed to cooperating with each other in order to guarantee security and fight transnational organized crimes in any form with the purpose of prevention, conducting research, and fighting against organized crimes, terrorism, narcotics smuggling and illegal border passages, and related criminal activities (*Official Gazette*, 17196/2003). In this relation the Italian Deputy National Anti-mafia Prosecutor visited the Islamic Republic of Iran in February 2006 (UNODC 2008).

## **Executive Measures**

Iranian society has been plagued by drug traffickers and terrorists along its border areas with Afghanistan and Pakistan. Hence, combating the terrorist groups and organized narcotics traffickers has been a top priority for the Iranian security sector. Facing these ever-growing social and security problems, Iran has been adopting different levels of preventive measures during the last two decades with regard to securing its borders. Some of these measures are as follows.

### ***Preventive Measures***

In the aftermath of 9/11, the UN Security Council made a number of obligations for UN members to enhance the control of borders so as to prevent the transborder movement of terrorists. Iran, in cooperation with the international community, has obviously tightened its borders with Afghanistan in order to help the repression of al-Qaeda cells that were trying to cross through Iran. Iran blockaded many common cross points along its shared border with Afghanistan.

In Iran's report of 2007 to the UN Counter-Terrorism Committee, it was mentioned that the country has been using modern instruments and tools on its borders to counter terrorism (UNODC 2007c). Iran has also constituted a council with the title of Council for Organization of Legal Passages of Entrance and Exit in order to coordinate its action with the residents living near borders. This council, which was approved by the office of the supreme council, is to arrange necessary executive policies and form coordination in common executive methods. Supervision over legal passages of exit and entrance issues of the country with regard to total coordination of border issues are among the main responsibilities of this council (*Official Gazette* No. 10103).

### ***Logistical and Intelligence Support for Armed Forces on Eastern Borders***

Over the past eight years, the Armed Forces of Iran have continually reinforced its border guards along the 900-kilometer border with Afghanistan, including three additional brigades along with logistics and support units that are ordered to identify and arrest individuals suspected of terrorist and drug-trafficking activities.

In addition, the Iranian border guards, including the police, armed forces, and security personnel at all points of entry to the Islamic Republic of Iran (airports, and land and sea points of entry) were reinforced and briefed about their responsibility. The list of individuals and groups associated with al-Qaeda, circulated as Security Council document SC/7166 of 8 October 2001, was distributed to the border guards to help them control the points of entry to the country and the rest of the borders.

### ***Expansion of COIR Tools on Border Points***

The Customs Organization has been developing rapidly. COIR now screens most passengers at Iranian entry and exit checkpoints, utilizing advanced inspection scanners and equipments (x-ray, Gateway, handheld detectors, and inspection camera systems). It should be noted that COIR carries out its duties in close cooperation with the Iranian Police Department. Regarding passenger control measures on international flights, the Islamic Republic of Iran, as a member of the Chicago Pact, is committed to ensuring aviation safety and security in accordance with international standards and practices. Furthermore, new equipments have been set up in Iranian airports (8 international and 80 domestic airports) in order to meet this obligation.

### ***The National Anti-Terrorism Committee***

There is a National Anti-Terrorism Committee in Iran that is responsible for ensuring the necessary coordination and information-sharing among the relevant agencies involved in the fight against terrorism. The Ministry of



Intelligence and law enforcement agencies including the police force are also involved in exchange of information and intelligence related to suspected terrorist activities through INTERPOL and other relevant channels. The activities of the mentioned Committee are overseen by the Supreme National Security Council.

This Committee has established a Working Group to study the requirements and the potentials for establishing a data bank and other mechanisms for further coordination among them in connection with gathering, compiling, and analyzing information about terrorist groups and the best possible practices in countering and preventing terrorist activities.

### ***Excavation of Canals, Earthworks, and Border Guardhouses***

The widespread and long-standing practice of poppy and cannabis cultivation within the tribal areas of Afghanistan and Pakistan have resulted in over 80 years of illegal narcotics trafficking through the Iranian provinces of Khorasan and Sistan-Baluchistan—one of the world's largest drug-trafficking routes. In 2000, after a noticeable increase in the level of violence and drug trafficking in these provinces, the Iranian government began a massive project to “control and physically block the eastern borders” so as to curb the movement of illegal drugs and apprehend criminals using the border to traffic narcotics and people. Since 2000, over \$20 million a year has been allocated for the re-designing and reinforcement of Iran's borders, with the eastern portion being the main priority. This massive undertaking, which spans over 925 kilometers along the Iran-Afghanistan border, from Sarakhs in Khorasan province to the farthest end of Sistan-Baluchestan, has been undertaken with great vigor. Along the eastern border of the Khorasan Province, a 500-kilometer asphalt road has been built in order for police patrols to do their work more efficiently. Further, Iran has constructed 23 dams, 390 kilometers of canals, and 695 kilometers of excavation and clearing, erected over 125 kilometers of barbed wire fence, and built approximately 70 guardhouses and towers and 60 operational and security bases along the eastern borders (Zarghani 2007).

Moreover, Iran recently introduced electronic control projects at sensitive border crossing points. After the fall of the Taliban government and improvement of relations with the Afghanistan government, some of the guardhouses and security border bases of Afghanistan were repaired with the aid of the Iranian government. Iran firmly supports the coordination and cooperation of security forces on the two sides of the border as a solution to narcotics smuggling (Moshiri 2008).

### ***Training of Special Airline Security Guards***

Iran has a tough airline security mandate. In Iranian airports there are several kinds of security forces including police forces, officers of the intelligence

service, and the Islamic Revolutionary Guard Corps (*Sepah Pasdaran*). Because of the continuous threats to security of internal and international flights to Iran, which have existed since the Islamic Revolution of Iran, control of passengers and accompanied goods and security during flight has given over to the special and skilled forces of Islamic Revolutionary Guards. This organization has proved to be very successful in the prevention of hijacking as well as in the capture of hijackers.

### ***Creation of Border Markets***

One of the main goals of Iran's security policies aims at bringing stability to its border cities. One of the ways in which it has tried to achieve this is the creation of an economic development program for inhabitants along its borders. Presently, there are 50 such border markets distributed among all 13 border provinces of Iran (Ministry of Commerce 2008). This initiative is aimed at preventing smuggling activities and promotes the prosperity of border residents through lawful trade. The indirect objective of this project is to reduce the inclination of residents to join terrorist groups and give an incentive for residents to cooperate with security forces in controlling the smuggling of goods, weapons, and narcotics. In accordance with Article 7, the residents alongside these border points are given the ability to import and export goods without having to pay the normal customs fees and duties.

### **Covert Suppressive Operations**

Following the al-Qaeda terrorist attacks of 9/11, along with the fall of the Taliban in Afghanistan, there has been a great deal of discussion within political circles and in the world press that al-Qaeda has been using Iran to transport weapons and goods. Local authorities of Iran have always denied these reports and stated that the official position of Iran is not to support the efforts of al-Qaeda (ISNA 2002). In fact, some Iranian officials have stated they have suppressed al-Qaeda activities within Iran. For instance, Mr. Younesi, the former Intelligence Minister of Iran, admitted that members of al-Qaeda have entered into Iran; however, he claimed that the Iranian forces had captured these terrorists at its borders and deported them back to their country of origin. He said: "Presently we have encountered five waves of al-Qaeda terrorists since the fall of the Taliban regime. The first wave was the one which, after suppression of the Taliban, was along the long border with Afghanistan, when several thousand Afghans or other nationalities entered the country illegally. We decided to confront them" (ISNA 2006).

According to then Intelligence Minister Younesi, Iran had adopted a multilayer strategy to fight al-Qaeda in Iran. First, Iran adopted a policy of prevention through tougher border controls. Gradually Iran noticed that some members of al-Qaeda lived inside Iran and were using Iran's

territory for terrorist operations. The Iranian Intelligence Services immediately identified and arrested them. Indeed, this encounter was very vital for Iran itself. The former Minister of Intelligence even disclosed that Iranian security and intelligence authorities had identified al-Qaeda members and arrested them.

Former Minister Younesi introduced the next wave by stating: “This wave has been focused on the Ansar Al-Islam (Islam’s Helpers) with their bases mostly in Iraq. We have identified and captured them, and most of them have been tried and imprisoned. Therefore, the prosecution of advocates of al-Qaeda was the fourth wave of this organization in the eastern borders” (ISNA 2006).

In explaining the fifth and final wave of this organization, he stated that “the fifth wave against al-Qaeda was to deal with those groups that were organizing and forming various groups for terrorist operations and for supporting al-Qaeda. Among them we identified some religious students and Sunni Molavies (clerics). Presently we have identified and captured, expelled, dismissed or sentenced more than a thousand people. Approximately 200 of these people are now in prison” (ISNA 2006).

