

THE TRANSATLANTIC TASK FORCE ON IMMIGRATION AND INTEGRATION

**ROOM FOR PROGRESS:
Reinventing Euro-atlantic Borders for a
New Strategic Environment**

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Introduction

This report is the product of two workshops held on border management in Brussels, Belgium and Laredo, Texas in the United States. It addresses three arenas of significant change shared by the United States and the European Union: 1) new government organizations for controlling borders; 2) the use of information technology to secure borders; and 3) visa-free travel policies.

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In an era when states and their populations are increasingly subject to opportunities and risks associated with the global movement of people, states are rethinking border management.

Many factors — trade, geography, and history among them — are furthering the economic and political integration of the European Union (EU) and bringing Canada, Mexico, and the United States together into deeper economic and security partnerships. These transformations alone are driving change in border management.

At the same time, illegal immigration, threats of infectious diseases, mass-casualty terrorist attacks, and transnational criminal enterprises, among other factors, are eliciting greater strategic reassessment of, and investment in, border and immigration policies. Suddenly, borders seem important from a security perspective as a means to help counter terrorist mobility, interdict transnational crimes, and address illegal immigration. But, in addition to providing security opportunities within larger strategic approaches to terrorism, crime, and migration, borders are also gateways to economies and delineate the field of economic competition.

The discussion takes as its starting point the changes that have occurred since September 11, 2001. During that time, both the United States and the European Union have moved in fits and starts to adjust to the new security realities while pursuing significantly varying forms of regional cooperation.

For instance, in 2004, the European Union established a new agency, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) to coordinate management of the European Union's new and still evolving borders. It also launched Europol to promote information exchange and cooperation among EU Member State law enforcement agencies and to produce an EU report on terrorism-related law enforcement investigations. Member States have also acted individually. The United Kingdom, for example, replaced its Immigration and Nationality Directorate with the Border and Immigration Agency in April 2007. It has made significant investments in border-security-related technology as part of its vision of "identity management." Going

forward, the United Kingdom has proposed that all foreign nationals who are not citizens of European Economic Area (EEA) countries¹ have a Biometric Immigration Document by 2008, and 95 percent of all passengers be checked in and out of the country by 2011.²

The United States abolished its Immigration and Naturalization Service in 2003, merging its functions with those of other border-related agencies into a new US Department of Homeland Security. It required the airline industry to provide data on passengers and governments to provide foreign passports that are machine readable and contain a biometric identifier, instituting the same practice for US passports. It tightened its visa-issuance processes, reducing waivers of in-person interviews and instituting the capture of biometrics in the visa process and at ports of entry. Building on the North American Free Trade Agreement (NAFTA), it initiated a regional security dialogue with Canada and Mexico, named the Security and Prosperity Partnership, while also mandating for the first time that travelers entering from Canada, including US citizens, present passport-comparable identification.

Although the dialogue concerning these systems has occurred post-9/11 and in the wake of significant terrorist attacks in Madrid and London, many of the changes were set in motion earlier and were not designed in response to terrorism or a heightened concern about homeland security. Some EU systems and policies — such as the Schengen Information System II and Visa Information System — were already in the planning stages or underway in 2001 as a result of the impending 2004 expansion of the European Union and the resulting shift in its external borders. Similarly, the US Congress in 1996 mandated an entry-exit system to address visa overstayers, although the government began to take this goal seriously only after the September 11 attacks. Both systems continue to evolve.

Other changes were specific responses to the growing lethality of terrorism. In the United States, these changes included developing a unified watch list of known and suspected terrorists, and specially registering certain males entering from designated countries; in Europe, an EU watch-listing group was established. Many of these changes continue to raise civil-liberty questions in Europe and in the United States.

Both the United States and Europe have imposed fingerprint requirements on foreign nationals but not on their own citizens, although the European Union is now moving toward including fingerprints in passports issued by its Member States.

History and culture have shaped perceptions and attitudes. Europeans have long lived with nationalist and post-colonial terrorists in their midst — the Basque separatist group ETA in Spain, the Irish Republican Army (IRA) in Northern Ireland, and Algerian groups in France. Terrorism often came from citizens, as was also the case in the 1995 Oklahoma City bombing of the federal government office building in the United States.

But the Al Qaeda organization that attacked the United States in 2001 was foreign and multinational, with a territorial base in Afghanistan and core supporters outside the United States. Ipso facto, transnational terrorism became associated with war.

Border-control efforts in Europe since the end of the Cold War and in the United States for much longer have focused on controlling illegal immigration and transnational crime, particularly narcotics trafficking. Both the European Union and the United States have become concerned with human trafficking and human smuggling. In the United States, border enforcement has historically referred to controls at the US-Mexico land border; the September 11 attacks broadened the focus to legal ports of entry and border access points generally.

Nearly six years later — and with the tragic additional backdrop of the Madrid and London bombings of 2004 and 2005, respectively — the European Union and the United States find themselves in agreement on many big-picture issues. Common themes emerge from a comparison of their key policies, including:

- a new emphasis on homeland security;
- the approach of pushing some aspects of border management overseas by seeking advance information about travelers;
- enhancement of travel and identification document security and new emphasis on screening tools;
- new burdens on private-sector actors;
- policy adjustments due to privacy and civil liberties considerations; and
- major increases in technology investments at ports of entry and in border functions generally.

Most importantly, they share an understanding that, to be effective in enhancing security and protecting their citizens, they need to work together to avoid creating any weak links in the chain that terrorists could exploit. However, as MPI's discussions in Brussels and Laredo revealed, the European Union and the United States still have to overcome the gap between understanding and practical realization and indeed to conceptualize a framework for deeper cooperation.

This paper is organized into three parts. The first examines the respective government organizations responsible for managing sovereign perimeters. Border management remains geographic in that territorial "green" and maritime borders mark sovereign lines. The European Union's evolving sovereignty arrangements, however, have led to significant differences between the organizational responses of the European Union and the United States. We examine both the substance of those responses and whether they are comparable.

The second and third parts of the paper examine two topics identified in our high-level policy dialogue as crucial to the European-North American relationship on border management. Part II looks at the information-technology-driven aspects of border management including border patrols, passports, and entry-and-exit systems. Here, Euro-Atlantic cooperation remains troublesomely limited.

In Part III, we analyze visa-free travel policy, as this part of border management is a point of active and contentious dialogue.

I. Whom to Call? Government Organization for Managing Borders

No diplomat, business representative, lawyer, or policy specialist deals with border issues for so much as a day without experiencing an exasperated sense of not knowing whom to call to deal with the latest problem. Europeans faced with the monolith of the four-year-old US Department of Homeland Security (DHS) and the bafflingly obscure diffusion of authority among the Departments of State, Homeland Security, and Justice on visa and immigration matters — not to mention among committees on Capitol Hill — regularly plead (in vain) to learn just the right point of contact.

