

Immigration, Globalization and National Security:
An Emerging Challenge to the Modern Administrative State.

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Abstract:

In the February 2002 edition of *PA Times* this author published a commentary entitled: “The Crisis in German Public Administration” where he argued that the growing debate on immigration policy in Germany provides a lens into which we can view the mounting crisis in public administration. Germany has Europe’s most liberal immigration and asylum laws and no issues carry as much political weight as the current immigration debate in Germany. The piece addressed the growing debate centered on Germany’s generous immigration policies together with its need to protect its borders against Muslim extremist groups who took advantage of favorable immigration rules and tough information protection laws.

In an effort to expand this thesis to the European Union and the United States – *writ large* - this author was invited to take part in an Atlantic Council of the United States and NATO Office of Information sponsored European Security Study Tour to Brussels in July of 2002.¹ During the week-long visit, he was able to explore in-depth the security issues associated with large-scale immigration to the European Union and the United States and what role public administration can play in protecting borders against terrorists who take advantage of liberal immigration and visa granting regimes. To this end, this author met with senior diplomats, policy makers, policy planners and an array of public servants who staff offices at NATO Headquarters, the European Union, European Commission the European Council and the U.S. Mission to the E.U. who are currently working on transatlantic security issues.

Expansive, free, and open societies such as the E.U. and the U.S. cannot make themselves invulnerable to terrorism. Because of its money, organization, international reach, training, fanaticism, desire to obtain weapons of mass destruction, and willingness to inflict maximum death and destruction on civilian and military targets alike international terrorism represents a serious threat to transatlantic security greater than that posed by any other type of terrorist foreign or domestic. It is therefore critically important that we develop visa and immigration policies to deal with the threat posed by foreign terrorists. An effective transatlantic security strategy can, however, greatly reduce the odds that the most deadly and costly types of terrorist attack will be carried out. Viewed in that way, the goal of providing transatlantic security is far from hopeless.

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Introduction:

Globalization has been the defining feature of the late twentieth-century, exemplified by sharply increased trade in goods, inter-connected financial markets and large-scale international migration. Globalization is defined by cross-border connectivity, including porous borders, which serve to expedite flows of goods while at the same time increase the level of immigration – both legal and illegal. Simply put, the large-scale movement of people poses potential threats to the security of the European Union and the United States. It should also be clear that solutions to the pressures created by large-scale immigration, are beyond the means of any single state. Migration and the security challenges it poses can be controlled only by international agreement and increased administrative cooperation within and among member states.

The events of September 11th 2001 have underscored the urgent need to move quickly on defining immigration as a valid transatlantic security issue. The threat of terrorism will require increased immigration control in the form of a more thorough screening of visa applicants by consular officials in the countries of origin, shared computer data between national law enforcement agencies, stepped up border patrols, and undertaking combined law enforcement and international security actions to identify and arrest suspected terrorists such as was undertaken by NATO troops in Bosnia and the former Yugoslav Republic of Macedonia earlier this year (Finn, 2002). These trends – in which the lines between military, security, police work and foreign policy become blurred – will continue to grow. To ensure the safety of our citizens and our wider global community this author argues that we need to look at immigration policy as a security issue. To be sure, we must be careful not to brand all immigrants as terrorists (none of the 19 terrorists

of September 11th was an immigrant. They were in the U.S. on temporary, “non-immigrant” tourist or student visas. Further, records indicate that they never applied to the INS for a Green Card or any other adjustment of status). Yet, after considerable review of the existing literature, consultation with scholars, policy makers, and security experts alike this author has come to the conclusion that because virtually every type of immigration, i.e., refugee and asylum policy, the issuance of non-immigrant visas, and other temporary-stay provisions can *potentially* be exploited by terrorists, immigration policy in general should be framed in terms of security. Therefore, focusing on just one category such as student visas, or even temporary visas in general would be shortsighted. Rather, in light of September 11th all aspects of the immigration system, including the way visas are processed in overseas consulates, the handling of foreign citizens at ports of entry, policing the nation’s borders, and enforcement of immigration laws within the European Union and the United States need to be transformed and strengthened in order to reduce the terrorist threat. No doubt, this presents a formidable challenge to the men and women who serve on the front-line such as border police, asylum and visa officers, immigration judges and national militaries. All these actors are forced to render administrative decisions with limited information and often must be made in moments of crisis, involving highly charged national debates.

