Chapter 9

A Secure Border? The Canadian View

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In a previous examination of the issues involved in a common security perimeter, I came out in favour of expanding the common security perimeter we have had since the 1950s—North American Aerospace Defence Command (NORAD)—to deal with the security challenges of the twenty-first century (Noble, 2005). Those challenges now include a sharper focus on who is allowed to cross national borders and who we let into Canada and the United States, both from across our common border and from outside North America. There have been and always will be segments of Canadian and American society that regard any sharing of sovereignty as bad thing, by definition, notwithstanding the end result. In this chapter, I review major developments in the past three years which affect the prospects for a common security perimeter and common security criteria for immigration and refugees. In the end, I conclude that while the prospects for more cooperation are good, the chances of a common security perimeter and common security criteria for immigration and refugees are not good on either side of the forty-ninth parallel. First, I will discuss several recent developments regarding the flow of people across our mutual border.

The Security and Prosperity Partnership

In late November 2004, Prime Minister Paul Martin and President George W. Bush agreed to a bilateral Security and Prosperity Partnership (SPP) during the latter's visit to Ottawa. This Partnership built on the Smart Border Declaration and 30-point Plan of Action which were established in December 2001. This bilateral SPP agreement was trilateralized in March 2005 during a meeting between President Bush, President Vicente Fox of Mexico, and Prime Minister Martin at Waco, Texas (White House, 2005b). A key element of the SPP is that it is trilateral in concept, but it allows any two countries to move forward on an issue, creating a path for the third to join later. Prime Minister Stephen Harper became part of the discussion at a leaders' meeting in Cancun in March 2006, and then hosted the SPP Trilateral Summit in Montebello in August 2007 (Office of the Prime Minister, 2007b). One of the five key priorities identified by the leaders at the Cancun meeting was the creation of "smart, secure Borders," with the objective of completing the following activities within 24 months:

- Collaborate to establish risk-based screening standards for goods and people, which rely on technology, information sharing, and biometrics;
- Develop and implement compatible electronic processes for supply chain security that use advanced electronic cargo information to analyze risk and ensure quick and efficient processing at the border;
- Develop standards and options for secure documents, to facilitate cross-border travel;
- Exchange additional law enforcement liaison officers to assist in criminal and security investigations; and,
- Develop coordinated business resumption plans at border crossings, to ensure legitimate trade continues (Office of the Prime Minister, 2006).

On February 23, 2007, ministers from the three countries met in Ottawa where they issued a final communiqué which established a senior level coordinating body to prioritize and oversee emergency management

activities, including emergency response, critical infrastructure protection, border resumption in the event of an emergency, and border incident management (Ministers Responsible for the Security and Prosperity Partnership of North America, 2007).

The SPP will enhance and strengthen our ongoing security efforts, such as the Smart Border Accord, the Border Partnership Action Plan, and the Free and Secure Trade (FAST) Initiative. As a White House (2005a) news release states,

> The SPP builds upon, but is separate from, our long-standing trade and economic relationships, and it energizes other aspects of our cooperative relations, such as the protection of our environment, our food supply, and our public health. The issues of immigration and trade disputes will be dealt with outside the SPP through existing treaties and congressional action.

The SPP and its related programs are the platform on which more cooperation and greater confidence between Canada and the United States in the flow of people across our mutual border is being built. The SPP may also be the platform on which certain aspects of a common security perimeter can be built, but a formal common security perimeter is clearly outside the scope of the Partnership.

The Western Hemisphere Travel Initiative

The United States Congress passed the *Intelligence Reform and Terrorism Prevention Act* of 2004, which requires the development and implementation of a passport, other document, or combination of documents for all travel into the United States by American citizens and by other categories of individuals for whom documentation requirements had previously been waived (e.g., all Canadian citizens). The Western Hemisphere Travel Initiative (WHTI) of April 2005 is the proposed plan to implement this mandate (Abelson and Wood, 2007).