Besides this interview with the former Intelligence Minister of Iran, through an official report of Iran to the UN Counter-Terrorism Committee of the Security Council in 2007 this issue has been reaffirmed. The report argues that besides members of al-Qaeda, security forces of Iran have taken measures to capture and suppress terrorist groups such as the PJAK, Mujahedin Khalq (MKO) and other rebel groups that commit terrorist operations in order to smuggle narcotics.

## Conclusion

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The 1979 Iranian revolution and the emergence and dominance of radical Islam less than three years after the revolution added to the complexity of geo-politics of the Middle East, as now the Islamic ideology of the ruling clergy had a very different understanding of political borders within their advocated doctrine. Hence, in effect they refused to recognize these political borders, as they tried to draw new geographical borders based on the universal government of Islam. Now borders were drawn at places and regions that separated believers and non-believers, between the “global arrogance” (primarily the United States), their proxies, and the impoverished believers in Islamic lands.

Within this new definition of borders Iran saw itself as the land that accepted neither the domination of the United States nor the Soviet Union (the slogan of neither East nor West), and saw as its duty to give its backing for Muslims’ struggles in any country. Hence it advocated the export of

revolution—not through making the country an example, something which could be learned from, but through violent means by arming opposition groups in those countries.

However, the devastating eight-year war with Iraq, political isolation, constant struggle with opposition groups and organized drug traffickers, and in recent years the ability of al-Qaeda forces to cross Iranian borders have forced the Iranian regime to become much less ideological and more practical. Hence, since the 1990s we observe the change of attitude in regard to Iranian borders.

In the post-9/11 era, the Islamic Republic of Iran has a number of major concerns in relation to border security issues. This is particularly true in the eastern and western regions. A lack of effective border police in Afghanistan and Pakistan to combat the smuggling of drugs and human beings, the war in Iraq, armed oppositional activities in Kurdish provinces, and the penetration of armed terrorist groups across borders with Turkey and Iraq, together with increasing narcotics smuggling by organized criminal groups across the Iran-Afghanistan borders, have all caused Iran to regard border security as an important element of its overall national security strategy.

Hence, the Iranian government has a real need and desire to secure its borders, not least of all because failure to do so weakens its authority among the public, which is vital for the security of the regime itself. There are signs that elements within the regime, which might be called rogue elements, occasionally use these border-related threats as opportunities to support armed groups to bring them under their influence. But the willingness of the regime to cooperate with its neighbors and other countries on security issues provides a favorable situation for Western countries, especially the United States, to engage the Iranian regime constructively and make it more accountable for its actions and policies. Furthermore, while attempts to isolate the regime have opened space for radicals within Iran, real engagements about border security might provide alternative strategies and weaken terrorist activities. Iran's strategic geo-political location, as well as its historical and cultural influence in neighboring countries, means that it has a major impact on the security of borders in the region. Hence, making Iran a partner for peace and engaging this country in a mutually constructive dialogue over borders, security, and terrorism may be the most effective way of achieving these goals. After all, as the security of borders in the oil-producing, Muslim-majority countries of the Middle East such as Iran is strongly linked to international peace, so the only way of securing borders and diminishing the flow of drugs and armed groups into and out of Iran is through an international effort, and for that there needs to be a leadership in these countries, especially in Iran and the United States, who are able to overcome their mistrust of each other and their ideological differences in order to solve the border insecurities with their immense international ramifications.

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# Epilogue

## The Future of Borders

# 10

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### Contents

Introduction	349
Developments within the EU	350
Overcoming Borders as a Hindrance	351
Borders as Protection	354
Fortress Europe?	357
Smart Borders	358
Parallels beyond Europe	360
References	362

### Introduction

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Our time witnesses a strange phenomenon: some of the most bitterly defended borders in the world over which two world wars were fought are disappearing. The magic word is *Schengen*, a multinational treaty, now incorporated into the *acquis* of the EU, which provides for ultimate mobility by requiring its signatories to bring down border controls.<sup>7</sup> An average traveler can now drive from Krakow, Poland, to Lisbon, Portugal, without noticing a border (in fact at least four are passed through). Even countries traditionally suspicious of international cooperation, such as Switzerland, are set to participate in this revolution. Thus, a unified area has emerged to encompass locations that were the scene of some of the most brutal acts of war and an area of 3.6 million square kilometers in which 400 million citizens can move freely without checks across borders.

<sup>7</sup> Originally signed by five states in 1985 and since expanded by two conventions, the Schengen Agreement now extends (as of December 21, 2007, March 30 relating to air borders) to the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia after they joined 15 other states in the border-check-free area, which thus extends from the Atlantic deep into Eastern Europe. A further four signatory states may choose to join them in the future (so it currently applies to 25 EU member states, Iceland, Norway, Switzerland, and Lichtenstein (though Great Britain, Denmark, and Ireland have opted out of certain categories of cooperation). In 2003, it was integrated into the law, or *aquis*, of the European Union. For an introduction, see House of Lords (2007, 7–8).

The background of this development is the integration taking place within the context of the European Communities,<sup>\*</sup> set—once and for all—to form one European Union when the Treaty of Lisbon comes into force. The European Communities have developed from a free-trade agreement to stand fundamentally upon the base of the so-called four freedoms: free movement of goods, persons, capital, and services within the now 27 member states. European integration centers around commercially motivated mobility (also regarded as vital in other jurisdictions [see Chapter 1 and Chapter 2]), which has developed so far that even citizens moving their residence to another country within the Union will receive voting rights equivalent to those of locals for certain elections. Traditional concepts such as borders and even citizenship are vanishing. Borders, boundaries, and matters standing in the way of freedom within this context are out of synch with the needs of our time, it seems.

## Developments within the EU

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The EU has developed and is developing from a politically shared set of economic values into a community that fundamentally affects the lives of member states' citizens and that is beginning to demark its own fundamental values.<sup>†</sup> It is a development far deeper than the agreement upon norms by an international community; it is the development of a unique supra-national collective of nation states with common interests and beliefs reflected by far-reaching common policies. Recent years have, however, witnessed increasing worry pertaining to the benefits the fundamental freedom of mobility brings to those with illegitimate interests with accompanying energetically voiced concerns that criminal justice systems, residing inevitably within their traditional borders, are being left behind (see Storbeck 2008).<sup>‡</sup> These are now also being acted upon. Borders are doubtless a complex phenomenon within this dynamic context.

<sup>\*</sup> The European Union is a supra-national conglomeration that has formed after cooperative policy strands concerning foreign policy and cooperation in criminal matters were foreseen within a common framework by the member states of the European Economic Community. This consisted of the European Coal and Steel Community, the European Community, and Euratom (a European atomic community), which have developed from a multi-lateral agreement between six states in the 1950s to a powerful supra-national collective regulating many areas of economic life in the member states.

<sup>†</sup> See the recent controversy over the supra-national European Communities' foray into the role of criminal law legislator: cases C-173/06 and C-440/05 before the European Court of Justice as well as Browne (2005).

<sup>‡</sup> Recently reiterated by Storbeck (2008 – the first President of Europol), who pointed to the huge impact the abolishment of border controls has had (even though they do not have the same meaning as 20 years ago) and the knowledge that drug and human traffickers' routes have changed in response.

While the EU attitude to physical borders among its member states can clearly be said to reflect these as a hindrance (see, for example, Chapters 4 and 6 this volume), this can in no way be taken as true for its dealing with the borders that separate it from non-EU states. Recent years have seen a shift in attitude now clearly viewing the territorial edges of the Union as the common external border and one that should separate. This has coincided with the incorporation of border-related issues, such as visas and asylum, into the supra-national competence realm of the European Communities (see the contributions in Part Two in this volume). The common interest has further been underlined with the publication of a border package (European Commission 2008a) presenting planned common policy relating to the EU's external border. This package clearly demonstrates that the EU views those crossing borders as belonging to one of two categories: those with legitimate and those with illegitimate interests. It differentiates strongly between EU and non-EU citizens, perhaps decisively, in that a presumption applies to EU citizens that their movement is legitimate unless past behavior indicates otherwise, while non-EU citizens are per se to be treated as having potentially illegitimate interests until they have proved themselves to be of desirable character.

## Overcoming Borders as a Hindrance

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As noted in the Introduction and Section Two, the Schengen developments have turned continental Europe into a realm through which one can pass unhindered and gain the impression that borders are a thing of the past.\* Sovereign states have even become severely restricted in their ability to exclude nationals from other EU countries; the Charter of Fundamental Rights of the EU (adopted in December 2000) enshrines the right of EU citizens to move and reside freely within the territory of the member states.† One can almost watch borders across Europe disappear.

What began as an economically motivated mobility concern has had knock-on effects, however. As noted in several of the European contributions, concerns about the abuse of mobility facilitated by the vanishing of physical borders have caused the attitude to borders in other contexts to alter too. Above all, borders no longer have the same meaning for *criminal justice* institutions. Classically, these are strongly tied to national sovereignty and so to a physical territory (see the Introduction to this book). In an effort to

\* See the DG for Freedom, Security and Justice Web page and the emphasis placed upon the common interest in the Union's external frontiers expressed there.

