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BORDER SECURITY IN NORTH AMERICA

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May 2021
Working Paper*

This working paper will be published as a
chapter in the forthcoming book, *North
America 2.0: Forging a Continental Future*.



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Borders are the place where some of the most challenging security issues in North America present themselves. This chapter addresses four aspects of border security arrangements among the three signatories to the North American Free Trade Agreement (NAFTA).¹

First, close cooperation in securing flows of goods and people through North America is essential for public safety and, indirectly, for prosperity in all three countries. The more that Canada, Mexico, and the United States can collaborate to keep “bad things” and “bad people” out of the region, and to ensure that immigration occurs through lawful channels, the more easily legitimate travelers and shipments can move *within* the region. As a result—and this raises the second point—the three NAFTA countries have an interest in preserving the progress that they have made on security over the past 18 years. National political debates should be prevented from disrupting mutually beneficial relationships at the border itself.

Despite the progress to date, there remains room for improvement in collaboration on border issues. The third and fourth points of this chapter, therefore, focus on the ideal security arrangements within North America. These fall under two rubrics: (1) solving problems away from the border in order to prevent security problems at the border and (2) improving operations at the borders themselves.

When it comes to “security” in a geostrategic sense, the Canada-U.S. relationship is very different from the Mexico-U.S. relationship. There is no reason to believe that what works for one dyad would apply to either of the other two.² But when it comes securing legitimate commerce and travel through North America, the goals of the three countries are congruent. The arrangements that embody sound border management apply at either land border, as well as to the much smaller amount of direct trade and travel between Canada and Mexico. The focus here is on security in this latter sense.

The Importance of Border Security

Secure borders are in everyone’s interest. Not only does border security contribute directly to public safety, collaboration among the three parties to NAFTA can prevent trade disruption should an adverse event occur. As the authors of a well-known report on the future of the NAFTA bloc put it more than a decade ago:

Failure to secure the external borders of North America will inhibit the legitimate movement of people and goods within the continent. After the 9/11 attacks, delays at the Canadian-U.S. border prompted parts shortages in both countries, costing manufacturers millions of dollars an hour. Trade across the . . . border also suffered in the immediate aftermath of the attacks, which hindered U.S. economic growth. Continent-wide consequences mean that Canada and Mexico have an overriding commercial interest in increasing North American security, apart from any other considerations. In addition, future terrorist assaults could target critical infrastructure or sites in any of the three countries. . . . International criminal

activity also poses a continuing threat to public safety in the region, including drug- and gang-related violence along the Mexican-U.S. frontier. These cross-border threats cannot be adequately addressed by any one government alone.³

The same report further noted:

Any weakness in controlling access to North America from abroad reduces the security of the continent as a whole and exacerbates the pressure to intensify controls on intracontinental movement and traffic, which increases the transaction costs associated with trade and travel within North America.⁴

From the U.S. perspective, cooperation with its two land neighbors creates an outer perimeter that reduces the threat of attack on the homeland. From the Canadian and Mexican perspectives, the security cooperation that has developed over the past 18 years means that there should never be a need to seal America's land borders, as was threatened after September 11, 2001. For Mexico, cooperation on security is also likely to involve—and should involve—capacity building for law enforcement and information sharing that enhances public safety domestically.

Just as reliable security arrangements permit deeper economic integration, so can breakdowns (or perceived breakdowns) in border security cause much larger problems in the trinational relationship.⁵ Three examples loom large in North America. First, failure to address illegal immigration risks disrupting continental ties, as evidenced by political discourse in the United States. Preventing undocumented immigration by Mexicans into the United States is a challenging problem for the Mexican government to solve, for many reasons, particularly in the absence of a well-crafted U.S.-Mexico guest worker program. However, preventing undocumented immigration by Central Americans *through* Mexico into the United States is far easier to address, and the benefits of doing so are clear. A second and related example concerns Mexico's southern border. Mexico has now become at least as important a transit country for undocumented migrants as it is a sending country—in other words, more non-Mexicans than Mexicans attempt to cross into the United States illegally from Mexico. As refugee crises in the European Union have demonstrated, perimeter security is only as strong as its weakest link. The vulnerability of one country in the region—or the failure of any one country to take appropriate security measures—adversely affects security of all three countries. A third example concerns transnational criminal activity. On the U.S.-Mexico border, drugs flow north while bulk cash and weapons flow south in a mutually reinforcing, bidirectional contraband trade. To effectively combat transnational crime, Mexico will need significant investment in its law enforcement capacity. For the United States, the reality of perimeter security is that investments in the capacity of another (particularly a neighboring) country may actually yield greater returns for security than investments in one's own country. It is this realization that lay behind the Mérida Initiative, first announced in 2007, which provided significant funding for Mexican and Central American law enforcement as well as supplemental funds targeted at strengthening Mexico's borders with Guatemala and Belize. Continued investment in Mexican law enforcement capacity is a wise investment for the continent as a whole.