US counterparts find equally difficult the European Union's structure and policymaking components (whether it be the European Commission, Council or Parliament) as well as Member States' retention of competency (sovereign decision-making) on immigration and related border security matters. The European Union also presents seemingly limitless political, legal, and bureaucratic nuances of institutions, rules, national cultures, and, not least, reigning personalities.

Yet both sides of the Atlantic are taking the organizational issues of border management far more seriously than in the past and are interested in, and drawing on, each other's models. Beneath the mutual frustration exists a sometimes reluctant recognition that governments are grappling with similar, serious challenges: how to organize travel, immigration, and border functions to meet new strategic, political, and economic needs.

It is sometimes hard to separate actual differences from the mere occupational hazards of contemporary border and immigration management or from policy and political conflict. In the case of managing sovereign perimeters — the borders of the United States and the edges of the new Europe — differences are real.

Fundamentally, differences derive from the fact that the United States legally exercises full sovereignty over its fixed and clear borders while the European Union exercises sovereignty that is still evolving legally and geographically. At the same time, the United States' ties with its immediate neighbors are exceptionally close, and the risks and threats that the United States and European Union face are comparable. It is

therefore important to understand the government organizations charged with border management — in other words, whom to call.

Historical and Geopolitical Vectors

Historical and geopolitical differences shape European and US perspectives on the function of borders and, consequently, on the type of organizations being constructed to manage them.

European Union. The external Schengen border currently consists of 14 countries.³ It is not uncommon for new EU Member States, for example, Poland and Latvia, to share borders with at least four countries. Throughout the 20th century history of world wars, significant numbers of military police and conscripted border guards stood at the borders of European countries. Instability in Soviet and Yugoslav successor states — Belarus, Moldova, Bosnia, Serbia, and Ukraine, all bordering the European Union — remains a risk. Some of these countries are associated with significant organized criminal activities aimed at populations to the west.

Since five European countries (France, Germany, Belgium, the Netherlands, and Luxembourg) signed the 1985 Schengen Agreement, Europe has incrementally moved toward dismantling internal borders to stimulate trans-European movement of goods, capital, and people. The 1997 Treaty of Amsterdam, which came into force in 1999, incorporated Schengen into the EU framework. In the context of EU enlargement, external borders became important as a means of barring unauthorized economic migrants and asylum seekers from turbulent and developing countries. Human trafficking, in addition to narcotics trafficking, from eastern border states became a problem. Only by strengthening and institutionalizing the management of external borders could EU Member States feel more comfortable with eliminating internal borders and expanding eastward in 2004.

The 2001 Al Qaeda attacks in the United States seem to have added momentum to the ongoing EU process, as reflected in the December 2001 Laeken European Council and 2002 communication of the European Commission.⁴ Counterterrorism first arose as a national response to terrorist attacks by extreme political groups aimed at national and historically colonial governments. Terrorist attacks in Madrid and London sharpened the focus on immigration from Muslim countries and on border and immigration functions in modern counterterrorism.

In sum, the drivers of European border policies are EU politics and evolving concerns over illegal immigration and security, including both terrorism and organized crime.

United States. The United States shares borders with only two countries and has enjoyed stability and security along nonmilitarized land borders with both its Canadian and Mexican neighbors for generations. Cross-border communities thrive at the northern and southern borders. Short-term visitors crossing back and forth between Canada and the United States have not been required to obtain visas or carry passports. Despite interludes of anti-immigrant outbursts, the American people have historically seen themselves as a nation of immigrants, welcoming and integrating the foreign born.

In the post-Cold War United States, narcotics interdiction efforts — a major focus of US policy for four decades — intensified along the US border with Mexico. During the 1990s and the first part of this decade, attention to illegal immigration grew as the numbers of unauthorized immigrants rose, particularly from Mexico and Central America. Since its implementation in 1994, NAFTA has promoted deeper continental economic integration.

In 2000, when US border officials apprehended the “Millennium Bomber,” a terrorist linked to Al Qaeda entering from Canada, border enforcement policy became more linked with counterterrorism than before. The 9/11 attacks cemented this policy linkage. And since the attacks came from within the United States rather than from an external source, such as missiles launched from another nation or by ship, the attacks also precipitated the strategic concept of homeland security.

In sum, local border community traditions, attitudes toward illegal immigration, counternarcotics, North American trade issues, and counterterrorism shape US border policy and its institutions. These developments are also influenced by an unquantifiable measure of nationalism reflected in a generalized concern about the ability to control sovereign borders.

Managing External Borders: US and EU Agencies

Customs and Border Protection (CBP). The most dramatic organizational repercussion of the 9/11 attacks in the United States was the March 2003 establishment of DHS.

The US Immigration and Naturalization Service (INS) was abolished, and three agencies within the newly created DHS assumed immigration and customs-related responsibilities. These agencies include the Bureau of Customs and Border Protection (CBP), which merged former immigration, customs, and agriculture inspectors, along with the US Border Patrol, into a single agency;⁵ the Immigration and Customs Enforcement bureau (ICE); and the US Citizenship and Immigration Services bureau (CIS).

DHS also incorporated the US Customs Service; the Coast Guard, which protects the maritime coastline; the Transportation Security Administration (TSA), which is

responsible for airline, train, and other common carrier security; and the Federal Emergency Management Administration, which provides aid after natural disasters; among other operational agencies bearing on homeland security.

DHS also develops mobility-related intelligence, while other departments and agencies play important roles in border management, including the Defense Department (the National Guard and the Navy), the Justice Department (the Federal Bureau of Investigations and the Terrorist Screening Center), and the State Department (the Bureau of Consular Affairs). The Directorate of National Intelligence and the National Counterterrorism Center support the Terrorist Screening Center among other functions relating to terrorist travel.

CBP is the major operational agency at land borders, airports, and sea ports. It has the authority to search and detain people and goods in order to deter unlawful entry, and it operates a large law enforcement air patrol.⁶ CBP is responsible for managing and controlling all 326 lawful ports of entry, 35 checkpoints, and thousands of miles between ports of entry, as well as 50 Container Security Initiative ports overseas, and 15 preclearance locations.