† See Article 45 (2) of the Charter of Fundamental Rights of the European Union (2000), which also states that this right may be granted to third-country nationals.

make amends for the imbalance of mobility created between citizens and criminal justice agents, however, the Schengen Implementing Convention provides for police cooperation assisted by central agencies. Furthermore, in cases of emergency, police officers may cooperate directly with one another. Judicial authorities may also address each other directly with letters rogatory, no longer bound by the diplomatic channels through which these traditionally had to pass.

This trend has spread: the European Arrest Warrant (EAW) ensures that an individual will be arrested and transferred to another member state if he or she is suspected by that member state of having committed an act considered a crime (see Council Framework Decision 2002) within that country even if it is not criminalized within the state in which the person is arrested. Current proposals within the EU include plans to make provision for evidence collected in one national jurisdiction to be admissible in all others (via the so-called European Evidence Warrant), for non-custodial sentences to be enforceable across the Union (ensuring the convict's mobility), and for home jurisdictions to take over pre-trial measures where another member state would otherwise retain a suspect in pre-trial detention. In these cases a decision by a foreign criminal justice system institution triggers action within another on the basis of the principle of mutual recognition. The border between the systems becomes irrelevant; it is as if a domestic institution made the decision or order.

The latest development further sees channels for the wishes and knowledge of criminal justice institutions across the EU to transcend their traditional limited fora: the Schengen Data Bases and the Visa Information System are developing and building a potentially formidable common knowledge base alongside the principle of availability now declared as fundamental to EU criminal justice cooperation. Together with Europol and other supra-national criminal justice institutions developing within the European Union context—where direct exchange of intelligence can take place (for an overview, see Wade 2009), these mechanisms provide an unprecedented borderless intelligence source. They should ensure that agencies across this new realm look out for persons, stolen vehicles, etc., on the basis of entries made by officers at the other end of the continent just as those made by local colleagues. Law enforcement personnel are (at least potentially) to be well informed of the concerns of their colleagues across the border and beyond. Should the intentions behind the creation of these resources and institutions be realized, borders should become irrelevant within this context. The examples of EU member states willingly relinquishing their borders are manifold. The eagerness with which they share

terrorism-related information is an example of borderless policy (see Stock and Herz 2009, 21).\*

To a limited extent, the ultimate boundary is being breached: increasingly operative law enforcement personnel are to be found on territory other than their own (see, for example, Chapter 4). This is currently under exceptional circumstances only: either in border areas in hot pursuit in accordance with the Schengen provisions (see Storbeck 2008), in common operations for big events such as the Euro 2008 soccer event, or in the politically desired growing phenomenon of joint investigation teams (JITs—see, for example, Chapter 4). Foreign operative personnel are further set to become a feature, with civil crisis management foreseeing the involvement of foreign law enforcement officials active beyond their territories. EU member states are not the only nations involved in the war on drugs in Afghanistan, but parallels can also be found in the form of police missions in Bosnia and Herzegovina and Kosovo as well as in the mandate to fight organized crime in Guatemala currently being negotiated before the UN.†

Certain crime prevention strategies furthermore involve criminal justice institutions acting outside their territorial boundaries. EU member state governments have seen fit to become active on territories well beyond their borders to prevent threats stemming from those locations coming to them. Thus, anti-drug activity sees police officers in Afghanistan with equivalent operations also to be found to combat human trafficking, terrorism, etc. (see Stock and Herz 2009, 25–26, 28–30). This kind of activity used to be a matter for covert secret-service activity; government agents were shadowy figures who eluded things such as borders, crossing them in a secretive manner. Now such work, transcending borders, is also at the heart of overt policing strategies. Borders do not have to be outwitted; state agencies react to breaches of their borders (such as by smugglers carrying narcotics) *quid pro quo*. The reaction to geographical permeability is not to counter it; in these policy areas borders are not protected by hardening them but by further dissolution in other realms.

It is, however, not only law enforcement personnel for whom the effect of borders are dropping away: articles 54–58 of the Schengen Implementation Convention ensure that a person cannot be sentenced twice for the same behavior within the Schengen Area. The so-called *ne bis in idem* rule provides

\* How unusual this is reflected by the absence of such exchange and cooperation in other jurisdictions. Thus the inter-state exchange of information requires special effort in the U.S. (see Heyman and Ackleson, Chapter 2; Miller and Wright 2009) and only in relation to the high-profile anti-terrorism policy area is cooperation entered into between Canada and the U.S. (see Winterdyk and Sundberg, Chapter 1). Interestingly this area is also the cause for unprecedented cooperation between Iran and Saudi Arabia as well as forming part of security agreements with Turkey and Italy (Aghababaei and Rezaei, Chapter 9).

† For further details of related UN activity, see Edelbacher and Kratcoski, Chapter 3.

suspects with expanded protection. Even where he or she infringes rules laid down by different sovereigns within their jurisdiction, only one may impose some form of punishment in reaction. It is as if there were only one affected sovereign. The contrast to the United States could not be greater: there a federal prosecution will not bar the state the right to prosecute—each sovereign may enforce its law (Miller and Wright 2009).

In truth, however, efforts to overcome the hindrance of borders are not comprehensive and certainly not even handed. Alongside the undeniably plausible problems faced by criminal justice institutions are also those faced by individuals handled via the new European criminal justice mechanisms. A person transferred by EAW will doubtlessly confirm that the border between his or her own and the detaining state are still there. Defense lawyers, for instance, can work only within the jurisdictions to which they are admitted—invariably connected to traditional geographic boundaries. No coordinating agency exists to assist them in overcoming the problems transnational cases bring with them, no fund has been created to ensure additional costs are met, and there is no political debate concerning such matters. The more metaphysical borders of language and culture will furthermore inevitably make themselves felt, will prevent integration in the prison in which the transferee is held, and may well prevent the prisoner's effectively exercising even the most basic of criminal procedural rights.\* Not only those imprisoned but all those identified as suspicious and whose mobility is not necessarily regarded as productive for the new Union will be increasingly watched as the technological and knowledge-sharing capacity of the evolving Union increase. They are the subject of a borderless realm in which some borders are, however, more impermeable than others.

## **Borders as Protection**

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In relation to its external boundaries, borders even within or by the EU are not viewed merely as a hindrance. They have traditionally been so fiercely guarded because they are first and foremost protective, and despite the high-profile shift away from them this function is far from forgotten in the EU. Borders can naturally be protecting only states that see the significant, if not the greatest, threats they face as external<sup>†</sup> (that is, with the potential to be kept outside their borders) or that view regulation of those on their soil as a high priority. Borders of all kinds are likely to become a high priority for those who

\* See the results of the EuroMoS (2007) pilot study exploring the experiences of Dutch and non-Dutch permanent residents of the Netherlands as prisoners in Germany, France, and nine other EU member states.

† Though this is not an easy concept to define, see Domingo, 5.



believe they have much to protect and thus perhaps gain even greater significance to those the former wish to be protected from. Logically, they are only a real concern to those countries that possess resources (at least potentially) significantly superior to the threatening outsider making a concerted effort to protect borders worthwhile. As such, strong borders are thus attractive to powerful and economically attractive states<sup>†</sup> and are to be used against those who might dilute or take advantage of this strength.<sup>‡</sup> Within the EU this is apparently not feared, or at least the benefits gained from lowering borders within the Schengen area are obviously regarded as more valuable than any loss incurred due to their relative dissolution.<sup>‡</sup>

This is a calculation that ends at the external border of the Union. The (at least physical) disappearance of borders within the Union is matched by a hardening of the external borders (see, for example, Italy versus Iran in this volume). The mobility provided once one is within the Union naturally justifies increased efforts to ensure that anyone who could pose a threat to those within cannot profit from this mobility, and so the borders surrounding this Area of Freedom, Security, and Justice must be strengthened. The Union displays a clear vision of who should benefit from EU mobility. The external borders harden, however, not only for those who pose a security threat. The borders remain very real and may in fact have become more imposing and impenetrable for those who wish to enter this commercially powerful space with legitimate interests or who seek refuge there.

The new border package is centered upon the creation of an entry/exit system registering the movements of all non-EU citizens at the EU's external borders. The Commission's communication recommends the establishment of an Automated Border Control System to verify traveler's identities based on biometric data. Finally, pre-departure online checks of non-EU citizens traveling by air based on information supplied by their carrier complete the measures foreseen. The latter is intended to allow border services to be alerted to "risky passengers"—this element of the Border Package is expressly intended "for the purpose of preventing terrorism and organized crime, not for border checks" (see European Commission 2008a, 3). The inclusion of such aspects within the border package provides a classic example of border policy as an area related to so many fields that it can be seen as displaying a holistic governance approach. It displays the expectations now placed on

<sup>†</sup> Though one should note, of course, that a country may pay equivalent attention to protecting other, non-economic resources; see, e.g., Aghababaei and Rezaei, Chapter 9.