The WHTI has nothing whatsoever to do with illegal migration and is not expected to stem it in any way. In my view, a plan that is supposed to

enhance the security of the United States, but does not deal with an annual illegal migration of some 500,000 people from Mexico seems to have a very big hole in it and makes a mockery of the whole process. When it comes to illegal migration from Mexico, the United States is faced with a difficult predicament: on the one hand, there is a strong security concern, and on the other, there is a strong demand for the labour provided by illegal migration. Canada faces a similar dilemma with respect to legal migration (Tibbetts, 2007, June 18; *The Economist*, 2007, May 31a; *The Economist*, 2007, May 31b). Both countries are confronted with the question of where to draw the line between meeting annual targets for migrants and refugees and maintaining national security. Not all of the illegal migrants entering the United States across the Rio Grande are Mexicans, and American security officials becoming increasingly worried about this. At least in Canada the authorities have an idea of who is entering the country.

There has been much talk about the possible development of an alternate secure ID document, such as a secure driver's license with biometric identifiers, and a United States smart pass card for traveling to Canada, which would be much cheaper than a full passport. To date, the Canadian government has focused almost exclusively on the development of a more secure driver's license as a satisfactory alternate ID that meets the criteria of the WHTI. Such as license would allow for a number of security options. For example, the duration of licenses issued to visitors with time-limited visas would not exceed the period of the visa (Vaughan, 2005).

In August 2007, the government of Canada asked the American administration to declare that it would accept enhanced driver's licenses as a passport substitute, and has asked for more time to introduce those licenses gradually, as existing licenses expire. However, an editorial in *The Globe and Mail* (2007, Sep. 4) suggested that this was unrealistic, and urged the government to expand its campaign to encourage Canadians to obtain passports. In addition, the editorial argued that the government should heavily advertise the NEXUS card, a high-security identity card available to Canadian and United States residents which expedites crossings at the land borders for low-risk, pre-approved travellers. The government should abandon its advocacy of the enhanced driver's license alternative, which would simply create more bureaucracy as provinces

scrambled to give their licensing officials more security training, while dealing with privacy concerns.

In June 2007, the Department of Homeland Security (DHS) announced a further delay in the full implementation of the WHTI, which meant that the deadline after which citizens of both countries who want to enter or re-enter the United States would be required to have a passport had been postponed from January 31, 2008, to a yet to be determined date (DHS, 2007). A DHS news release noted that "on January 31, 2008, United States and Canadian citizens will need to present either a WHTI-compliant document or a government-issued photo ID, such as a driver's license, plus proof of citizenship, such as a birth certificate" (DHS, 2007).

The DHS announcement was due to a number of factors, the most important of which was pressure from border state legislators at the federal and state level who are concerned about the potential negative impact the passport requirement may have on the economy. The fact that passport offices on both sides of the border have been swamped with applications, causing considerable delays, is another factor. One unspoken factor is the clear desire of both countries to try to come up with a low-cost alternative to the passport that is still secure. While the WHTI is a unilateral American initiative, its implementation has various cross-border implications which have required, and will continue to require, extensive cooperation. The WHTI may yet result in some new form of secure ID which will be less than a full passport, such as the NEXUS card.

The Safe Third Country Agreement

Another recent development affecting the flow of people across our mutual border was the Agreement between the Government of Canada and the Government of the United States of America for Co-operation in the Examination of Refugee Status Claims from Nationals of Third Countries (known as the Safe Third Country Agreement). The Agreement reinforces refugee protection by establishing rules for the sharing of the responsibility between Canada and the United States to hear refugee claims made by persons at ports of entry (POEs) on the shared land border. Its objectives, as articulated in the Smart Border Action Plan, are to enhance the orderly

handling of refugee claims, strengthen public confidence in the integrity of our asylum systems, and help reduce abuse of refugee programs.