CBP employs approximately 42,000 individuals: 18,000 officers, over 12,000 Border Patrol agents, over 2,000 agriculture specialists, and approximately 650 air and marine officers. These comprise one quarter of all DHS personnel. CBP's fiscal year (FY) 2007 budget totals over \$7.8 billion (\$6.5 billion appropriated and almost \$1.3 billion in user fees).⁷

The numbers of personnel at US borders are growing. The United States tripled the number of Border Patrol agents between 1986 and 2002. If CBP reaches 18,000 agents by the end of 2008 as it aims to do, it will have increased the total by nearly 50 percent in two years, and added as many agents in two years as were added in the previous ten.⁸

*FRONTEX.*⁹ In Europe, the control and surveillance of external borders remain competencies of EU Member States, many of which operate within the Schengen framework of open internal borders. However the European Council in October 2004 established a new agency dealing with external borders: the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). The agency became operational in May 2005 and its headquarters are located in Warsaw, Poland.¹⁰

FRONTEX is based on Germany and Italy's original proposal in 2001 to the European Council that it create a single European Border Police/Guard. This idea originated with the 2001 Laeken Council, which stated that "better management of the Union's external borders will help in the fight against terrorism, illegal immigration networks, and the traffic in human beings."¹¹ In response to the Laeken Council's mandate "to examine the

conditions in which a mechanism or common services to control external borders could be created,"¹² the European Commission in May 2002 proposed codification of common rules and standards, and eventually a border guard corps, as steps toward more integrated management of external borders. However, rather than a single integrated European Border Guard that would have operated under a common command structure and replaced national forces, the May 2002 feasibility study pushed for a network of national border guards, with various countries providing expertise in specific areas.¹³

The Council of Ministers in June 2002 agreed to a "Plan for the management of the external borders of the Member States" that combined elements of the Laeken communication and the EC feasibility study. The council settled on more cooperation rather than seeking to establish a European Border Guard; concentrated on practical measures, operational coordination (rather than legal), and integrated risk analysis; and placed less emphasis on common legislation and financing. Deferral of a decision on a European Border Guard reflected Member States' disagreements about the desirable extent of cooperation, concerns about a supranational force as impinging on their national sovereignty, and divergence of views on financial burden-sharing, as well as the challenges that would have ensued in selecting a single language and adopting necessary domestic legislative changes.¹⁴

Therefore, at present, is effectively a coordinating body. Its role is to coordinate the actions of the national border agencies of the Member States in managing their external borders; undertake risk analyses; establish common training standards and assist Member States in training their border guards; approve and coordinate joint operations; provide technical and operational assistance; and develop relevant research to strengthen security at external borders. As a creation of the European Council, FRONTEX is subject to pressure by Member States and has no power to order any of the countries to take any action. Instead, FRONTEX works cooperatively with the Member States, which retain responsibility for policing their own borders and using their own budgets and personnel. In fact, its operations in a Member State (by Joint Support Teams or Rapid Border Interventions Teams) require approval of the host country.¹⁵

FRONTEX's projected budget for 2007 is €35 million (nearly tripling its 2006 budget), and it expects to double its staff to nearly 140 this coming year. By 2011, FRONTEX hopes to reach a €44 million budget and employ 190 people.¹⁶ As these figures imply, the budget for FRONTEX is extremely small in relation to the spending on border management by individual Member States; indeed, European-wide external border management is embryonic at best.

Practical and Policy Issues

Human capital issues. Notwithstanding significant differences in authority and scale, both border agencies face problems of meeting human capital needs. For CBP, the challenge

lies in establishing the right recruiting standards, retention, training, and the ratio of experienced to new agents. It takes 30 applicants to field one CBP Border Patrol agent, in part due to the availability of comparable law enforcement jobs that pay higher salaries and offer less physically challenging work environments.¹⁷

In the short run, FRONTEX has struggled to recruit employees to Warsaw where the pay is 70 to 75 percent less than in Brussels. At the same time, EU Member States that have implemented the Schengen Convention face a challenge of having an excess number of border agents as internal border controls are lifted. For example, border guards of the 40,000 strong German Federal Police currently stationed along Germany's border with Poland and the Czech Republic will need to find new tasks when border controls with these new EU Member States are lifted in December 2007/January 2008. New Member States, such as the Czech Republic, Poland, Hungary, Lithuania, and Latvia, have professionalized their border guards, transferring them from military to civil agencies, usually to the Interior Ministry and/or national police forces. In anticipation of achieving full compliance with EU standards, some countries have reduced the number of border guards they have, and some border guards could find themselves out of a job once their countries fully implement Schengen and lift border controls.

The policy context. "Integration" is as essential a word for contemporary border management as it is for security and transportation affairs generally. The integration of border functions in new institutional arrangements is underway in many countries. For example, Canada merged various components of its immigration and customs agencies to develop the Canadian Border Services Agency in 2003 (as part of the new Cabinet-level Ministry of Public Safety and Emergency Preparedness Canada),¹⁸ and Mexico is currently examining the possibility of a single agency that would deal with ports of entry and other border-related responsibilities that now belong to multiple agencies. The United Kingdom's July 2007 announcement that it was going to unify its border force by integrating its Border and Immigration Agency with Customs and UK Visas is only the most recent example.¹⁹

Each version of integration provides the impetus for greater cooperation both within and between governments as well as the consolidation of border policing/management. But emphases and political resonances differ. Indeed, the establishment of FRONTEX and CBP demonstrate distinct aspects of the broader set of integration challenges.

FRONTEX. In Europe, discussion of border institutions is focused simultaneously on a spectrum of functional questions concerning the role of internal and external borders in immigration, labor, trade, and security management, and on a continuous stream of internal and external political and constitutional issues arising from the process of consolidating European nations into the European Union. For these reasons, the concept of "integrated border management" is a fulcrum for policy discussions.

Peter Hobbing, a former senior European Commission official, has summarized the definition of integrated border management as having at least three primary components, which are:

comprehensive tackling of the interrelated problems of trade, transport, insecurity, criminal smuggling and, where necessary, the development problems of the border regions themselves; strict requirements for the numerous authorities and agencies ... to cooperate on common problems, rather than working separately and often at cross purposes; and strong encouragement for neighboring countries to cooperate in managing shared borders.

It at least suggests enhanced cooperation between central and local officials, an efficient infrastructure, and a professional (nonmilitary) staff.²⁰ Assistance to migrant-sending countries is among the more unique aspects of the European approach.

CBP. Integrated border management is not as expansive a policy framework for DHS as it is for the European Union, although many elements are similar. In the United States, integrated border management through DHS was a direct response to the events of September 11. Several of the 9/11 Al Qaeda conspirators and those involved in the first World Trade Center bombing in 1993 had violated immigration regulations and had deftly exploited the visa and border systems. A general view prevailed that the lack of cooperation among border-related agencies, especially their failure to share information, inhibited counterterrorism, which became the critical dimension of border controls. Integrating their operations more effectively was deemed to be at least part of the solution.

The design of the reorganization drew on a much longer history of ignored proposals to combine border enforcement functions in various ways and in various Cabinet departments to strengthen immigration and trade policy.²¹ A further reason for integration was the post-9/11 conceptualization of sovereign borders as legal and virtual as much as territorial. Border Patrol agents at US land borders; inspectors at air, land, and sea ports of entry; consular officials overseas; and intelligence officials — all are conceived of as part of an integrated border security presence.²²

The vision of integration among border and border-related law enforcement agencies also encompasses US-Canadian cross-border law enforcement teams. In these teams, officials hand off information and suspects without exercising law enforcement authority beyond their own national borders. Unlike in Europe, the concept of “integrated border management” has not included development assistance to immigrant-sending countries.