<sup>‡</sup> See a similar calculation made in the U.S., perhaps reflected most clearly by the fact that border protection is technologically most advanced and indeed has only included wall building to the south (see Heyman and Ackleson, Chapter 2).

<sup>‡</sup> For analysis of this development in accordance with world system theory see Edelbacher and Kratcoski, Chapter 3.

border policy; the expectation of Schengen external borders are to secure economic prosperity, preserve sovereignty by controlling who enters and exits (enforcing immigration law, customs duties, etc.), backing up foreign policy, and preventing crime.\* Often border policy must be formed as a compromise between different pressures, as various political goals may logically demand strongly diverging attitudes to borders. Thus, the EU has witnessed France torn between its desire to benefit from the Schengen Agreement and perform its duties under it and the desire to ensure that its own drug policy remains effective, protected from undue influence by the Netherlands (see, for example, Chapter 4).

Third country (non-EU) nationals who regularly visit the EU and display a number of positive features (no overstays, adequate finance, biometric passport, and successful visa applications) can gain the status of low-risk “registered traveler” (European Commission 2008a, 4) within the automated scheme,<sup>†</sup> but they must earn this status. Despite its declared aim to benefit such travelers, the border package appears above all to categorize them negatively, only to allow them to be filtered out and then spared the negative consequences ensuing. In particular, the privacy cost of the efficiency gains foreseen for these and other bona fide travelers are to be viewed critically, however (Guild et al. 2008, 3).

Data protection standards are expressly included in the Commission proposal, with the Commission stating that “individuals *should* have the right of access to information held on them and to challenge and correct this information as provided for in supra-national (EC) and national legislation.” It is not hard to imagine the problems travelers may face in correcting entries, for example, to the Schengen database which may cause their travel to be vetoed far away from the point and process of data entry (see European Commission 2008a, 4–5). Again, the Commission’s use of the word *should* in relation to the creation of an appeals process for “over-stayers” whose breach is “forced” is a worrying indication that policy is to err on the side of exclusion (European Commission 2008a, 5). True commitment to the freedom of third-country nationals to travel and data protection would surely entail the Commission making a specific proposal for a centralized agency to manage

\* See, for example, former EU Commissioner Franco Frattini’s statement that the EU must use “the most advanced technology to reach the highest level of security” preventing visitors from “overstaying their welcome” as well as the entry of terrorists, quoted in Euractiv (2008); see also European Commission (2008a); for a critical assessment of the value of mixing security interest with border policy see Bigo et al. (2008, 1), who assert that so much cross-border crime takes place over the unprotected internal borders of the EU that to focus on security in relation to external border policy is ludicrous.

<sup>†</sup> Guild et al. (2008) further criticize that the scheme is being set up to facilitate bona fide travelers’ entry into the EU despite there currently being no sign of any hindrances to their entry.

such procedures rather than this statement that leaves appeal and data protection mechanisms to and at the discretion of the member states. Borders have disappeared in relation to exclusion from the realm, but they remain an obstacle to problem solving in this area.

Before manually stamping the traveler's papers upon allowing entry to the Schengen area, border guards are expected to conduct a "thorough check" on third-country nationals, including a check of the Schengen Database (SIS), which contains information on wanted persons, and national databases (in addition to and in spite of these also having been checked during visa application proceedings). The future Visa Information System (VIS) and EURODAC will provide further resources: VIS providing details and biometric data of all visa applicants and EURODAC being a register of asylum seekers and anyone detained in connection with "irregular crossings of external borders" as well as persons found illegally on EU territory (for example, having overstayed their visa).

The steps foreseen for the creation of a European Border Surveillance System (EUROSUR) are the ensurance of compatible surveillance systems as well as the creation of coordination centers along the southern and eastern external borders alongside a common computerized communication system for coordination and data exchange. Thereafter common research and development to achieve technical advance is envisaged together with synchronized use of surveillance tools to ensure all relevant member states have the same knowledge about their "external borders and the pre-frontier area." Similar developments are foreseen for maritime authorities (European Commission 2008b, 2–3).

## **Fortress Europe?**

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The development of a well-protected, prosperous, united Union has long been associated with the negative potential for a "fortress Europe" aggressively excluding those beyond the external borders. Not surprisingly, the new border package that so clearly marks all third-country nationals as outsiders has added to this debate.

The European Council on Refugees and Exiles has expressed strong concerns in relation to the European border package. In a news release questioning whether this does not ignore the right to asylum, the Council pointed out that asylum applications in EU member states are at their lowest level in 20 years and that asylum seekers are already tended to be forced to enter the EU illegally in the dangerous flows with other immigrants, interjecting that the border packages already in place "prevent most refugees from physically reaching the EU." For example, the Council argues that 48% of asylum applications made in Malta since 2002 led to applicants being recognized as

requiring international protection (with the majority of applicants having arrived by perilous sea routes), and thus the Agency questions what percentage of those prevented entering by the EU's border agency FRONTEX were genuine asylum seekers (ECRE 2008; see also the European Commission speaking of 500,000 illegal immigrants in 2006, only 40% of whom were removed—European Commission 2008a, 2).

The external border of the EU may be invisible but it is doubtlessly present, omnipotent, and a border indeed—perhaps particularly for those desperately in need of the protection the EU professes to offer.

In relation to the external Union borders, this package has nothing to do with a softer border, and immigrants are not less categorized as unwanted than by previous policy, though they are viewed with a degree of sympathy. European border policy is currently marked profoundly by the common concern relating to those washed up in desperate condition by indescribable means on the coasts of Italy and southern Spain (for a summary of the challenges faced by law enforcement personnel there, see Chapter 6). Above all, Africans risk life and limb, paying outrageous fees for vehicles unsuitable for an afternoon on the lake to take them across the Mediterranean. Recent years witnessed these borders not only becoming more visible for such individuals—identified as undesirable—but also more dangerous, as Spanish and Italian authorities took an increasingly aggressive stance (for Spain, see Saux 2007b and for Italy, the *Independent* 2007). With an acceptance by the other EU member states that Spain's and Italy's border problems are also those of all the member states, this policy has been modified and somewhat tempered as part of the European Border Package. Above all, however, those who exploit the plight and desperation of refugees and sell them their ticket to the lottery, which at worst pits rubber dinghies against the Atlantic at extortionate prices, are advancing to strongly marked criminals (now forming a priority within supra-national criminal justice agencies' agendas [Article 2{1}, Europol Convention]). How successfully the EU will deal with economic migrants and the refugees themselves and what the external borders will factually mean to them remains to be seen.

## Smart Borders

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As noted in most of the European contributions in this volume, much of the development described within the EU is, of course, about technological progress and how such advances increase our capacities in our daily lives.\*

\* Indeed there is some speculation that the EU might have fallen into the trap of thinking "that maximum technology is by definition the solution for better security" (Bigo et al. 2008, 3).

The feeling that borders are disappearing is merely a superficial impression in certain respects. While manned physical border posts in the road, walls, wires, and such, the visible manifestations of borders, may be vanishing, they are being replaced by modern alternatives—to a certain extent at least: camera surveillance, sensors, infra-red, and shared knowledge provide smarter functional equivalents (see, for example, how technical means to achieve identification up to 50 kilometers beyond the border mean that traditional checks become obsolete). Data analysis of those known to be entering and softer border zones in which border guards operate—also on neighboring territory—may result in borders being less visible for many, but also being more intelligent than their predecessors.

So while borders are visibly becoming a thing of the past, their disappearance is often conditional. They are becoming invisible in particular to those who are willing to provide data for pre-clearance and submit themselves to screening so that they can be categorized as legitimate travelers for whom borders should be no hindrance.<sup>4</sup> Borders can accurately be said to be disappearing only for those for whom they were previously an inconvenience and a time-costing factor and who submit to new regimes, paying with their privacy in order to avoid the inconvenience of borders.

The way in which we use such innovation is, however, also undeniably tied to our mindset, and the way we mark, protect, and indeed defend our borders has much to do with our deeper conception of what we expect from them.

The EU's treatment of member-state citizens and those coming from outside the Union is fundamentally tied to its expectations of them. Member states apparently expect their citizens above all to contribute to and profit from the benefits of shared, mobile resources, and so borders as a hindrance to them are to disappear. Those suspected of taking advantage of their mobility to illegitimate ends will quickly see themselves selected for alternative treatment because more intelligent borders should continue to exist for them. Those entering from outside the Union are to be subject to thorough scrutiny, though they can gain more favorable status by proving their legitimacy. More intelligent borders can also make greater demands upon those who wish to pass.