But these are only the challenges with which North Americans are already familiar. New challenges related to border security arise continuously. For instance, the full legalization of

cannabis in Canada will likely lead to southbound smuggling into the United States and will certainly lead to violations of U.S. law by Canadian citizens carrying small quantities of the substance for personal use. Both governments will have to actively manage the issue of how to prevent infractions without arresting people who actually pose little threat to public safety or discouraging tourism. Other looming security issues concern cross-border critical infrastructure (such as pipelines), the illicit trade in fentanyl, the handling of dangerous incidents at ports of entry, and the continuing adaptation of transnational criminal organizations. Any of these problems could strain bilateral relationships if the framework of collaborative security is not firmly established.

Preserving Progress to Date

In 2005, a task force of notable individuals from Canada, Mexico, and the United States convened to address the next chapter of North American cooperation.⁶ On border security, this task force made five recommendations: (1) the creation of a North American security perimeter, (2) the creation of a North American vetted traveler program, (3) a “smart borders” action plan, (4) joint screening of nationals from third countries, and (5) increased information-sharing and capacity building for law enforcement. Thirteen years later, substantial progress has been made on all of these issues. For instance, it is now just as difficult for terrorists to fly into Mexico or Canada from a third country as it is for them to fly into the United States.⁷ Likewise, trusted traveler programs such as SENTRI, NEXUS, Global Entry, and FAST have all improved, simplifying border-crossing security procedures for prescreened commercial and personal travelers.⁸ Most importantly, all three countries have embraced the notion of collaborative border management (CBM), also known as “Twenty-First Century Borders.”⁹ In this approach, countries use border authorities to secure flows of goods and people through their territories, rather than to defend a specific legal line.¹⁰ CBM thus represents a crucial paradigmatic shift from 19th-century notions of sovereignty and border management to a framework that is more adaptable to the needs of the current century.

At the same time, national politics occasionally has disrupted collaboration on border management and other security issues. During the renegotiation of NAFTA in 2017–18, for instance, progress on border security was held hostage to economic points of contention. This outcome was understandable but lamentable. One of the ways that North American countries have made progress over the past 20 years is by encouraging cooperation at an operational level along the border and insulating such efforts from national-level politics.

In practice, it is not always possible to sequester conversations about border security from larger issues such as trade and immigration. However, it is vital for all parties to decouple border security policies from other issues wherever possible and consider them on their own merits. In particular, North American countries should strive to prevent national politics from interfering with quotidian working relationships at the border, which are crucial to ensuring the smooth flow of legitimate commerce and travel. The Port Security Committees (on the Mexico-U.S. border) and an analogous arrangement (Port Committees) on the Canada-U.S. border are two key examples. Countless other informal and formal law enforcement relationships, both at and between the ports of entry—from joint U.S.-Canadian patrols on the Great Lakes to ad hoc communication between officials on each side of the southwest border—are being created and cultivated every day.

Protecting these valuable relationships from politics is crucial, particularly in an era when the rhetoric regarding immigration and U.S.-Mexico relations has turned nastier.