In the United States, functional questions dominate discussions about the organization of border management. For example, to what extent DHS should focus on terrorist risks, immigration control, other hazards, and/or emergency management and resilience; or, how terrorism or visa functions should be exercised among diplomatic, intelligence, and criminal justice agencies. Such core functional, even strategic, questions are far from satisfactorily answered. For example, CBP's mission today is described as a dual one: to "prevent terrorists and their weapons from entering the United States," while at the same time "fostering our nation's economic security through lawful international trade and travel."²³ However, as the major build up of enforcement resources aimed at curbing illegal immigration from Mexico attests, preventing illegal immigration is also among CBP's priorities.²⁴

Foreign policy issues, as well as functional issues, are implicated in evolving institutional arrangements. The United States, Canada, and Mexico are actively addressing how border-control functions should be handled to create a greater degree of security around the North American perimeter and greater efficiency at shared border crossings. Progress is minimal, with the United States and Canada recently failing to agree on expanding pre-clearance procedures.

The comparison makes clear that FRONTEX and CBP are parallel in only a highly attenuated manner. While a more accurate estimation of staff working in FRONTEX and CBP would include those working for the Directorate-General of Justice, Freedom, and Security of the European Commission as well as the relevant border agencies of all EU Member States, they nonetheless operate on very different scales in terms of personnel and budget, and differ in their genesis and outlook. Their structure and organization therefore do not provide much help to Euro-Atlantic officials seeking obvious counterparts and to answer the question, whom do I call?

II. Using Information Technology to Secure Borders

The United States and the European Union and its Member States are increasingly turning to information technology (IT) to screen flows of people in a manner that balances security and travel facilitation, and generally increases their border-security capabilities. Indeed, IT seems likely to reengineer the provision of border security itself.

IT-centered border controls include systems to monitor geographic perimeters, screen travelers and prospective immigrants before they embark, identify travelers and immigrants (biometrics), track travelers' entry and exit, and share information across national departments and international borders so that border security and law enforcement agencies know about the movement of suspect individuals.

The United States and EU Member States are using many of the same types of technologies and systems but not necessarily in the same way. The implementation of technologies varies due to differing historical, social, political, and geographic contexts.

Broadly speaking, in the wake of the 9/11 attacks, US border control policy has focused on preventing terrorism, but it has become politically intertwined with reaction against historically high levels of illegal immigration entering predominantly through the southwest US border. IT budget justifications, if not actual border control information technology, are increasingly dedicated to counterterrorism objectives.

Since 9/11, the European Union and its Member States have accelerated the use of IT to strengthen border controls; this effort has been heavily motivated by the political imperative to address “unwanted” asylum seeking and illegal immigration. The dynamics of regional economic integration have been another factor, one that has affected the development of US border-security IT only at the margins.

Surveillance between Ports of Entry

The use of technology to help patrol US borders between ports of entry goes back to the 1970s, when INS used low-light video cameras and ground sensors at the US-Mexico border. Then, in the 1980s, INS began to integrate data from its surveillance equipment with the deployment of an automated dispatching system that collected data on border intrusions and directed agents to those locations. In 1997, INS started using the Integrated Surveillance Intelligence System (ISIS), which used motion, infrared, seismic, and magnetic sensors. By 2000, INS had deployed some 13,000 ground sensors.

However, five years later, the government began to realize the scale of the challenge — in October 2005, ISIS was in place along just 4 percent of the border with only 10,500 operative sensors.²⁵ Political pressure for more investment in enforcement resulted in DHS establishing the Secure Border Initiative (SBI). SBI is a comprehensive multiyear plan which, among other things, involves “a comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of unmanned aerial vehicles (UAVs), and next-generation detection technology.”²⁶ In September 2006, DHS awarded the SBI Network (SBInet) contract, estimated at \$2.5 billion, to a Boeing-led consortium of companies. SBInet’s goal is to develop what many policymakers call a “virtual fence” to complement the several hundreds of miles of physical fencing that Congress has mandated and which remains controversial, including within border communities.

EU Member States for the most part have taken a different approach to patrolling and controlling the “green border” areas between land ports of entry. Like their US counterparts, border guards utilize infrared night vision scopes and video cameras; they have special mobile units that can elevate high-power video cameras in order to provide

surveillance over a wide area. However, they have not invested, nor do they plan to invest, in fencing, whether physical or virtual. EU Member States have similarly deployed sensors. Some, such as Latvia, have continued using them, while others have abandoned them due to excessive false positives, mostly caused by animals.²⁷

In Europe, border-control authorities tend to focus less on patrols at the border itself and more on checks in frontier regions near the border and on internal enforcement throughout the country (e.g., at workplaces, main traffic corridors, train stations, and points of contact with government agencies). Most continental European states have a population registry, and citizens and legal residents must register their residence with the local police whenever they move.

The differences between the US and European approaches to border control are beginning to narrow. The US government is seeking to increase internal enforcement by taking actions against employers of unauthorized workers. For example, employers would be fined if they receive “no-match letters” flagging questionable Social Security numbers and the discrepancies are not resolved. These new measures are controversial and being challenged in court, thus far successfully.

E-Passports

Passports typically have a duration period of a decade, and each generation has adopted new security features. The most recently introduced passports make more information available to border officials. EU Member States and the United States all now issue what they call “electronic passports,” or “e-passports,” which have radio frequency identification (RFID) chips that contain biographical and facial biometric data. Although the development of EU and US e-passport programs was highly interdependent, the types of e-passports that EU and US citizens will eventually carry have diverged significantly.

The United States precipitated the recent round of changes when, in 2002, it conditioned countries’ continued participation in the US Visa Waiver program (VWP) on the issuance of machine-readable, tamper-resistant passports. The passports must contain biometric data and meet international standards for biometric e-passports set within the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations established in 1947 to ensure safe and orderly development of international civil aviation. The US Congress set a deadline of October 26, 2004, for VWP countries to implement e-passport programs. As one State Department official put it, the United States used the “leverage” of VWP to push for a “common agenda on biometrics.”²⁸

ICAO announced an agreement on the biometric standard in May 2003. The standard consists of a facial image plus optional fingerprints and/or iris scans stored on a radio frequency-enabled contactless integrated circuit (IC) chip.²⁹ The contactless IC chip,

which is affixed to the passport, is part of a RFID system in which biographical and biometric data on the chip are transmitted via radio waves to a reader that inspectors use at ports of entry. A year later, ICAO arrived at a technical standard for IC chips that ensured interoperability between chips and readers,³⁰ leaving only five months for countries to purchase and install the necessary equipment for their e-passport programs.