Border policy in the EU is unquestionably developing to become an integrated part of a risk-assessment-based security strategy (see Braithwaite 2000). We have those who belong, who we categorize as posing no risk, as welcome in our societies, and for whom borders appear almost to cease to exist. Then there are those of whom we are not certain, and who will be

<sup>4</sup> For example, the scheme at Frankfurt airport, which makes passports and related checks unnecessary for those willing to leave their fingerprints and iris scans with the border control agencies. Such systems are paralleled by similar developments in other countries (see, for example, Heyman and Ackleson, Chapter 2 and the U.S. scheme for shippers; Winterdyk and Sundberg [Chapter 1]; and Moran, UK, [Chapter 7])

subjected to more or less bothersome checks; for whom borders will retain their more traditional image: a need to stop, subject oneself to control, and to be allowed to pass at the sovereign's discretion. Finally, there are those who are not welcome; for them the border is to be hard, stronger, and more omnipresent than any wall could ever be.

## Parallels beyond Europe

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While the above account relates specifically to European developments, it draws out trends that find parallels beyond the EU and Schengen realm. While the European development is certainly unique, many key features are symptomatic of what is happening to borders across the globe, thus revealing something about a more universal vision of the future of borders.

The key importance of mobility as the driving force of our modern economies is clearly reflected in other contributions to this volume, particularly for Canada (Chapter 1) and the United States (Chapter 2). There is also the permeability of traditional borders for criminal justice agencies (in relation to information (in relation to information [Chapters 1 and 2]) as well as to tasks being performed by personnel—in the United States the case via cooperating foreign government workers (Chapter 2). It is impossible to read this book without gaining a sense of an all-pervasive need felt by states to categorize those who might wish to cross its borders and the desire to invoke borders with a different meaning for different groups.

In his work *American Vertigo*, Bernhard-Henri Lévy (2006, 100–105) reflects upon the harshness of U.S. American border policy, speculating upon the greater cruelty of not having built a wall between the United States and Mexico but to direct, via use of technology and strategically deployed border guards, potential immigrants to routes on which, as one U.S. border guard puts it, mother nature (in this case the unrelenting desert between the two countries) will provide an equivalent. In other words, to risk the death of those who attempt to enter the country illegally.\* While he concludes that a wall cannot have a much worse image than the modern equivalents and patrols being made use of, his shock is evident at the callousness with which potential illegal immigrants are viewed.

This account reflects not only a parallel development to the European one described above on American soil, as far as the use of technology is concerned, but above all of the trend toward simple and consequential categorization (for other types see Chapter 2). When one stands in endless queues

\* Also a main bone of contention expressed by law students at the University of Arizona in Tucson, another region seriously affected by and witness to the deaths this immigration policy brings.

before Homeland Security counters at entry airports in the United States the signs that one is being herded and strongly categorized into one bulk are inescapable. Without the advance of technology and the use of infra-red technology, rather than traditional ink and parchment, it is difficult to imagine so many succumbing so peacefully to surrendering their fingerprints (just as applicants for UK visas do) to the authorities. If this categorization were more clearly associated with the treatment of criminals it is hard to imagine such peaceful submission. The advance of technology and our willingness to categorize people and in turn to accept simple categorization profoundly marks the meaning of borders today. Having surrendered our data and established our legitimacy, we may no longer feel or see the border. That does not, however, mean that it is not there. Borders are becoming invisible but at the same time very clever and efficient, able to be made tangible only to those for whom they are intended.

At the U.S.-Mexican border (with parallels to be found, for example, in Australia in relation to boat people (see Chapter 8) the above account blatantly experiences a category not yet openly addressed at European borders: unwanted\* (and insignificant beyond the need to exclude)—clearly expressed by a regime which is callous even to the death of those who try to avoid the consequences of this label. For those pre-selected as such, this border is the hardest of imaginable walls. A boundary one attempts to cross—like the migrants and potential asylum seekers crossing the seas to Europe, upon pain of death. Not inflicted but in this case quietly ignored. The EU's policies in these areas are not quite so harsh. There is massive concern about those who seek to come. There is concern that those truly in need of asylum do not reach us and concern about the many who die trying. One of the justifications for the introduction of a European Border Surveillance System is that it would increase capacity to detect small boats, thus reducing the number of lives lost at sea (European Commission 2008b, 1). Outposts exist on the African continent to facilitate legal procedures taking place there (European Commission 2008b). The latest European Commission (2008b) statement on border policy lays out the need to include third countries in border surveillance. Publicity warning of the dangers of attempting to immigrate is omnipresent as murals in some African states (ARD 2008). The fight against human trafficking, and thus those who turn potential immigrants' desperation into profit so cynically, has high priority. Only time will tell, however, what this new border regime really means.

Border policy in the prosperous world, more or less caring, nevertheless has a few common denominators. Some commentators assert that the most important feature of panopticism is the pre-selection of targets and this

\* A category commonly found in border policy it seems; such clear categorization is reflected in accounts concerning boat people coming to Australia (see Tascón, Ch. 8).



is at the heart of the EU's new integrated border package (Aas 2008). This categorization is identified as a feature of many systems, also in this volume, and as decisive as it will—given the emerging technological possibilities—determine what borders mean to whom in the future. Current EU policy is obsessed with categorizing those who wish to cross its borders. On the one hand, border policy seeks to ensure that borders are resurrected or hardened for those who should not be allowed to cross them—ever more intelligent solutions are being sought to invoke borders for those for whom they are wanted, but at the same time to ensure that they (and in particular this hardening) remain imperceptible to those to whom they should not apply. Coincidentally, the category of those unwanted is broadened. For the favored category, the apparent lack of borders should be providing what Winterdyk and Sundberg (Chapter 1) describe as a “sense of freedom,” even if the good itself is not actually what is served by border policy.

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# Index

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## A

- Action Directe (France), 137  
Advanced Passenger Information (API), 255  
AEO, *see* Authorized Economic Operator  
Aircraft  
    Airborne Warning and Control System–equipped Boeing 707s, 45  
    Air India bombing, 17  
    Convention for the Suppression of Unlawful Seizure of Aircraft, 8  
    hijacking events of 1976 in Entebbe, Uganda, 161  
    ID checks before boarding (Germany), 176  
    investments (Italy), 202  
    legislative decree (Italy), 227  
    prevention of potential terrorists getting access to, 177  
    upgraded (U.S. Border Patrol), 44  
Airport security  
    Italy, 202, 223, 237  
    private management of  
        Italy, 212  
        UK, 263  
    security check of personnel (Germany), 179  
    United Kingdom, 256  
Alliance Base (France), 155  
al-Qaeda  
    era, second-phase (Italy), 202  
    forces, ability of to cross Iranian borders, 344  
    franchise model of (UK), 250  
    hijackers, 9/11 Commission conclusion about, 54  
    Internet communication, 31, 81  
    Jundallah affiliation with, 333  
Al-Zawahiri, Ayman, 122, 250  
Animal and Plant Health Inspection Service (APHIS), 52  
APHIS, *see* Animal and Plant Health Inspection Service  
API, *see* Advanced Passenger Information  
Asylum, European Council on Refugees and Exiles, 357  
Asylum seekers  
    Australia, 290  
    United Kingdom, 266  
    United States, 290  
Australia, border protection, 275–306  
    asylum seekers, 290  
    Australian border, 282–291  
    Australian way of life, 291–293  
    border, 280–282  
    border of terror, 293–296  
    dangers of unregulated population flows, 289  
    Dr. Haneef, 298–300  
    isolation, 276  
    Migration Restriction Act of 1901, 284  
    multiculturalism, 284  
    Pacific Solution, 287  
    responses to terrorism, 297–298  
    shift of migration border, 287  
    White Australia policy, dismantling of, 284  
Austria, *see* Global society, protection of borders in  
Authorized Economic Operator (AEO), 152  
Automated Border Control System (EU), 355  
AWACS aircraft, 45  
Axis of Evil, 330
- ## B
- BAA, *see* British Airports Authority  
Bali bombings, 280  
Biometrics, 122  
    debates regarding, 262  
    entry-exit screening system, 103  
    passports (France), 152  
    visa applicants, 357  
Border operations, U.S. agencies involved in, 43

- Border Protection, Antiterrorism, and  
Illegal Immigration Control Act  
of 2005 (U.S.), 40
- Borders, future of, 349–363
  - borders as protection, 354–357
  - developments within EU, 350–351
  - European Border Surveillance System,  
357
  - European Council on Refugees and  
Exiles, 357
  - fortress Europe, 357–358
  - overcoming borders as hindrance,  
351–354
  - parallels beyond Europe, 360–362
  - registered traveler, 356
  - Schengen Database, 357
  - smart borders, 358–360
  - Visa Information System, 357
- Borders, longest undefended border in the  
world, 27
- Bossi-Fini (Italy), 210
- Breeder document standards (U.S.), 75
- British Airports Authority (BAA), 256