The agreement applies only to land crossings of the Canada-United States borders, and not to arrivals by air or sea. In November 2006, a one year binational review of the implementation of the Agreement was completed (Citizenship and Immigration Canada, 2006). This review was conducted in cooperation with the United Nations High Commissioner for Refugees (UNHCR) and drew on input from non-governmental organizations (NGOs) in both countries, as mandated under section 8.3 of the Agreement. Overall, both governments' assessment of the implementation of the Agreement was positive. The Agreement also received the UNHCR's stamp of approval. The UNHCR's overall assessment was that "the Agreement has generally been implemented by the Parties according to its terms and, with regard to those terms, international refugee law" (Citizenship and Immigration Canada, 2006).

Over several years prior the Agreement, the number of refugee claims made in Canada declined steadily. In the 50 countries covered in a UNHCR report, there were 15% fewer applications for refugee status in 2005 (336,100) than there were in 2004 (394,600) (Citizenship and Immigration Canada, 2006).

In 2005, there was a 3% decrease in the number of refugee claims made at airports and a 6% decrease in the number of claims made at inland offices across the country, and a 55% decrease in the number of claims made at the land border. This led to an overall decrease of 23% in the number of refugee claims made in 2005, compared to the number made in 2004 (Citizenship and Immigration Canada, 2006).

In recent years, refugee claims made at the Canada-United States land border have comprised a significant portion of the total refugee claims received each year. On average, between 2002 and 2004, approximately 32% of the annual number of refugee claims were made at the land border. In 2005, this proportion fell to approximately 20%. In 2005, Canada received 4,033 refugee claims at the Canada-United States land border, 3,254 of which qualified for one of the exceptions to the Agreement. As a result, those people were able to pursue their claims for refugee protection in Canada. That acceptance rate (80.5%) is higher than the general

Canadian average mentioned below (Citizenship and Immigration Canada, 2006).

The Safe Third Country Agreement has reduced the number of unfounded refugee claimants coming to Canada across the land border, without becoming an impediment for genuine refugee claimants. Once word spreads about this agreement, perhaps the numbers of claimants will increase in future years.

The United States' experience with the Safe Third Country Agreement

Between 2000 and 2004, when the Agreement was not in place, an average of 58 asylum claimants arrived at one of the Canada-United States land border crossings each year. Of the 66 claimants during the first year of the Agreement, 62 were subject to the Agreement. The other four claimants were Canadian citizens, who are not subject to the Agreement. There were 39 cases in which United States Citizenship and Immigration Services (USCIS) determined that the applicant was subject to the Agreement. In 38 of the cases in which USCIS determined that an asylum seeker was subject to the Agreement, Asylum Officers found that an exception applied in 23 cases (60%). In 16 cases, there was a determination that an exception to the Agreement did not apply. In the 23 cases in which the applicant established an exception, all 23 were determined to have a family-based exception (Citizenship and Immigration Canada, 2006).

Reform of the refugee system in Canada

The Department of Citizenship and Immigration Canada (CIC) states that reform of Canada's refugee determination system is being explored so as to identify ways of streamlining the system to ensure protection is delivered efficiently to those in need. To support administrative reform of the system, additional funding was allocated to reduce the backlog in the refugee system. These new administrative measures continue to yield positive results in the form of an enhanced ability to manage access to the in-Canada refugee determination process and a reduction in the Immigration

and Refugee Board (IRB) inventory by more than half since 2002 (from 51,600 in 2002 to 22,000 in 2005). In this context, CIC increased admissions from 15,901 in 2004 to 19,935 in 2005. CIC has also worked with other organizations—including the Department of Justice, the IRB, and the Canada Border Services Agency (CBSA)—to develop substantive proposals that will advance the refugee reform agenda (Citizenship and Immigration Canada, 2006).

However, a June 2007 article in the *Ottawa Citizen* reported that the "refugee backlog grows despite a flurry of appointments to IRB—Canada's backlog of refugee claims is growing by almost 1,000 cases a month as the Harper government continues to dawdle on filling vacancies at the Immigration and Refugee Board" (Bryden, 2007, June 16). The article pointed out that the backlog of claims has climbed to about 8,000, according to IRB records. Board spokesman Charles Hawkins said the number of pending cases is rising by about 900 a month, with each claim taking an average of 12.5 months to process. Furthermore, the *Citizen* reported that "when Prime Minister Stephen Harper took power 16 months ago, there were only five vacancies on the board, which at that time had 119 members .... [and] the backlog of claims had been effectively reduced to zero for the first time in a decade."