After it appeared that many VWP countries would not be able to meet the original deadline, Congress granted an extension to October 26, 2005, but it soon became clear that many countries could not meet this deadline either. Congress then relaxed the biometrics requirement so that a digital photo embedded in the passport cover would count as the required biometric for another year. All VWP countries were able to meet this requirement except for Italy and France, which meant that those Italian and French citizens who received their passports after October 26, 2005 were required to get visas in order to travel to the United States, that is, until the Italian and French e-passport programs came online. Within the next year, 24 of 27 Visa Waiver Program countries met the October 26, 2006 deadline for all new passports to have biometrics on radio frequency-enabled IC chips — including all EU Member States in the Visa Waiver Program.

Notably, the US Congress did not pass legislation requiring that e-passports be issued to US citizens, nor did the White House request it. The US Department of State developed e-passports on its own prerogative in order to remain compliant with ICAO standards and to avoid having to solicit other states to meet these standards while not doing so itself. The State Department issued its first e-passports to US citizens in August 2006, but not all new US passports issued after October 26, 2006, had biometric chips. This meant that the United States did not meet even the extended deadline it had imposed on other countries. Moreover, while the chips contain biometric facial images, there is no system in place to match them electronically against the actual faces of people presenting themselves with their passports. Thus the chips represent only a partial technological evolution toward biometrics as a means of verifying identity.

Indeed, although US homeland security policies drove implementation of European e-passport programs, the European Union is now setting security standards for e-passports that are higher than those of the United States. EU Member States have collectively agreed to an EU requirement that new e-passports will eventually include fingerprints in addition to facial biometrics.³¹ State Department officials have not begun to consider such a step, nor has Congress addressed it. It is therefore unlikely that the US e-passport would meet the EU standard in the near future, and, absent further efforts toward interoperability, not at all.

Entry Systems

Entry systems exist at legal ports of entry, where authorized travelers and immigrants enter. The basics of entry systems in the United States and Europe are relatively similar in function. In the primary inspection process, an inspector inputs a traveler's data, usually by swiping the machine-readable zone of the traveler's passport into a system that queries a database with a watch list of individual names, passport numbers, and other information. This may generate a "hit," which is then further investigated in secondary inspection.

United States. US immigration inspectors began using automated lookout systems in the 1980s, and, in the 1990s, INS updated and supplemented its basic entry system. After 9/11, IT spending increased tremendously in efforts to create "smart borders" and then "virtual borders." Many information systems now support consular officers and inspectors who control entry, and they are increasingly interoperable.³²

In particular, the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program, which DHS operates, is in the process of integrating many existing legacy INS, US Customs, and FBI systems. The integration supports an automated biometric entry-exit system. Currently, however, it is serving only as a biometric entry system.

US-VISIT collects biographical and biometric data (a digital photo of an individual's face and two index finger scans) from certain foreign nationals when they apply for visas at US consulates abroad in cooperation with the State Department's BioVisa program and/or when they enter the United States. Watch-list checks are run on the data to help inspectors at ports of entry keep out potential terrorists, criminals, and violators of immigration laws. Eventually, US-VISIT will also determine whether those who enter the United States leave in accordance with the terms of their visas.

US-VISIT was first deployed at airports on January 1, 2004, and, by the end of 2005, it was in place at all 284 air, land, and sea ports of entry.³³ As of January 2007, US-VISIT had processed the entry of more than 76 million foreign visitors. More than 1,800 criminals or immigration violators have been stopped from entering the United States with the help of US-VISIT.³⁴

Although US-VISIT is fast becoming the world's largest biometric database, it is still very much a work in progress. The US-VISIT contract solicitation outlined a more comprehensive vision to develop US-VISIT into a "virtual border."³⁵ An Accenture-led team of companies won this contract in May 2004. The US-VISIT program has cost over \$1.7 billion so far, and its projected cost through FY 2014 is between \$7.2 billion and \$14 billion.³⁶

European Union. Not surprisingly, entry systems in Europe are more complicated. In general, the European Union is moving on a different path toward a system with similar objectives to that of the United States. In contrast to DHS's use of US-VISIT, European border guards do not collect biometric data except for a very small number of travelers enrolled in optional registered-traveler programs in several airports in the United Kingdom, Germany, and the Netherlands. However, an increasingly elaborate screening process that relies on integrated databases is being developed and rapidly implemented.

In many EU Member States, officers conducting primary inspections at border-crossing points run watch-list checks of national police databases. For example, when travelers to Germany are controlled at international airports or at Germany's external Schengen border, officers will typically swipe the traveler's passport (or enter passport data manually if it is not machine readable), and the data will be checked against the INPOL database, which was established by the Federal Criminal Police Office (*Bundeskriminalamt* or BKA) in the early 1970s. INPOL includes data on missing or wanted persons, stolen property, and lost or stolen travel and identity documents.

An enhanced system prevails for those states that are signatories of the Schengen Convention. All EU Member States (except the United Kingdom and Ireland) plus Norway and Iceland are members of the Schengen Convention. For these countries, national police systems such as INPOL also provide access to the Schengen Information System (SIS), which enables travelers' data to be automatically checked against data that all Schengen states provide. SIS is made up of two parts: national SIS systems (NSIS) in each of the Schengen signatory states, and a central technical support system known as the Central SIS (CSIS), located in Strasbourg, France, and administered by France for the European Commission. SIS contains data on illegal immigrants, lost and false travel documents, wanted or missing persons, stolen goods, and counterfeit notes.

SIS is designed to enforce the common external border surrounding Schengen Member States and to build confidence in this common border so that signatory states remove all internal border controls. Because integration into SIS is necessary before any signatory state implements the Schengen Convention, all members are either connected to the existing SIS system or, in the case of new members, will be connected to the second-generation version (described below). But, although Member State border police may share information through their NSIS or directly, SIS can only electronically transmit text and figures, not photos and fingerprints, and it is not large enough to accommodate all Member States. Consequently, despite SIS being seen as central to the development of integrated border management at the European level, its technical limitations have greatly restrained its role.

Since SIS is only capable of working with a maximum of 18 Member States and cannot handle the increased data processing demands of EU enlargement, the European Commission proposed the Schengen Information System II (SIS II). SIS II will have the

capability to store and transmit digital images and biometric data, and is projected to answer police requests within five seconds. Internal border controls with new Member States will not be lifted until they are included in SIS II. The European Commission, which set out a proposed legal basis for SIS II, is responsible for overseeing its development; Steria, a France-based IT services company, is leading the SIS II development consortium and is co-contracting with Hewlett Packard Belgium. It is not yet clear whether France will continue to administer SIS II, once it is developed, or whether another existing or new agency will administer it.