## C

- Canada Border Services Agency (CBSA),  
27
- Canada Firearms Centre (CFC), 25
- Canadian border security, shifts in, 3–36
  - Anti-terrorism Act, 6, 7
  - Canada Firearms Centre, 25
  - contemporary issues in border security  
strategy, 24–25
  - Convention for the Suppression of  
Unlawful Seizure of Aircraft, 8
  - criminal databases, 26
  - Cross-Cultural Roundtable, 13
  - defining terrorism, 6–13
    - Criminal Code of Canada, 8–11
    - Immigration and Refugee Protection  
Act, 11–13
  - historic approach to border security,  
23–24
  - how Canada protects itself post-9/11,  
25–28
  - impact of globalization and new border  
security reforms, 29–31
  - longest undefended border in the world,  
4–6
  - Millennium Bomber, 13
  - no-fly lists, 26

- October Crisis (1970), 13, 18
- “old” and “new” terrorism and their  
impact on border security, 13–23
- Public Safety Canada, 25
- Québec Liberation Front, 13
- security certificates, 12
- Smart Border Declaration and Action  
Plan, 25
- Canadian Security Intelligence Service  
(CSIS), 25
- CBP, *see* Customs and Border Protection
- CBSA, *see* Canada Border Services Agency
- CCPD, *see* Centers for Police and Customs  
Cooperation
- Centers for Police and Customs  
Cooperation (CCPD), 145
- Centers for Temporary Stay (CPTs), 209
- CFC, *see* Canada Firearms Centre
- Code for Public Security (Italy), 209
- COIR, *see* Custom Organization of the  
Islamic Republic
- Combating Terrorism Extension Act  
(Germany), 183
- Convention for the Suppression of Unlawful  
Seizure of Aircraft (Canada), 8
- Counterfeiting of currency and documents,  
financing terrorism by, 86–87
- CPTs, *see* Centers for Temporary Stay
- Criminalization of immigrants (UK), 266
- Cross-Cultural Roundtable (Canada), 13
- CSIS, *see* Canadian Security Intelligence  
Service
- Custom Organization of the Islamic  
Republic (COIR), 325–326, 340
- Customs and Border Protection (CBP), 25,  
27, 52
- Cyber-café Internet providers (France), 153

## D

- Database(s)
  - biometrics, 152
  - creation (France), 122, 150
  - criminal (Canada), 26
  - electronic foreign visitor arrival and  
departure (U.S.), 47
  - EU, 154
  - hacking, 87
  - illegal immigrants (France), 150
  - joint anti-terror database (Italy), 193
  - multi-agency links (Italy), 225
  - port (U.S.), 46

- ring of steel model linked to (UK), 256
  - Schengen Information System, 96, 151, 210, 357
  - watch-lists (U.S.), 60
  - Data Management Improvement Act (DMIA), 47
  - Dataveillance, 265
  - DHS, *see* U.S. Department of Homeland Security
  - Disciplinary Force of the Islamic Republic (NAJA), 324
  - DMIA, *see* Data Management Improvement Act
  - DNA test (Italy), 211
- E**
- EAW, *see* European Arrest Warrant
  - El Paso Intelligence Center (EPIC), 42
  - Enhanced Border Security and Visa Entry Reform Act of 2002 (U.S.), 53, 54, 57
  - Enron Three case (UK), 267
  - EPIC, *see* El Paso Intelligence Center
  - Eternal Light (Iran), 329
  - EURODAC, 357
  - European AENEAS cooperation program, 210
  - European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), 97, 154, 181, 211
  - European Anti-Fraud Office, 211
  - European Arrest Warrant (EAW), 352
  - European Border Surveillance System (EUROSUR), 357
  - European Council on Refugees and Exiles, 357
  - European Evidence Warrant, 352
  - European Law Enforcement Organization, 211
  - European Police College, 211
  - European Union
    - Authorized Economic Operator, 152
    - Automated Border Control System, 355
    - CEPOL, 211
    - counter-terrorism in, 224–227
    - database, 154
    - Europol, 211
    - four freedoms, 350
    - FRONTEX, 97
    - fundamental values, 350–351
    - involvement of Austria in, 94–97
    - new border package, 355
    - OLAF, 211
    - reformed European Community Customs Code, 152
  - EUROSUR, *see* European Border Surveillance System
- F**
- Federal Police Act (Germany), 181
  - Financial sector, financing terrorism by exploiting, 88
  - FINATER (France), 137
  - FLQ, *see* Québec Liberation Front
  - Fortress Europe, 357
  - France, national borders, surveillance, and counter-terrorism pre- and post-9/11, 121–158
    - Action Directe, 137
    - Alliance Base, 155
    - American speeches on war against terrorism, 127
    - attacks in Paris and near Lyon (1995), 125
    - biometric passports, 152
    - Centers for Police and Customs Cooperation, 145
    - counter-terrorism intelligence and judiciary organizations and policies, 133–138
    - customs, PAF and, 140
    - cyber-café Internet providers, 153
    - database creation, 122, 150
    - dismantling of terrorist cells, 122
    - FINATER, 137
    - French Penal Code, 133
    - FRONTEX, 154
    - law enforcement qualified authorities and agencies, 126–133
      - Afghanistan and Iraq cases, 130
      - assassination of Prefect Érignac in Corsica, 131
      - complexity of terrorism phenomenon, 126
      - ETA killing of Spanish civil guards, 132
      - National Police and National Gendarmerie forces, 128–129
    - Loi Pasqua, 141

- monitoring of border protection and security, 138–140
- National Customs Intelligence and Investigations Service, 136
- new security agenda, 122
- post-9/11, reinforcing counterterrorism
  - tools in open world, 146–155
  - reaction to 9/11 attacks, 146–148
  - reinforcement of European and international cooperation, 153–155
  - reinforcement of prevention security capacities, 148–153
- pre-9/11, adaptation of French model to an open Europe, 140–146
- Schengen Agreement, safeguard clause, 143
- TRACFIN, 137
- Freight Targeting System (UK), 256
- Frontex, *see* European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

## G

- GAO, *see* Government Accountability Office
- Germany, border security post-9/11, 159–197
  - border security in Schengen Open Border era, 171–177
  - Combating Terrorism Extension Act, 183
  - developments in border control
    - legislation and policies related to terrorism, 177–187
  - experience in terrorism (old versus new risks), 160–171
  - Federal Criminal Police Office, 181
  - Federal Police Act, 181
  - FRONTEX, 181
  - impact of border-related security reforms, 188–194
    - police and control forces, 190–194
    - travelers and citizens, 188–190
  - Joint Database Act, 182
  - Military Counterespionage Service, 183
  - mobile border controls, 179
  - Movement of June 2nd, 161
  - Prüm Convention (2005), 183, 184

- Red Army Faction, 161
- relaxation room for sleeps of 9/11, 165
- Revolutionary Cells, 161
- rudimentary control regime, 171–177
- Sauerland Group, 171
- Schengen III, 183
- Schengen Information System, 174
- Schengen liberties, 176
- suspect-free controls, 179
- transnational terrorism, 161
- Global society, protection of borders in, 77–119
- Austria
  - border protection post-9/11, 93–94
  - development of, 79–80
  - involvement of in European Union, 94–97
  - organizational changes in security forces, 97–99
  - terrorist incidents in, 81
- defining terrorism and development, 83–93
  - counter-terrorism strategies, 83–85
  - financing terrorism by exploiting transportation and financial sectors, 88–89
  - financing terrorism by fraud, counterfeiting of currency and documents, and identity theft, 86–87
  - financing terrorism by hijacking, kidnapping, and robbery, 85–86
  - financing terrorism by money laundering, 90–91
  - financing terrorism by smuggling of humans and goods, 89–90
  - global cooperation in protecting borders, 91–92
  - illegal transporting of persons and goods in Austria, 88
  - linkages between terrorism activity and other types of criminal activity, 85
  - United Nations, 92–93
  - use of technology to finance terrorism, 87
- development of global grand strategy to protect national borders (U.S.), 99–100
- future trends in defending interests of nations in global society, 113–115