North American countries should thus try to resolve border issues, including local law enforcement and port-of-entry operations, at the border wherever possible, rather than allowing them to become political footballs. For instance, the discovery of a tunnel used by smugglers between the states of Sonora and Arizona should be regarded as part of everyday law enforcement operations, rather than an occasion for questioning binational efforts to address transnational crime. The shooting of a Mexican who threw rocks at a Border Patrol agent should become an occasion for discussions about the process by which law enforcement agents on one side of the border can secure help from counterparts on the other side during an incident and about the value of mirrored patrols in the areas between the ports of entry, rather than for official demarches by the Ministry of Foreign Affairs.

One common way to reduce the politicization of incidents is to have in place more formal and technocratic mechanisms to address them. For instance, the governance of transnational waterways by organizations like the International Boundary and Water Commission on the southwest border and the Great Lakes Commission for the Great Lakes and the Saint Lawrence River tend to depoliticize incidents and focus discussion on technical issues. For issues of border management, this approach should be adopted wherever possible.

Solving Problems Away from the Border

Many problems caused by ill-conceived national policies manifest themselves at the border—often literally. For instance, the challenge of undocumented immigration into the United States from (or through) Mexico is fundamentally a product of inadequate employer sanctions against hiring undocumented workers in the United States and the absence of properly structured guest worker program. Attempting to address the perverse consequences of lax interior enforcement and labor market demand by reinforcing physical security at the border is inefficient, ineffective, and sometimes inhumane. The same is true for the traffic in illegal drugs, which governments could address most effectively through policies that discourage demand but which (given the economics of the illegal drug trade) can be addressed only inefficiently and incompletely at the border. The optimal security arrangements in North America, therefore, include policies that prevent problems which are most apparent at the physical border but have their origins elsewhere. In particular, closer attention to immigration reform and the flows of illegal drugs and weapons would meaningfully contribute to border security in North America.

Comprehensive immigration reform likely would include employer sanctions for hiring undocumented workers and a jointly negotiated guest worker program that presumably would allow a large number of Mexicans and Central Americans to work legally in the United States and Canada. Another possible component of immigration reform, tied to security, would involve assistance to Mexico in strengthening its southern border, especially with Guatemala. Funding should be directed to the Mexican government for physical infrastructure at and around ports of entry, as well as to the Guatemalan government to pay for a computer-assisted entry-exit system and professionalization of its customs agency. This effort should be coupled with collaboration between Mexico and the United States in adjudicating asylum claims by Central American migrants before they reach the interior of Mexico.

North America as a whole is in need of better policies regarding trafficking in illegal drugs and weapons. Policies that reduce drug demand in the United States would be especially critical.¹¹ These policies might include expanded drug testing (to discourage use), better supervision of the prison-probation-parolee population, and street-level enforcement that makes it more difficult for buyers to meet sellers. All three countries also would benefit from efforts to develop sound, evidence-based drug control policies, especially for cannabis. One step might be for civil society organizations or academic institutions to develop drug control proposals that are aimed *at the region as a whole* and that take into account the interconnected nature of North American economies. Similarly, tighter restrictions on the sale of weapons and ammunition to potential straw purchasers would help curtail the flow of illegal weapons and their use in criminal activity. In conjunction with these efforts, Mexico would benefit from expanded funding for programs aimed at building Mexican domestic law enforcement capacity, along the lines of the Mérida Initiative. In particular, funding should include assistance in developing a vetted Mexican federal frontier force (or vetted units of the Federal Police) that can mirror the U.S. Border Patrol in the areas between ports of entry.

Improving Border Management

In an era of global travel networks and just-in-time manufacturing, governments need to be able to facilitate beneficial commerce. At the same time, governments need to work together to interdict illegal flows, using the wide-ranging authorities they have at the border to do so. All of these activities will be much more efficient and effective if done in collaboration between countries on both sides of a physical border, rather than done by one unilaterally or by both in an uncoordinated way. This is particularly true when the goal is to dismantle transnational criminal organizations that operate more or less seamlessly on both sides of a border and engage in bidirectional smuggling.

The reality of flows in North America is that “bad things” leaving one country will inevitably return to it in some way. Each country can learn more about “safe” shipments and vehicles from what its neighbors, thus ensuring that they do not have to expend law enforcement resources on things known to be unproblematic. For this reason, North American countries must care as much about what goes out of their country as what goes in—a significant paradigmatic departure from conventional thinking about borders during the 20th century.