In August 2007, *Globe and Mail* columnist Jeffrey Simpson wrote about Canada's refugee system. He noted that,

> between January of 2005 and June of 2007, Mexico was the top source country for refugees to Canada. There were 6,745 Mexicans in the Canadian queue as of the end of June, more than Haitians, Chinese, Colombians and Sri Lankans combined. Yes, a majority of claimants are rejected, but given Canada's limited deportation success, even the unsuccessful ones can go underground and stay. Or, with a good lawyer, appeal to the minister. Or, as a last resort, a news outlet may provide a sympathetic front-page story. Because anybody who puts a toe on Canadian soil and claims to be a refugee has the right to Charter protection and the whole panoply of the refugee-determination system, the country is essentially helpless to do things more efficiently—and to assist genuine, certified refugees.

Helpless to deal with claimants when they land, the government has been forced to impose visas on all visitors from some friendly democratic countries, such as Costa Rica, Chile, and some countries in Eastern Europe. Mexico may be next. Today, Colombia (where Mr. Harper just made an official visit), India, the United States, and Israel are among the top 10 source countries for refugees. A majority of claimants from those countries, except Colombia, eventually are rejected, but they use up money and time, and send awful signals to other countries. We ought to have an annual list of countries from which Canada will not accept refugees, no matter the circumstances. Such a list could be compiled from a variety of public sources. But, of course, our laws would not allow it.

Election of the Conservative Party in January 2006

The election platform of the Conservative Party during their last campaign included a seven-page section entitled "Stand Up for Security," which included a section on "Securing our Borders" (Conservative Party of Canada, 2006: 26). The platform also included a section entitled, "Ensuring Effective Deportation Laws" (2006: 27). The platform contained a promise to hold "a comprehensive, independent judicial inquiry into the investigation of the Air India bombing of June 23, 1985," which, prior to the 9/11 attacks, was the largest single terrorist attack. That inquiry has been established and to date has heard considerable testimony and evidence which suggests the bombing could have been prevented.

Following its election, the Conservative government declared the Tamil Tigers a terrorist organization, resulting in favourable comments from Nicholas Burns, the United States Undersecretary of State. Burns made it clear that the State Department was tremendously excited to have an engaged, active new government as interlocutor. The government's early actions against Hamas, as well as its designation of Sri Lanka's Tamil Tigers as a terrorist group, were "indications of a very self-confident foreign policy and of a government not afraid to make very tough decisions," Burns said. "So we are very impressed. We are very impressed by the self-confidence and by the clarity of thinking in Canadian foreign policy" (Wells, 2006).

Need for further reforms to Canada's refugee system

The Canadian refugee system needs to be reformed for reasons other than issues of terrorism. Our concerns about possible terrorists slipping in as refugee claimants should not be the primary force driving this issue. But even if many Canadians are not concerned about terrorist threats to Canada, they should be concerned about the negative effects of a border closure in the aftermath of a terrorist attack with a Canadian connection. They should also be concerned about and want to rectify a two-tier system that many people use to try to circumvent the normal immigration process by claiming refugee status (Noble, 2003: 21). For example, the number of refugee claimants from Mexico continues to be very high, as noted above.

An Ipsos-Reid poll published by the *National Post* on June 18, 2007, concluded that "Canadians are split on refugee risks." Nearly one-half of those surveyed (48%) said immigration officials should be more worried about "accidentally letting someone stay in Canada when they are not a legitimate refugee." On the flip side, 43% said officials should be more concerned about "forcing someone to return to their country when in fact they really deserve to be considered a refugee." Nine percent said they did not know which prospect they find more worrisome (Tibbetts, 2007, June 18).