- international agreements pertaining to justice matters post-9/11, 102–113
  - factors inhibiting effectiveness of global measures used to protect national borders, 110–113
  - internal security post-9/11, 107–110
  - U.S. Department of State and Department of Justice, 104–107
- International Criminal Investigative Training Assistance Program, 106, 107
- professionalization of the police cooperation, 113
- Task Force on Organized Crime in the Baltic Sea, 96
- United Nations Department of Peacekeeping Operations, 92
- world systems theory, application of as basis for global response to international crime and terrorism, 100–102
- Government Accountability Office (GAO), 63
- GTAZ, *see* Joint Terror Defense Center in Berlin
- Gulf War, Second, 127
- H**
- Hacking (database), 87
- Hijacking
  - al-Qaeda, 9/11 Commission conclusion about, 54
  - events of 1976 in Entebbe, Uganda, 161
  - financing terrorism by, 85–86
- Hindus, 315
- Homeland Security Act (U.S.), 52
- I**
- IBETs, *see* Integrated Border Enforcement Teams
- ICE, *see* Immigration and Customs Enforcement
- ICITAP, *see* International Criminal Investigative Training Assistance Program
- Identity theft, financing terrorism by, 86–87
- IIRIRA, *see* Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 45, 57
- Imam Rapito affair (Italy), 232
- Immigration and Customs Enforcement (ICE), 25, 27
- Immigration and Naturalization Service (INS), 40, 51
- INS, *see* Immigration and Naturalization Service
- Integrated Border Enforcement Teams (IBETs), 26
- Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 57
- International Criminal Investigative Training Assistance Program (ICITAP), 106, 107
- International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001, 108
- Internet
  - al-Qaeda communication over, 31, 81
  - cross-border crime committed via, 87
  - French authority to access data housed on, 153
  - providers, cyber-café (France), 153
  - terrorist propaganda spread on, 225
  - terrorist threat reported against Italy, 217
  - websites (Italy), 239
- Iran, 307–347
  - al-Qaeda cells, 309
  - Axis of Evil, 330
  - conception of borders and border control, 313–321
    - classical Islamic law, 319–320
    - Iranian mythology, 320–321
    - Iran-U.S. conflict, 317
    - Islamic theology, conception of borders in, 313–319
    - Islamic universalism, 315
  - Disciplinary Force of the Islamic Republic, 324
  - Eternal Light, 329
  - Jundallah, 333
  - legislative and executive measures for border security, 333–343
    - Anti-Money Laundering Act, 344–345
    - Anti-Terrorism Bill, 333–334

- covert suppressive operations, 342–343
- creation of border markets, 342
- dilemma of Kurds, 336
- excavation of canals, earthworks, and border guardhouses, 341
- executive measures, 339–342
- expansion of COIR tools on border points, 340
- legislative measures, 333–339
- logistical and intelligence support for armed forces in eastern borders, 340
- National Anti-Terrorism Committee, 340–341
- preventive measures, 339–340
- regional and international cooperation, 335–339
- training of special airline security guards, 341–342
- Mojahedin-e Khalq Organization, 329
- National Resistance Army, 330
- national secular army, 325
- policy makers and border security authorities, 321–326
  - Country Security Council, 322–323
  - Custom Organization of the Islamic Republic (COIR), 325–326, 340
  - executive organs, 323–326
  - Ministry of Intelligence, 323–324
  - parallel armies, 325–326
  - police, 324–325
  - policy makers, 321–323
  - Supreme Council for National Security, 321–322
- political geography and common borders, 310–311
- Revolutionary Islamic Army, 325
- rogue elements, 344
- security-threatening factors, 326–333
  - drug trafficking, 326–328
  - goods smuggling, 328–329
  - oppositional groups, 329–332
  - religious-tribal extremists, 332–333
  - terrorism, 329–333
- strategic classification of international borders and status of Iran's borders, 311–313
- takeover of U.S. Embassy, 317
- Taliban, 309
- transformational diplomacy (U.S.), 317
- IRIS, *see* Iris Recognition Immigration System
- Iris Recognition Immigration System (IRIS), 255
- IRTPA, *see* Intelligence Reform and Terrorism Prevention Act of 2004
- Islamic republic, borders of in Middle East, *see* Iran
- Islamic theology, conception of borders in, 313–319
- Islamic universalism, 315
- Italy, post-9/11 border security, 199–239
  - bewilderment about real terrorist threat, 201
  - border security, 203–211
    - fight against illegal migration, 208–209
    - legislation on migration, 209–211
    - migration flows, 206–207
    - physical features of Italian borders, 203–204
    - presence of criminal organizations, 205–206
    - proximity to other countries, 204
  - Bossi-Fini, 210
  - Centers for Temporary Stay, 209
  - Code for Public Security, 209
  - counter-terrorism, 214–219
    - Abu Omar case and other imams accused of inciting terrorism, 219
    - history of terrorism in Italy, 214–215
    - Islamic terrorist acts post-9/11, 218
    - jihadiist menace, 215
    - threats of Islamic terrorism post-9/11, 216–217
  - Department of Information on Security, 215
  - DNA test, 211
  - economic uncertainty, 201
  - European AENEAS cooperation program, 210
  - European Union
    - border control in, 211–214
    - counter-terrorism in, 224–227
  - Games Security, 234
  - GIS, 231
  - Imam Rapito affair, 232
  - impact on travel across Italian border, 235–236
  - Internet, terrorist threat reported on, 217
  - joint anti-terror database, 193
  - law enforcement authorities, 227–229

- law enforcement functions for border control and counter-terrorism, 230–235
    - border control, 230–231
    - counter-terrorism, 231–232
    - Integrated Command Center, 235
    - new technologies, 233
    - Olympic Winter Games of Turin, counter-terrorism in, 233–235
  - legislation on terrorism, 221–224
    - post-9/11, 222–224
    - pre-9/11, 221
  - Mafia, 205
  - migration issues 201
  - National Program for Security, airport provisions, 212
  - perspectives, 237–239
  - port security, 210
  - relevant literature concerning al-Qaeda and terrorism threat, 220–221
  - risk of jihad terrorist attacks, 202
  - Schengen Information System, 210
  - Torino Project, 211
  - United Nations, counter-terrorism in, 224–227
- J**
- Jakarta Australian Embassy bombings, 280
  - JITs, *see* Joint investigation teams
  - Joint Database Act (Germany), 182
  - Joint investigation teams (JITs), 353
  - Joint Terror Defense Center in Berlin (GTAZ), 182
  - Jordan Commission (U.S.), 51
  - Jundallah (Iran), 333
- K**
- Kidnapping, financing terrorism by, 85–86
  - Kurds, dilemma of along Middle East borders, 336
- L**
- Law Lords (UK), 298
  - Legislation (U.S.)
    - Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, 40
    - Data Management Improvement Act, 47
    - Enhanced Border Security and Visa Entry Reform Act of 2002, 53, 54, 57
    - Homeland Security Act, 52
    - Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 57
    - Intelligence Reform and Terrorism Prevention Act of 2004, 57, 62
    - International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001, 108
    - REAL ID Act of 2005, 53, 62
    - SAFE Port Act of 2006, 64
    - Secure Fence Act of 2006, 62
    - Terrorism Prevention Act, 57
    - USA PATRIOT Act, 53, 82, 107
  - Liberation Tigers of Tamil Ealam (LTTE), 17
  - Line watching (U.S.), 44
  - LTTE, *see* Liberation Tigers of Tamil Ealam
- M**
- Mafia, 205
  - Memorandum of Understanding (MOU), 267
  - MEPA, *see* Middle European Police Academy
  - Middle East, borders of Islamic republic in, *see* Iran
  - Middle European Police Academy (MEPA), 97
  - Military Counterespionage Service (Germany), 183
  - Millennium Bomber, 13
  - MKO, *see* Mojahedin-e Khalq Organization
  - Mobile border controls, 179
  - Mojahedin-e Khalq Organization (MKO), 329
  - Money laundering, financing terrorism by, 90–91
  - Money Laundering Abatement and Anti-Terrorism Financing Act of 2001, 108
  - MOU, *see* Memorandum of Understanding
  - Movement of June 2nd (Germany), 161

**N**

- NAFTA, *see* North American Free Trade Agreement
- NAJA, *see* Disciplinary Force of the Islamic Republic
- National Commission on Terrorist Attacks Upon the United States (9/11 Commission), 51, 54
- National Criminal Index Center (NCIC), 26
- National Program for Airport Security Measures (Italy), 212
- National Security Entry and Exit Registration System (NSEERS), 254
- NATO
  - forces around Iran, 309
  - French military structure of, 130
  - Italian armed unit, 231
  - Supreme Allied Commander, 163
  - U.S.-Iran conflict, 317
- Nat West case (UK), 267
- NCIC, *see* National Criminal Index Center
- 9/11 Commission, *see* National Commission on Terrorist Attacks Upon the United States
- No-fly lists, 26
- NORAD, *see* North American Aerospace Defense Command
- North American Aerospace Defense Command (NORAD), 5
- North American Free Trade Agreement (NAFTA), 5
- NSEERS, *see* National Security Entry and Exit Registration System

**O**

- October Crisis (Canada), 13, 18
- Operation Streamline (U.S.), 60

**P**

- Pacific Solution, 287
- Party for a Free Life in Kurdistan (PJAK), 330
- Passports
  - biometric, 152
  - machine-readable, 53
- Phishing, 87
- PJAK, *see* Party for a Free Life in Kurdistan
- Port security

- databases (U.S.), 46
- enhanced, 109
- imaging systems, 64
- Italy, 210
- SAFE Port Act of 2006 (U.S.), 64
- United Kingdom, 256
- Project Semaphore (UK), 254
- Prüm Convention (2005), 183, 184
- PSC, *see* Public Safety Canada
- Public Safety Canada (PSC), 25