With the fall 2007 deployment deadline approaching and discussions of implementation delays within EU circles intensifying, new EU Member States have expressed their concerns that the much-anticipated lifting of border controls might be delayed. In an expression of solidarity with the new Member States, and in an attempt to head off any political conflicts this situation might generate, the Portuguese government (which holds the EU presidency for the second half of 2007) and a Portuguese IT firm have developed an interim solution referred to as "SIS I+" or "SISone4all." This solution will provide the new Member States a means of connecting to SIS that meets criteria necessary for lifting border controls. As it stands, implementation of "SISone4all" will enable old and new EU Member States to proceed with lifting land border controls in December 2007/January 2008, and border controls at airports in March 2008.³⁷

Exit Controls – Exit Systems

Comparisons are less clear with respect to exit systems than with respect to passports and entry systems. The United States has limited exit controls and is now engaged in a planning process for installing systematic exit controls at airports. Some ability now exists to match entry and exit data, but these data are incomplete. Most EU Member States have exit controls at airports and, in some cases, at land-border crossings, but EU Member States do not have systems that collect exit data and match it to entry data. As will be discussed below, US exit controls and the collection of exit data are critical tools used in connection with the US Visa Waiver Program.

United States. With respect to air travel, US-VISIT currently collects biographical exit data from airline manifests. US-VISIT recently announced that it will deploy its biometric exit capability by enlisting airlines to collect biometrics as travelers check in for their departing flights. Since the airlines oppose this approach, it is unclear whether this system will, in fact, be implemented. At land-border crossings — where approximately 358 million entries (80 percent of the 440 million total) take place³⁸ and where most of those visits end — US-VISIT does not have any capability to collect biographical or biometric data.

US-VISIT cannot collect exit data largely because the border control infrastructure (booths, lanes, and staffing) was not set up to track exits. At land-border crossings,

travelers typically leave the United States driving 40 to 55 miles per hour on highways or across bridges. Airports present an environment where exit controls might be instituted (e.g., at the departure gate, TSA security checkpoint, or the airline check-in counter). Based on this reality and the experience gained through the exit pilot projects, the US-VISIT program plans to move forward with deploying a biometric exit capability at airports; land-border crossings will have to wait perhaps three to five years for new exit technologies to be developed.³⁹

Europe. In contrast to the situation in the United States, international travelers departing from European airports are already subject to passport controls, and European airports have been built to handle this exit-control function. Similarly, at land-border crossings at Schengen's external border, travelers are controlled when leaving. According to the EU code governing the common external border, "On entry and exit, third-country nationals shall be subject to a thorough check" that includes "verification of travel documents" and "direct consultation of reports on persons and objects included in SIS and in national data files."⁴⁰

While all those departing the Schengen area are supposed to have their IDs checked (and third-country nationals their passport data checked against SIS), EU Member States have yet to initiate entry-exit systems. In addition, Schengen has no entry-exit system, largely because SIS is only used for watch-list checks — and several countries (e.g. Germany, Austria, and Slovenia) do not retain entry-and-exit data after the watch-list check is completed.⁴¹ Therefore, there is no entry record against which an exit record can be matched and no possibility of developing an entry-exit system.

New border-control IT is allowing the United States and EU Member States to "push out" their border controls beyond their territorial boundaries, which by, definition, enter into other states' jurisdictions and bump up against laws and policies. Therefore, increased international cooperation is often necessary for such new information systems to work properly and provide anticipated border-security outcomes.

On this front, intra-EU cooperation on the use of border-control information technologies exceeds that of any region in the world, and the border-security capabilities that are thereby being developed are quite extensive, even if they are not always used to the fullest extent.

International cooperation that maximizes IT capabilities has extended beyond Europe across the Atlantic and to a global level; however, this cooperation is very much in a preliminary phase and lacks a governance framework.

III. Euro-Atlantic Visa Policy: Toward Next-Generation Visa-Free Travel

Mutual visa exemption regimes between countries in Europe and the United States have enabled visa-free travel by short-term (three-month) tourist and business visitors for nearly two decades. Although all foreign passport holders regardless of nationality may be screened at border-crossing points, visa-free access, at a minimum, has reduced costs and administrative hassles for travelers, and effectively enhanced the opportunity to travel. It is a jealously guarded travel asset of the business community.

Until recently, the club of nations participating in this visa-free travel regime generally has agreed on visa policy toward the rest of the world as well. Most nations under the current EU and US visa exemption lists belong to the Organization for Economic Cooperation and Development (OECD). Citizens of most of the world's states must obtain visas for short-term stays in the United States and Europe. Not a single Middle Eastern or African country is on either the US or EU visa-exemption lists (with the exception of Mauritius, which was recently added to the EU list) and only a handful of countries in Asia are represented. Latin America provides the exception. The European Union has granted visa-free status to Argentina, Brazil, Chile, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay, and Venezuela.⁴² The United States has not done so because it is a major destination for illegal immigration from Latin America. Approximately 80 percent of the estimated 11.6 million unauthorized immigrants in the United States are from Latin America.⁴³

The period of easy Euro-Atlantic visa concord is over, however. Dialogue is intense concerning the future of mutually advantageous visa-exemption reciprocity arrangements, particularly between the United States and the European states that joined the European Union in 2004, as well as between the United States and the European Union itself. Fueling the discussion are political, economic, and security factors on which the governments involved, as well as private-sector stakeholders, have yet to agree.

European Union. The conflict over visa-free travel between the European Union and countries around the world, including the United States, Canada, and Australia, is partly rooted in the European Union's evolving legal-political structure. As stated earlier, the 1985 Schengen Agreement was incorporated into the EU framework in 1997, and all EU Member States, with the exception of the United Kingdom and Ireland, are now part of the Schengen Area.⁴⁴ Some subregional, intergovernmental agreements between EU Member States and other European countries also contribute to free mobility. Sweden, Finland, Denmark, Iceland, and Norway, for example, allow their citizens to move freely without passports within the Nordic Passport Union established in 1954.⁴⁵

The EU legal structure — constitutional in nature albeit treaty-based — deems policy issues relating to immigration, visa, and border management to be either European Community or intergovernmental competencies, depending on the particular issue. In the case of visa policy, an EU Member State retains control over whom to admit into its territory, but the European Union itself has authority to develop common rules for issuing visas by harmonizing existing rules among Member States.