This paper examines the contemporary (and newly emerging) challenge facing the member states of the European Union and the United States in protecting their borders against international terrorism while at the same time acknowledging the reality of large-scale immigration to these societies and protecting the rights of non-citizens. Close administrative cooperation at an international level among security, judicial, law

enforcement and national militaries must be given more weight in our attempt to wrestle control of open borders while at the same time fashioning humane policies, which take note of the rights of non-citizens – legal and illegal – within our national borders.

Although historians, sociologists, and legal experts have written extensively on immigration policy little has emerged from the public administration and public policy disciplines. In examining immigration policy through an administrative and policy analytic lens, we can better identify processes and patterns relating to the issuance of visas and immigrant selection, as well as the role of program management and administration. In addition, a careful study of administrative capacity also may help to answer the more difficult and vexing questions relating various administrative structures in order to ensure that implementation is effective. On a practical level how is immigration and visa policy administered among the member states of the European Union and the United States? How uniform are entry requirements? What can this tell about administrative capacity to control immigration in the E.U. and the U.S.? What role should national, state and local administrative units such as foreign ministries; law enforcement agencies, national judiciaries and militaries play in strengthening international borders against international terrorists?

Within the arena of immigration policy, the major challenge facing public officials in E.U. and the U.S. is as follows: preventing international terrorists from entering borders while at the same time constructing meaningful efforts to ensure that legal migrants, and temporary visitors are not victimized by iniquitous enforcement measures. The events of September 11, 2001 have brought home the magnitude of the security challenges we face at the beginning of the 21st century. These threats are difficult to predict and that have

the potential to grow into large-scale confrontations. The time is right, therefore, for public administration to undertake a more central role in forging transatlantic security links and the protection of international borders.

Overview of Immigration to the E.U. and the U.S.

Every state must face the difficulty of regulating the entry of individuals into its natural territory. Likewise, the state must establish the conditions of residence for aliens, and the methods by which non-citizens can become citizens. Decisions such as these, concerning the control of a population within a given territory, are simply not technical, economic or demographic choices; they are profoundly political choices that often must be made in moments of crisis, involving highly charged national debates. They literally can affect the lives of millions of people; and they can reveal in pristine form the innermost workings of the political system and the key philosophical assumptions upon which the system is based. What better way to study the relationship between the state, the individual, and society than to look at the way in which the state deals with foreigners, who are among the most vulnerable members of any (democratic) society, lacking many of the basic rights that are guaranteed to citizens.

James F. Hollifield (1989) "Migrants into Citizens: The Politics of Immigration in France and the United States." Paper delivered at the 1989 Annual Meeting of the American Political Science Association, August 31 – September 3, 1989, Atlanta, GA.

When James Hollifield delivered this paper at the 1989 Annual Meeting of the American Political Science Association barely three months before the fall of the Berlin Wall he seemed to foretell the crisis situation which the member states of the European Union (at that time the European Community) and the United States would face when coming to terms with the unprecedented international migration flows they experienced in the early 1990s. With the collapse of communism in Europe and the subsequent rise of irredentist and nationalist tendencies on a global scale, both Western Europe and the United States were faced with the challenge of sustained wide-scale migration flows into their territory throughout the early half of the decade. Accompanying these flows were highly charged national debates surrounding immigration which as Hollifield noted laid

bare and revealed “in pristine form the innermost workings of the political system and the key philosophical assumptions upon which the system[s] [are] based.” What is surprising, however, is that despite the restrictionist climate of public opinion in both Western Europe and the United States, the 1990s has been the decade of immigration (Tichenor, 1994; Reimers, 1992) and one, which recast the racial and ethnic composition in throughout Western Europe and the United States.

Large scale immigration to the United States and the countries of Western Europe who now make up the European Union has continued irrespective of economic cycles, public opinion, and restrictionist tendencies, immigrants and foreigners have acquired rights and therefore the capacity of liberal states to control immigration is constrained by laws and institutions (see also, Hollifield and Zuk, 1998). Within this framework, argues Gibney (1999) states do not maintain completely open borders but as an entity that strives to create national communities consistent with liberal egalitarian principles and that treats foreigners according to the same principles (p. 175). In short, this new rights-based liberalism affords certain legal entitlements that protect immigrants against the exclusionary powers of the state. Yet at the same time, terrorists to shield their activity from legal authorities have used these legal entitlements and liberal policies.