Although all three countries have rhetorically embraced collaborative border management at the highest levels of government, implementation remains incomplete. In some cases, there is still the danger of antiquated thinking—for instance, the fear that harmonization of standards for products compromises “sovereignty.” Such thinking can prevent otherwise easy “wins” for the region as a whole. In the future, border operations should be improved along the critical lines of interconnectivity, streamlined commerce management, noncommercial travel (especially in connection with terrorism), and comprehensive border security.

On the subject of interconnectivity, all new authorized crossing points should be constructed as a single binational port of entry that straddles the frontier, staffed by cross-deputized officers. Where cross-deputation is impossible for whatever reason, such as the configuration of existing ports, all processing should be single-entry/exit, so that an entry into one country is automatically counted

as an exit from the other. Communications should be interoperable, so that security personnel at and between the ports of entry can communicate securely with their counterparts on the other side of the border. Representatives of the neighboring country should be informed ahead of time about procurement of equipment that might affect the interoperability of communications. In addition, joint or fully parallel patrols should operate in the areas between the ports of entry, as with the Canadian-American program Shiprider, in which U.S. and Canadian officers operate together on the same vessel in the Great Lakes. On the southwest land border between the ports of entry, as noted above, Mexico should develop vetted units that can mirror the operations of U.S. Border Patrol in major smuggling corridors. In some cases, representatives of the third country might participate as observers in mirrored operations conducted by the other two countries for training purposes. Such cooperation would not require novel governance structures, nor would it involve the creation of any kind of binational or trilateral frontier force.

To facilitate and streamline cross-border commerce, all three countries should build on their existing trusted shipper programs. These programs—voluntary arrangements by which shippers agree to secure their own supply chains (facilities, conveyances, etc.) in exchange for expedited processing and priority in business resumption—have grown and improved over the years, but they should be further enhanced in several ways. Verification and inspection for vetted trader programs like the Customs-Trade Partnership Against Terrorism (C-TPAT) should be conducted jointly (as is already happening in Canada), and Canada's Partners in Protection (PIP) program and C-TPAT need to be truly harmonized; in other words, a company that belongs to PIP should be recognized as being C-TPAT approved in the United States and vice versa. Membership in Authorized Economic Operator programs should likewise be mutually recognized in all three countries.¹² For commercial drivers, the three governments should consider introducing mandatory radio-frequency identification (RFID)-equipped border crossing cards. RFID signals would allow customs authorities to link to driver, truck, trailer, and shipment information, providing more advanced notification of entries—a crucial improvement in land border operations.¹³ Similarly, all three countries should run jointly developed targeting algorithms on cargo data, in order to detect potential dangerous or illegal shipments or conveyances.

Along with commercial travel, noncommercial travel should receive equal scrutiny, particularly as it pertains to issues of terrorism. To this end, trusted traveler programs should be expanded. The three countries should also investigate the potential for “known traveler” digital identity programs that allow individuals to share information with authorities on a one-time basis as they pass through ports of entry, thereby allowing law enforcement personnel to focus on higher-risk individuals. Such programs would reach a segment of people (including visitors from outside North America) who cannot access existing trusted traveler programs or who simply do not wish to surrender their personally identifiable information to the government on a permanent basis. Primary inspection at ports of entry should be eliminated, at least for nationals from other North American countries. Travelers should be referred to secondary screening based on a combination of targeting and the judgments of officers on the scene, as well as a reasonable number of random checks designed to maintain a baseline deterrence against smuggling. North American countries also should continue intelligence collaboration on counterterrorism, including asylum claimants or refugees in Canada and joint screening of air travelers arriving into the continent from abroad. Where appropriate, officials from the third country might participate in such joint operations as observers, in order to glean information for analogous operations in their home country. Furthermore, the three countries

should collaborate more comprehensively to prevent the movement of known or suspected members of transnational criminal organizations into and through the region, including the development of “watch lists” analogous to those used to screen known or suspected terrorists.