Because EU Member States are individually parties to legacy visa-exemption agreements with other nations — such as agreements with the United States — the European Union has exercised its visa authority to promulgate a common list of countries whose citizens require short-term visas to cross the external borders of their countries. Since 1995, all EU Member States except for the United Kingdom and Ireland and the non-EU countries of Iceland, Norway, and Switzerland, have adhered to the common list. It currently requires citizens of 128 countries, including North Korea, Iraq, and Iran, to obtain visas.⁴⁶ Citizens of 36 non-EU states are exempt from obtaining short-term three month visas.⁴⁷ Countries that pose a threat of “a sudden inflow of nationals” or are deemed problematic with regard to illegal immigration may have their exemption status revoked. Bolivia’s status was revoked in 2007, for example, because too many Bolivians who traveled to Spain as tourists were becoming unauthorized immigrants. Spain had previously revoked Ecuador’s status in 2003 for similar reasons.⁴⁸

Consistent with treating the combined territory of EU Member States (except for the United Kingdom and Ireland) more or less as one entity for purposes of internal travel, the European Commission has declared that the same group of Member States must be treated as if all were a single sovereign entity for purposes of visa-exemption agreements with other nations.⁴⁹ If one EU Member State has a visa-free arrangement with a non-EU state, all EU Member States must be incorporated into that agreement, regardless of whether each would meet the legal requirements of the non-EU partner nations. Thus, at the time of writing, the European Union grants visa exemptions to 36 countries, all of which are expected to grant visa-free travel to all EU Member State nationals.

Until 2004, all EU Member States except Greece enjoyed visa-free travel agreements with the United States. The 2004 EU enlargement, however, has both expanded and sharpened the issue of visa-restriction inequality. None of the new Member States, with the exception of Slovenia, enjoys the same visa-exemption agreements that the older Member States have with the United States, Canada, and a number of other countries.⁵⁰ At present, 12 EU Member States do not have visa-waiver agreements with the United States, and nine do not have them with Canada.

The European Union has sought to advance international visa-reciprocity cooperation by requiring Member States to report to the EU Commission on their visa agreements

and giving the EU Commission a mandate to negotiate for uniform treatment based on these reports.

EU sovereignty does remain limited in minor and major respects. Notwithstanding the common visa-free travel rule, individual Member States may require short-term travelers to file prior declarations of travel to work. Fourteen Member States require such labor declarations and, though not deemed impediments to travel, national governments may enforce these rules with substantial penalties.⁵¹ More significantly, national security and crime control are still predominantly vested in the governments of Member States. Under the Schengen Borders Code, for example, EU Member States may temporarily reinstate border controls at internal borders if they face a serious threat to their public policy or internal security, though the code encourages Member States to keep such responses to a minimum.⁵²

United States. The United States activated VWP in 1988, beginning with pilot agreements with the United Kingdom and Japan.⁵³ The US government conceived VWP as a cost-savings measure for the State Department, a benefit to tourism and business, a convenience for individuals, and an example of the free mobility sought in a globalizing world. By 1999, 29 countries enjoyed reciprocal, short-term visa exemptions with the United States. These included 14 members of the Schengen Area (all but Greece) and seven other European states. Canadian citizens did not require a waiver because historically they have not been required to obtain short-term visas. Since 1998, citizens of Mexico have been able to apply for Border Crossing Cards, which remain valid for ten years and authorize travel 25 miles into the United States (75 miles into the state of Arizona).⁵⁴

Ironically, only in 2000 did Congress authorize what it envisioned as the long-term framework for a permanent VWP. This statute codified two key national-level criteria on the basis of which countries were initially invited to participate: 1) that their citizens had a demonstrably low rate of being denied a nonimmigrant visa or admission into the United States, withdrawing their applications, and violating the terms of their admission by overstaying their visas; and 2) that the country offered reciprocal visa treatment to the United States.⁵⁵

Two countries, Argentina and Uruguay, lost their place in the program in 2002 and 2003, respectively. Argentina's economic crises precipitated an increase in illegal migration to the United States through VWP.⁵⁶ Uruguay's data on border admissions and overstays indicated excessive rates of denials and overstays.⁵⁷ No new countries were added after 1999.

The 9/11 attacks precipitated a reexamination of the security dimension of all aspects of US visa policy, including visa-waiver policy. Since the US government could no longer use citizenship as a reliable indicator of political allegiance, a visa-waiver policy could

allow dangerous individuals from VWP states to enter and launch lethal attacks on a significant scale. UK national Richard Reid's aborted attack on a transatlantic flight in December 2001 followed the revelation that Al Qaeda conspirator Zacarias Moussaoui was a French national. These examples deepened US concerns about vulnerability to Islamist terrorists with European passports.

While a leading Democratic member of the US Senate raised serious security concerns about VWP in 2004 — including questioning whether a moratorium on the program should be put in place if the problems identified in the program could not readily be remedied — most policymakers concurred with countervailing arguments to preserve the program mainly for economic and diplomatic reasons. Additional and compelling arguments for the continuation of VWP included the practicalities and potential costs associated with instituting visa processing for millions of additional travelers. The United States instead embarked on a winding path of continuous changes to visa and travel security policy, with minimal diplomatic consultations. Changes centered on terrorist-related intelligence-sharing, the use of biometrics, and the collection of personal information about travelers for preflight screening. Some of these initiatives were discussed in Part I above. The constant flow of security mandates likely forestalled any expansion of political support for rolling back VWP, but there has been little examination of their effectiveness.

Greece is the leading candidate for new admission to the VWP as the only member of the original group of EU states that did not gain access in the first phase of the program. South Korea is undoubtedly the preeminent VWP candidate in terms of impact on travel to the United States.⁵⁸ Approximately 700,000 South Korean nonimmigrant tourist and business travelers entered the United States and Guam in 2005, and the rate at which they overstayed these visas barely exceeded the legal requirement, suggesting that other rationales may exist for South Korea's exclusion.⁵⁹

Controversy over visa policy heated up noticeably when Poland, Hungary, the Czech Republic, and the Baltic States joined the European Union in 2004. Their passionate claim of entitlement to visa-free travel as full members of the European Union and allies of the United States gained adherents from politically robust central European immigrant communities in the United States and from advocates eager to see the United States wholeheartedly embrace the leaders of newly democratic countries with market economies, especially those that supported the United States in the war in Iraq and/or are being discussed as a location for new US missile defense capabilities in Europe. Indeed, during his November 2006 visit to Estonia, President George W. Bush pledged to take action on this issue.⁶⁰

Seeking to be responsive to this group of countries, and under growing pressure from business interests to unclog travel from Europe, the United States set up a consultative process with the group of excluded EU Member States and several other states with a

mutual interest in visa-free travel. The goal was to develop individual “roadmaps” toward VWP participation.⁶¹ The consultative process showed concern, enabled information on visa overstay rates to be shared privately, and allowed security cooperation to be explored. But since it did not address the European Union as a unified actor, it stirred up as much distress among EU officials as it awakened hope among Member State diplomats.

At any rate, consultations alone could not have led to results. Overlooking significant visa overstay rates associated with some European nationalities was not possible during a period when the United States was dramatically stepping up enforcement of immigration laws in response to domestic political pressure — including against individuals who had obtained visas and overstayed as well as those who had entered without travel documents. Moreover, any security components of the dialogue could not overcome new security concerns because the underlying VWP statute barely addressed security requirements.