**Q**

- Québec Liberation Front (FLQ), 13

**R**

- RAF, *see* Red Army Faction
- RAID, *see* Research Assistance Intervention Dissuasion
- REAL ID Act of 2005, 53, 62
- Red Army Faction (RAF), 161
- Registered traveler, 356
- Research Assistance Intervention Dissuasion (RAID), 137–138
- Revolutionary Cells (Germany), 161
- Ring of steel model (UK), 256
- Robbery, financing terrorism by, 85–86

**S**

- SAFE Port Act of 2006 (U.S.), 64
- Sauerland Group (Germany), 171
- SBI, *see* Secure Border Initiative
- SBIInet, 62
- Schengen Agreement, safeguard clause, 143
- Schengen Database, 357
- Schengen Information System (SIS), 96, 174, 210
- Schengen liberties (Germany), 176
- Second Iraq War, 127
- Secure Border Initiative (SBI), 62
- Secure Fence Act of 2006 (U.S.), 62
- Security certificates (Canada), 12
- SIS, *see* Schengen Information System
- Sleepers (9/11), Germany as relaxation room for, 165
- Smart Border Declaration and Action Plan (Canada), 25
- Smart borders, 54–55, 358–360
- Smuggling, financing terrorism by, 89–90
- Social Contract, The*, 4

## T

Taliban, 126, 130, 309

Task Force on Organized Crime in the  
Baltic Sea, 96

## Terrorism

financing of, 85–87

counterfeiting of currency and  
documents, 86–87

financial sector, 88

hijacking, 85–86

identity theft, 86–87

kidnapping, 85–86

money laundering, 90–91

robbery, 85–86

smuggling, 89–90

technology, 87

transportation sector, 88

global definition, 83–93

counter-terrorism strategies, 83–85

global cooperation in protecting  
borders, 91–92

illegal transporting of persons and  
goods in Austria, 88

linkages between terrorism activity  
and other types of criminal  
activity, 85

United Nations, 92–93

use of technology to finance  
terrorism, 87

U.S. Department of State definition, 84

Terrorism Prevention Act (U.S.), 57

Terrorist groups, U.S. Department of  
Justice determination of crimes  
by, 85

Terrorist member alert systems (Canada),  
26

Terrorist Screening Center (U.S.), 63

Torino Project (Italy), 211

TOROC, see Turin Organizing Committee

TRACFIN (France), 137

Transformational diplomacy (U.S.), 317

Transnational terrorism, 161

Transportation sector, financing terrorism  
by exploiting, 88

Turin Organizing Committee (TOROC),  
234

## U

United Kingdom, border security in,  
241–272

Abu Qatada, 267

Advanced Passenger Information, 255

border security in practice, 254–260  
airport and port security, 256–258  
asylum/deportation/extradition,  
259–260

exit controls, 260

incapacitating suspected foreign  
terrorists already within UK,  
258–259

screening and blocking, 254–256

British Airports Authority, 256

criminalization of immigrants, 266

dataveillance, 265

detention policies for asylum seekers,  
266

effectiveness of new system, 260–263

organizational change, 260–261

technology of screening and  
blocking, 261–262

transport infrastructure, 263

Enron Three case, 267

franchise Freight Targeting System, 256

franchise model of al-Qaeda, 250

human rights, 264–267

asylum/deportation/extradition,  
266–267

mass travel, 265–266

non-citizens inside UK, 264–265

international aspect of terrorist threat,  
247–251

21/7 attempted bombings, 251

transport infrastructure, 249

Iris Recognition Immigration System,  
255

Londonistan, 249

Memorandum of Understanding, 267

National Security Entry and Exit  
Registration System, 254

Nat West case, 267

overview of issues, 243–247

Project Semaphore, 254

ring of steel model, 256

structure of border security, 252–254  
border, 252

policy development, 253–254

recent organizational changes,  
252–253

technological screening, 255

Visa Information System, 254

United Nations

counter-terrorism in, 224–227

- Department of Peacekeeping
  - Operations, 92
- efforts to secure borders, 92–93
- Police (UNPOL), 92
- Security Council's Resolution 598, 330
- United States border security post-9/11, 37–74
  - agencies involved in border operations, 43
  - Border Patrol upgrades, 44
  - border security policy pre-9/11, 40–49
    - basic border security locations and operations, 40–42
    - border patrol, walls and fences, and military, 42–45
    - ports of entry, consulates, and counter-terrorism, 45–49
    - pre-9/11 programmatic (de)emphases, 45–49
    - pre-9/11 programmatic emphases, 42–45
  - breeder document standards, 75
  - Coast Guard, immigration interdiction, 46
  - Customs and Border Protection, 25, 52
  - Data Management Improvement Act, 47
  - drug interdiction agenda (ports), 46
  - Enhanced Border Security and Visa Entry Reform Act of 2002, 53, 54, 57
  - Government Accountability Office, 63
  - Homeland Security Act, 52
  - homeland security market boom, 52
  - Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 57
  - Immigration and Customs Enforcement, 25
  - Immigration and Naturalization Service, elimination of, 51
  - Jordan Commission, 51
  - line watching, 44
  - Operation Streamline, 60
  - port databases, 46
  - pre-screening, 42
  - REAL ID Act of 2005, 62
  - responses to 9/11 (2001–2005), 49–58
    - creation of U.S. Department of Homeland Security, 51–54
    - initial policy response, 50–51
    - Intelligence Reform and Terrorism Prevention Act, 57–58
    - new screening and mobility procedures, 54–55
    - smart borders, 54–55
    - US-VISIT, 57–58
    - visas, watch-lists, and consular operations, 55–56
  - reversion to Mexican border (late 2005–present), 58–65
  - SBI.net, 62
  - Secure Fence Act of 2006, 62
  - Terrorism Prevention Act, 57
  - Terrorist Screening Center, 63
  - U.S. Commission on Immigration Reform, 51
  - US-VISIT system, 57
  - virtual wall, 62
  - visa-awarding process, 47
  - Visa Waiver Program member states, 53
  - watch-lists, 60
- United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system, 57
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists Act, *see* USA PATRIOT Act
- UNPOL, *see* United Nations Police
- USA PATRIOT Act, 53, 82, 107
- U.S. Armed Forces, liaison offices, 103
- U.S. Coast Guard
  - immigration interdiction, 46
  - port security, 64
- U.S. Commission on Immigration Reform, 51
- U.S. Department of Agriculture, 40, 52
- U.S. Department of Defense
  - definition of terrorism, 84
  - interdiction of unauthorized entry by air, 42
- U.S. Department of Energy, 40
- U.S. Department of Homeland Security (DHS), 25, 62
  - creation of, 25, 27, 40, 51–54, 82, 108
  - organizational chart, 41
  - Secure Border Initiative, 62
- U.S. Department of the Interior, 98
- U.S. Department of Justice, 40
  - crimes of terrorist groups, 85
  - Drug Enforcement Administration, 42,

- electronic foreign visitor arrival and departure databases, 47
  - liaison offices, 103
  - U.S. Department of State
    - definition of terrorism, 84
    - electronic foreign visitor arrival and departure databases, 47
    - liaison offices, 103
    - watch-lists, 56
  - U.S. Department of Transportation, 41
  - US-VISIT system, *see* United States Visitor and Immigrant Status Indicator Technology system
- V**
- VACIS cargo imaging systems, 64
  - Virtual wall, 62
- VIS, *see* Visa Information System
- Visa-awarding process (U.S.), 47
  - Visa Information System (VIS), 254, 357
  - Visa Waiver Program member states, 53
- W**
- Watch-lists (U.S.), 60
  - WI-FI Internet providers (France), 153
  - World systems theory, application of as basis for global response to international crime and terrorism, 100–102
- Z**
- Zoroastrians, 315





# BORDER SECURITY IN THE AL-QAEDA ERA

The events of 9/11 and other ongoing terrorist threats have taken interest in national security and border security to a heightened level of concern. An exploration of the trends and transformation of border security in the aftermath of 9/11, *Border Security in the Al-Qaeda Era* presents one of the first comprehensive analyses of not only the impact and consequence of 9/11 on border security but also its effects within the broader international context.

Featuring contributions by an array of international experts, this volume explores border security in nine countries, ranging from those with conventional practices to those with approaches that represent the antithesis of the western world. It compares security measures in countries identified by Osama bin Laden in the post-9/11 era as potential targets for attack with a few that were not directly identified. For each country profiled, the authors provide, among other information:

- An overview of the history of terrorism and the extent of any suspected terrorist activity since 9/11
- The definition of terrorism
- A description of how terrorist data is handled by border security
- An overview of border security operations
- The impact of changes to border security on the movement of citizens, goods, and foreigners
- Steps taken to improve national security and the impact on citizens
- The impact of border security changes on the sense of sovereignty

While many of the challenges each country faces are similar, the authors demonstrate that there are differing approaches given the history, culture, geography, and politics of the various countries profiled. Steeped in the knowledge of scholars from the countries represented, this volume puts a criminological focus on border security and its role in the context of counterterrorism. This information can then be used to develop more effective border security reforms.

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