The same article noted that a separate Ipsos survey conducted among 1,002 Canadians between June 12–14 also found that over the past 20 years, Canadians have changed their attitudes regarding refugees. When asked whether Canada should be doing more than other similar countries, 41% said Canada should do more than other countries do to protect refugees, 1% said Canada should do less, and 48% said it should be about the same. In a 1987 survey, only one-quarter of Canadians said Canada should be doing more to protect refugees. However, in 1987, almost half said that Canada should be doing about the same as other countries, a figure that has held steady for two decades. The recent poll found that British Columbia residents were most likely (51%) to think Canada should be doing more than other Western countries. Québecers were the least likely (only 24%) to say Canada should be more active (Tibbetts, 2007, June 18).

Differences between the Canadian and American systems

There is no reason why Canada cannot continue to maintain its own policies on annual levels of immigration and its own regulations determining the selection of skilled immigrants, sponsored relatives, etc. Canada and the United States would only need to adopt common standards if they were to agree to combine their economies in a common market that included free movement of labour across their common border. If so, the reasons would be economic rather than security. Sovereignty concerns and jealousies in both Canada and the United States regarding the question of common standards for the selection and numbers of immigrants are not likely to abate.

In terms of law enforcement, prosecutions, and detention, the two countries differ in a substantial way. The United States uses detention much more aggressively than Canada does. Until recently, this indicated primarily a willingness to spend more money—much more money. However, since 9/11, the United States has also backed away from legal protections that still hold sway in Canada. In the United States, there is also a greater willingness to prosecute, a greater ability to convict, and harsher penalties imposed by the courts on smugglers and traffickers than is the case in Canada.

But does this mean that the American system is better than the Canadian system in terms of entry control and removals? In light of the number of asylum seekers from abroad coming to Canada via the United States, it seems that many people have not had difficulty getting past American entry controls. If Canada did not have to deal with the 10,000 to 15,000 additional refugee claimants per year who come from the United States, it would have considerably more resources to apply to enforcement, detention, and removals. That is why the Safe Third Country Agreement mentioned above was so important to Canada. It was supposed to relieve some of Canada's present burden, and force the United States to take some responsibility for the present flow of refugee claimants into Canada (Noble, 2005: 510–11).

A 2002 study entitled, *US and Canadian Immigration Policies: Marching Together to Different Tunes*, itemized problems with Canada's refugee

determination system and American criticisms. It suggested that entry as a visitor would offer a terrorist the path of least resistance. The paper notes that "the modus operandi of the 9/11 terrorists suggest that they understood that the weakest link in North American border security lay in the admission and monitoring of tourists, international students, business people, and other temporary entrants, because there are no exit controls and no way of knowing whether those who were admitted temporarily ever leave" (Rekai, 2002: 15).

Schengen and the idea of a shared border for North America

A security perimeter, similar to the Schengen Treaty which covers most but not all European Union countries,[1] which would abolish the land border between Canada and the United States is not an option at this time for a number of reasons. First, Canada and the United States are not committed to the type of political and economic union that has developed in Europe. The Americans would worry that abolishing the border would make the United States more vulnerable to security threats. In addition to sharing those concerns, Canadians would worry about two things: the large number of illegal undocumented immigrants in the United States and the potential flow of guns into Canada. I must agree with James Laxer, longstanding nationalist and member of the New Democratic Party "Waffle Group," who wrote that an open border with the United States "would raise serious security concerns for Canada including importing the American gun culture into Canada, something most Canadians strongly oppose" (Laxer, 2003: 262, 318–19).