The final overarching area of concern is border security. Major investigations of cross-border smuggling and trafficking should be joint, and operations should be coordinated to achieve maximum disruption of criminal organizations. The three countries should also consider jointly endorsing “disruption” as a theory of action against certain types of transnational crime (rather than the conventional law enforcement model of investigate-arrest-indict-prosecute-incarcerate), where traditional approaches are known to have a weak deterrent effect.¹⁴ In some cases, such as human trafficking investigations, binational task forces could include a representative of the third country (presumably as an observer) as a way of sharing best practices and training law enforcement personnel. Planning for major natural disasters that span the border, as well as for public health crises that involve border communities, should be done jointly. When planning is “dual-binational,” representatives of the third country might attend planning sessions as observers. Likewise, the three countries should develop a joint plan to protect transnational critical infrastructure in North America, such as pipelines, from all hazards, from cyberattacks to extreme weather events.¹⁵ Again, binational planning might incorporate official observation by representatives from the third-partner country.

Obstacles and Next Steps

The most important obstacles to deeper collaboration on security come from three sources. The first is ignorance of the state of play at the physical borders, including of the mutual benefits that already have been obtained from close collaboration. Lack of awareness about the actual situation at the border creates opportunities to misrepresent any one adverse incident. A second and related problem is the nationalization of local border issues, which tend to blow operation-level mishaps into international incidents. A final source is unjustified negative discourse about friendly neighbors, whose cooperation is essential for security in the region.

These three threats to cooperation must be countered vigorously. Indeed, further deepening of collaborative border management in North America and continuous public support for such collaboration by all three governments will be critical to future cooperation. This approach suggests a series of policy changes, detailed above, but it also involves public diplomacy.

Most people in Canada, Mexico, and the United States will not cross either of the two land borders in North America themselves. Very few will learn much about the intricate pattern of cooperation that makes borders in the region run smoothly much of the time and brings material benefits to citizens of all three countries. They must therefore rely primarily on politicians and the mass media. Unfortunately, political discourse about neighboring countries can be tendentious, and media coverage can provide a distorted picture of the situation on the ground. For this reason, it is incumbent on all those familiar with border security—elected and appointed officials, business executives, policy experts, members of civic groups, community leaders, journalists, and the like—to reiterate the importance and value of security collaboration in North America.

¹ NAFTA is abbreviated in Spanish as TLCAN (Tratado de Libre Comercio de América del Norte) and in French as ALÉNA (Accord de libre-échange nord-américain). NAFTA is to be replaced by the U.S.-Mexico-Canada

Agreement (USMCA, also abbreviated as CUSMA (Canada–United States–Mexico Agreement)/ACEUM (Accord Canada–États-Unis–Mexique) in Canada and T-MEC (Tratado entre México, Estados Unidos y Canadá) in Mexico, once the latter is ratified.

² For instance, Canada is a member of NATO (North Atlantic Treaty Organization), and American and Canadian soldiers have fought together in international conflicts from World War I to Afghanistan. By contrast, military cooperation between the United States and Mexico is more recent and limited. (There is little if any military cooperation between Canada and Mexico.) That said, there is value in greater military-military contacts between Mexico and NATO partners, and the question of whether Mexico should join the North American Aerospace Defense Command or become a Major Non-NATO Ally (MNNA) of the United States remains an open question.

³ Council on Foreign Relations, the Canadian Council of Chief Executives, and the Consejo Mexicano de Asuntos Internacionales (Mexican Council on Foreign Affairs), *Building a North American Community*, Council on Foreign Relations Independent Task Force Report No. 53 (Washington, DC: Council on Foreign Relations, 2005), 3–4.

⁴ *Building a North American Community*, 5.

⁵ Security arrangements are actually “dual-binational” than trinational (a term that implies a robust Canada-Mexico partnership and presumes that institutions apply equally to all three dyads). However, because the same principles of border management apply in both of the main dyads, the terms “trinational” and “continental” appear in this chapter.

⁶ See *Building a North American Community*.

⁷ Seth M. M. Stodder, “Rethinking Borders: Securing the Flows of Lawful Travel and Commerce in the Twenty-First Century,” in *Beyond 9/11: Homeland Security for the Twenty-First Century*, ed. Chappell Lawson, Alan Bersin, and Juliette Kayyem (Cambridge, MA: MIT Press, 2020).