Based on an initiative by the Bush administration and seeking a more assured path for new entrants, in August 2007 Congress passed and the president signed the Secure Travel and Counterterrorism Partnership Act, which reconstitutes VWP on new statutory grounds.⁶² It centers the program on security cooperation, mostly leaving specifics to the discretion of the DHS secretary. The legislation requires travelers to electronically file (e-file) travel authorization requests with DHS, a model borrowed from Australia’s Electronic Travel Authorization (ETA) system that permits pre-travel security screening. It loosens criteria concerning national visa overstay rates by allowing the DHS secretary to set a maximum overstay rate; this rate is determined by the annual number of visa holders from a country who actually overstay. To be able to actually track overstay practices, the law mandates an exit-checking system at airports initially required to be 97 percent effective in establishing who exits. Within a year, the system is required to include a biometric exit check for all departing air passengers.

Enlarging the Euro-Atlantic Visa-Free Travel Space

The new US law will not immediately satisfy the European Union, which wants to be treated as a single entity; individual EU Member States, which seek VWP status; or the business community, which wants to expand visa-free travel to its maximum feasible limits. Nor is the law providing significant reassurances to the US security community.

The new law gives the DHS secretary considerable flexibility in setting and administering visa overstay standards. However, exercising that discretion is not without its political challenges. Much is made of the fact that the new EU Member States have supported the United States in Afghanistan and Iraq. But the “war on terror” coalition includes 70 countries, 64 of which are publicly disclosed. The “Coalition of the Willing” in Iraq has 25 members — Armenia, El Salvador, Kazakhstan, and Mongolia

among them. For various reasons, none of these countries would be eligible for VWP based solely on their participation in Iraq. Additionally, as violators of US immigration laws from Latin American countries continue to be arrested, detained, and deported in unprecedented numbers under the spotlight of the media, the political argument for overlooking historical overstay rates of European immigrants lacks the same automatic legitimacy in the US context that it has in the European Union.

Additional political challenges include expressions of possible resistance to advance registration from current VWP participants. Although the new VWP statutory language does not limit the application of the system to entering countries, DHS has indicated that initially, it intends to apply the system only to them. This phase-in approach has the usual logic of grandfather clauses that permit current arrangements to continue. However, recent warnings by the top level of the US intelligence community that Al Qaeda is training terrorist operatives from existing VWP countries specifically to exploit this mobility channel undermine the usual logic.

Meanwhile, government agencies have yet to develop the technical solutions promised by the new law. CBP will need to work out whether the traveler must register with airlines, travel agencies, or DHS itself or have options, as is the case in Australia, and what information may be requested and how costs will be defrayed. The airlines are resisting taking on a new responsibility — and cost. All of this seems unlikely to be accomplished in an 18-month time frame.

The system of pre-authorized travel need not necessarily be controversial, since the United States and EU Member States already participate in such a program with Australia. But transatlantic disagreement over what constitutes appropriate and proportional responses to terrorism, differences among political leaders and in laws and social attitudes relating to privacy and civil liberties, unilateralism in US actions on travel issues generally, and the cautious attitudes of US officials toward an enlarged European Union have contributed to lack of progress on visa-free travel policy.

It is also true that the steps required to protect populations from terrorism and crime generally are not the same as those required to fight military battles. The historical premise of Euro-Atlantic visa-waiver policy — that citizenship provided a reliable yardstick of visitors' intentions — no longer holds. By severing security policy from visa policy, the European Union has made visa-reciprocity arrangements more difficult. This raises a conundrum for the United States, Canada, and other countries that are actively adapting their visa policies to meet increased security concerns by seeking greater ability to “connect the dots” among security, law enforcement, immigration, and border functions at policy and operational levels. ETA-type systems afford such an integrative ability. For the same reason, it is not surprising that Franco Frattini, vice president of the European Commission, indicated that the European Union is considering a similar system.

Conclusion

The United States and the European Union share common goals and visions for making their borders more secure, but at the moment, the differences are drawing greater attention. External border protection organizations differ substantially. CBP, with its Border Patrol, and FRONTEX, while both border security agencies, are significantly different in scale, budget, structure, and organization. And while the United States and the European Union agree on the importance of investing in IT to improve their security systems at border checkpoints, they are enlarging technology investments in different ways. While still in the early stages, there is a common — although not joint — desire to set up effective entry-exit systems and upgrade travel documents to include digitized biometric data. However, given the evolving geography and legal framework of the European Union, Member States are necessarily focused on multinational integration in border management, while still wrestling with appropriate management of information-sharing with the United States. Within the United States, questions about the scope and utility of travel intelligence and biometric identification are only beginning to be raised in political debates. Finally, while the United States and Europe both understand the benefits of visa-free travel, the visa reciprocity issue has proven to be a hotspot in Euro-Atlantic relations that will require deft management.

Designing border organizations and technology systems that allow for or promote integration and interoperability among countries, meet new security needs, and support economies is a major challenge. Building border and immigration frameworks that effectively balance political, security, and economic imperatives is proving even harder.

It is doubtless true that the United States and EU Member States are increasingly viewing international cooperation, however difficult it may be, as the only way to ensure their own security. In its conclusion, the 9/11 Commission argued that

[T]he US government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other governments. We should do more to exchange terrorist information with trusted allies, and raise US and global border security standards for travel and border crossing over the medium- and long-term through extensive international cooperation.⁶³

In the aftermath of the July 2005 London bombings, the European Council emphasized that counterterrorism is a “worldwide agenda” and that “the European Union will continue to work closely with the United States, other partners, and key international bodies.”⁶⁴

States that share similar attitudes toward these challenges and their solutions are more likely to make common progress. But small differences can lead to big gaps where

political will and legal and organizational frameworks are lacking. Today, different laws, political systems, circumstances, and priorities remain obstacles to essential, achievable gains.

Our brief summary of discussions concerning governmental border organizations, border management technology, and visa-free travel policy indicates that the project of international cooperation on border management must be viewed far more broadly, systematically and seriously before policy and practical coordination can be achieved.

ENDNOTES

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¹³ Monar, "The Project of a European Border Guard" (see n.11), 177.

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About the Report

This report emerged from discussions among current and former European and North American policymakers, academics, and practitioners involved at all levels of border management who participated in a May 2007 workshop in Brussels, Belgium, and a July 2007 roundtable in Laredo, Texas. The aim of the meetings was to exchange information, enhance mutual understanding, and generate ideas about changes governments are making in border management to address the new strategic and political environment. The report examines three aspects of border management: new organizations for controlling borders, the heightened use of information technology in managing entry and exits, and visa-free travel policy.* Our main goal has been to provide a factual basis for further dialogue; that is, to describe policies, systems, and organizations as a basis for assessing similarities, differences, and solutions to common problems.

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* This paper does not address US or EU approaches to maritime border control as not all border topics could be covered.