As Daniel Stoffman has written, there are two main problems with the idea of a security perimeter: "i) the Canadian immigration and refugee systems are in such disarray that American security would be compromised if border controls were removed; and ii) Canadian security would be at risk

1 The Treaty established the first provisions for a harmonized visa policy among signatory EU countries and established new policies to ensure the cooperation necessary to eliminate internal border checks for nationals of Schengen party states (Newland and Papademetriou, 1998-1999).

if Canada stopped checking people entering from the south" (2002: 48). Stoffman also wrote that "the major reason Canada should fear the United States is that the States is home to the greatest collection of unidentified illegal immigrants anywhere in the world" (2002: 66). Sidney Weintraub (2003) of the Center for Strategic and International Studies has also written about the problems associated with a security perimeter:

> the notion of perimeter screening to speed up the movement of goods and residents of the two countries is logical on the surface, but there are inherent problems that must be considered. Without any border screening, the two countries would need identical immigration laws to permit the free movement of people from one country to the other and a common tariff and other trade restrictions so that the transhipment [sic] of goods from one country to the other would not matter. These steps smack of sharing sovereignty rather than "mutual respect for sovereignty."

Moreover, in 2004, Christopher Rudolph concluded that "the unequal distribution of power among NAFTA states, disparate interests, and ideational factors make the establishment of a comprehensive harmonized regime governing migration and border policy in North America highly unlikely" (Rudolph, 2005: 457). Quoting Peter Andreas, Rudolph also noted that "to 'Schengenize' North Americas borders … would require a level of formal institutionalization and policy harmonization that is difficult to imagine in the present context" (Andreas, 2003: 12, quoted in Rudolph, 2005).

When considering the possibility of a security perimeter, it is also useful to recall the assessment made by Gary Hufbauer and Jeffrey Schott (2004) that North American Free Trade Agreement (NAFTA) politics in the United States are far more sensitive to Mexico than to Canada. As such, a bilateral Canada-United States deal is less likely to garner the necessary support in Congress than a trilateral deal. Hufbauer and Schott suggested that,

> non-NAFTA visitors who threaten security can be better excluded if a few principal measures are adopted … we believe that Ottawa,

> Washington, and Mexico City can forge common visa standards for most non-NAFTA visitors and immigrants. The NAFTA partners should agree on visa-waiver country lists, length of stay, and watch lists for potentially troublesome visitors. Officials in each country should have electronic access to the immigration records of its partners. These suggestions seem obvious. However, US security agencies, such as the FBI, CIA, Customs, and Alcohol, Tobacco and Firearms (ATF), have yet to agree on a common watch list for potentially troublesome visitors to the United States, so it will take political energy to forge a common North American approach.

Furthermore, Hufbauer and Schott argue that NAFTA partners should create a special force to handle all third country immigration controls at the individual's first airport of entry into the NAFTA area. Common document and biometric identification standards should be applied (2004: 14). However, this kind of immigration control ignores the ongoing realities of illegal migration from Mexico into the United States and the unwillingness of both Canadian and American authorities to trust Mexican border officials.

Options for North American physical security

Previously, I have suggested various potential options for ensuring the security of North America (Noble, 2005: 520). The threat of a protectionist "Fortress America" mentality appears to have receded in the light of cooperation along the two American borders since 9/11. However, this assessment may be considered overly optimistic in light of a report tabled by North American business leaders at the Montebello Summit, which expressed concerns about the "need to make borders within North America as safe and transparent as possible" (North American Competitiveness Council, 2007). It is unknown what would happen in the event of another 9/11 type of attack on the United States, particularly if any of the terrorists gained access to the United States through Canada or Mexico. At a minimum, there would be the type of short-term interruptions which characterized the American response to 9/11. A Fortress America mentality

would rely on existing borders as the best place to maintain controls. It could entail increased delays in the flow of people and goods from north and south of the United States, and thereby threaten the economic security of two large trading partners of the United States and a large amount of American investment in those countries.

Creating a Fortress America would be very expensive and would put the emphasis of control in the wrong area. Control should be maintained at the perimeter points of access to North America, which are not across the two land borders, but at airports and ports. I fear that the United States Congress has decided to spend a lot of money on controlling the two borders, for example, by building a physical fence along the southern border and an electronic fence along the northern border (or at least from the head of Lake Superior to the Pacific coast). As Michael Byers notes, "attempting to secure a frontier that is nearly nine thousand kilometres long is a fool's errand that will cost the American taxpayer dearly .... Fences might make for good neighbours, but barriers are not good for making or keeping friends" (Byers, 2007: 214).