⁸ SENTRI (Secure Electronic Network for Travelers’ Rapid Inspection) is a pre-9/11 program for frequent border crossers at the U.S.-Mexico border that was not originally designed with security in mind. NEXUS is a vetted traveler program for crossings (air, land, and water) between Canada and the United States. Global Entry is a vetted traveler program for international air passengers. FAST (Free and Secure Trade) is a program for truck drivers. Trinationally, Canadians may apply for Mexico’s Viajero Confiable (Trusted Traveler) Program, and members of Viajero Confiable can apply for NEXUS.

⁹ See “Declaration by the Government of the United States of America and the Government of the United Mexican States Concerning Twenty-First Century Border Management,” The White House, Office of the Press Secretary, May 19, 2010, <https://obamawhitehouse.archives.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c>; and “Declaration by President Obama and Prime Minister Harper of Canada – Beyond the Border,” The White House, Office of the Press Secretary, February 4, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/02/04/declaration-president-obama-and-prime-minister-harper-canada-beyond-bord>.

¹⁰ Alan D. Bersin, “Lines and Flows: The Beginning and End of Borders,” *Brooklyn Journal of International Law* 37, no. 2 (2012): 389–406.

¹¹ Mark Kleiman, “Surgical Strikes in the Drug Wars: Smarter Policies for Both Sides of the Border,” *Foreign Affairs* 90, no. 5 (2011): 89–101.

¹² At present, there are several obstacles to further harmonization. The first concerns applications. Canada and the United States introduced a single application process that allows a company applying for membership in the trusted shipper program of their host country to simultaneously apply for membership in the other country’s program by merely checking a box. However, the governments decided that this single application process will only exist for highway carrier applicants, and there are no plans to expand it to importers or other potential trusted business entities (including customs brokers). Expansion of this program is warranted. Furthermore, the portals developed by U.S. Customs and Border Protection (CBP) and the Canada Border Service Agency (CBSA) to allow industry partners to manage their membership should be interoperable, with one portal for both programs. The Canadian portal should also be improved to allow members insight into their supply chain partners (i.e., whether they are in the program, in good standing, suspended, removed). Second, Canada requires membership in two additional programs for a company to be deemed “trusted”: Customs Self-Assessment (CSA) for companies and Commercial Driver Registration Program (CDRP) for truckers. The CSA program, an extremely expensive back-end accounting and audit program, should be decoupled from security programs like PIP and C-TPAT. The CDRP program should be harmonized with FAST. Currently, the CDRP card has no security or background check attached to it, unlike FAST. Drivers that have the FAST card have been vetted through both U.S. and Canadian background checks. The benefits that come with having the card (deemed low risk, access to FAST lane) are reserved for those able to obtain the card through the intensive application process. Allowing drivers that have a CDRP card access to the FAST lanes diminishes the value of the FAST card and reduces security by allowing a less-trusted driver to enjoy the same privileges. Third, in Canada in any goods on a truck are subject to regulations imposed by other government

departments—such as the Canadian Food Inspection Agency, Health Canada, Natural Resources Canada, or Transport Canada—the truck cannot use the FAST lane. This requirement mixes other regulatory issues with security considerations.

¹³ An RFID-equipped border crossing ID card already exists for Canada, but it is not mandatory and can be difficult to obtain owing to the strict security features and background check required. If security tiers were introduced, with corresponding levels of facilitation benefits, the background check would remain in place at the highest level. For more detail on this proposal, see North American Strategy for Competitiveness, “Empowering cooperative processes that enable both increased security and trade facilitation,” n.d., www.nasconetwork.com.

¹⁴ For further discussion of the “disruption” paradigm for combating transnational crime, see Alan Bersin and Chappell Lawson, “Homeland Security and Transnational Crime,” in Lawson, Bersin, and Kayyem, *Beyond 9/11*.

¹⁵ For a further discussion of cybersecurity, including the need for long-range planning in the region and protection of the next generation of critical infrastructure, see the chapter written by Luisa Parraguez, Paul Stockton, and Gaétan Houle.