The United States has recognized that it needs to expand the perimeters of its security at least to the edges of North America and, in many cases, beyond. Passengers destined for the United States and Canada from overseas countries must go through pre-clearance checks before they are allowed to board the aircraft. Canada and the United States are cooperating in this effort in various European airports and elsewhere. As well, container traffic bound for North America is being pre-cleared in ports outside the continent. Cooperation in this area was highlighted in the joint communiqué which came out of the Montebello SPP summit in late August 2007 (Office of the Prime Minister, 2007a).

Perimeter concepts for North America are not new and are best exemplified in the long standing Canada-United States defence partnership. Similar activities took place on the civilian side prior to 9/11 and have since become codified in the Smart Border Declaration and Action Plan. Various ideas have been put forward for concentric circles of perimeter security and some of these have been incorporated into the Smart Border plans, on which work is continuing alongside the Security and Prosperity Partnership.

The concept of a security perimeter could be limited strictly to a military or defence one in the face of traditional threats. But the new threats to North American security do not come from state actors, but non-state actors, and the most appropriate means of defence against these threats lies outside the traditional military pattern. Instead, it involves intelligence sharing, police cooperation, and tighter administration of refugee and asylum policies and visitor visas. Here, the past experiences of Canada and the United Sates, and Mexico and the United States are widely divergent. Defence cooperation between Canada and the United States has a long and ongoing history. However, cooperation between the United States and Mexico would be a new and very controversial matter.

Proposals for increased labour mobility within North America are being held hostage to the new security climate. The Canada-United States Free Trade Agreement (CUSFTA) and NAFTA introduced Trade NAFTA (TN) visas for certain categories of skilled professionals, with major differences in application between those issued by the United States for Mexicans and for Canadians.[2] Full scale labour mobility between Mexico and the United States is seen as a major threat to the United States and an economic drag. Whether or not it might be possible to envisage a widening of the categories for NAFTA, widening TN visas is another matter. In any event, full labour mobility inside the European Union did not come until after it had gone from a customs union to a common market and an economic union. Such a union would appear to be a pre-cursor to any Schengen type of agreement which governs admission from outside the borders of the European Union and has effectively abolished controls on the internal borders. Proposals to abolish all controls on the Canada-United States or Mexico-United States borders would run into strong opposition on both sides of the two borders for reasons mentioned in this chapter.

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

Conclusions

New initiatives with respect to the flow of people across our mutual border and for a common security perimeter are unlikely to find support from either the Canadian or the American government unless some fundamental decisions are made with respect to the nature of our future economic integration. Such a prospect is not in the cards at the present time, however much it might be in both countries' interests.

The two governments have committed themselves to the Security and Prosperity Partnership, which has as one of its key objectives a smart, secure border. However, the SPP has made it clear that no treaties are being negotiated under its mandate and that, in most respects, immigration is outside its purview, notwithstanding the relevance of border controls on some parts of immigration and refugee issues. The Safe Third Country Agreement appears to be working better than some thought, and with less impact than others feared. But it is not a panacea. Similar agreements are needed with other countries, especially those in the European Union. Alternatively, the Canadian government could just announce that it will return any refugee claimant arriving from a safe European Union country. All that is required to do this is a strong dose of political will from the federal government. The refugee system would also work better if the United States would agree to include refugee claimants arriving by air and sea in the Safe Third Country Agreement, rather than limiting its application to the land border.

Attempts to develop common security criteria for immigration and refugees could prove extremely problematic for a variety of reasons, including the sovereignty and criminal issues mentioned in this chapter. However, continued work and cooperation in this field will increase the confidence of the other party that the policies and their administration are being carried out in a manner which meets the common objective for smart, secure borders. Thus, more can be done without a formal common security perimeter and without common selection criteria for immigrants and refugees.

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