In both the U.S. and E.U. the convergence of liberal immigration policies in the past fifty years is the combination of rights-markets coalitions (Hollifield, 1992; Hollifield and Zuk, 1998). The so-called rights based expansionism relied chiefly on the institutional transformation of the legislatures and courts in both the E.U. and the U.S. after 1965. This author notes that a new political culture, which developed in the 1960s, made possible the emergence of a new politics of civil liberties and human rights.

Relying on the principle of constitutional and social state, courts granted foreign workers who had repeatedly renewed their residence permit the right of permanent residency. This meant that it became legally very difficult, and eventually impossible, to deny these workers further residence (Hoffman, 1999:363; see also Hailbronner, 2000). To which Hollifield (2000) adds, “rights in liberal democracies have a very long half-life. Once extended, it is very difficult to roll them back” (p. 17).

Looking at the situation in the U.S. Christian Joppke (1997) notes:

Throughout the 1980s hard-nosed government measures of mass detention, deportation, and high-sea interception were undercut by increasingly activist courts that no longer deferred the traditional plenary power of Congress and the president over immigration, and brought to bear the communitarian impetus of immigration law on the new field of asylum (p. 256)

In concert with this institutional transformation arose the political mobilization of social movements and political parties in both countries which advanced a “clientelistic politics of immigration” (Freeman, 1995:887) strongly oriented toward expansive immigration policies.

In comparing the European Union to the United States with respect to immigration policies, one must also keep in mind a fundamental difference between the two and the development of their political institutions. The United States was born and grew in the demographic context of immigration while much of the European Union became nation-states in the context of emigration. The United States has always been an "immigration country." After centuries of emigration from the countries, which are now present-day E.U. members, net migration flows only recently, reversed direction. In a sense, the E.U. is transforming its political institutions of citizenship and developing something it

previously did not need - an immigration policy -- so as to conform to the demographic context of immigration.

Immigration and Transatlantic Security in the Aftermath of September 11th: The U.S. Administrative Response

“The terrorist attacks of September the 11th underscored in the most painful way for Americans that we need better control over individuals coming to our shores from other nations. We remain a nation committed to welcoming America's friends from abroad, but we have a new determination not to see our welcome abused by America's enemies.”

Attorney General John Ashcroft, November 14, 2001.

In the aftermath of September 11th, immigration and visas policy became a transatlantic security issue. The unexpected political terrain of post 9-11 signaled a decisive opportunity for the member states of the European Union and the United States to energize their individual and collective willingness to deepen integration in administrative matters. Implementing immigration and visa policy in the U.S. is the responsibility of the Immigration and Naturalization Service (INS) within the Department of Justice. The INS is responsible for all areas of immigration policy which includes regulating permanent and temporary immigration to the United States (to include legal permanent residence status, nonimmigrant status, e.g., tourists or students, and naturalization; maintaining control of U.S. borders; identifying and removing people who have no lawful immigration status in the United States. The INS also works with other Federal, state, and local law enforcement agencies to uphold the laws of the United States.

In a November 14, 2001 memo to INS Commissioner James Ziglar attorney General John Ashcroft noted the following contradictory nature of the INS “the

Immigration and Naturalization Service is tasked to carry-out two competing missions; the first mission of welcoming new immigrants to America, and the second mission of seeking to protect our borders by enforcing immigration laws.” “In addition,” noted Secretary Ashcroft, “the INS has suffered from insufficient accountability between field offices and the headquarters, and a lack of consistent operations and policies” (Ashcroft, 2001) Under the plan, clear and separate chains of command for the agency's service function and the enforcement function are created with the goal of improving efficiency by eliminating layers of management between field offices and headquarters, and accountability is promoted by providing overall direction under a single agency head, the INS commissioner. According to INS Commissioner Ziglar the broad goal of the INS since September 11, 2001 is to separate the two functions. Or, as James Lindsay, Senior Fellow at the Brookings Institution writes “the dual role of the INS in post-911 America is to encourage international visitors, catch illegal immigrants, welcome refugees from foreign wars, stop the flow of illegal drugs, facilitate international trade, keep out terrorists, and embrace people seeking to become Americans (Lindsay and Michaelidis, 2002).

In the past year, the United States has implemented several measures aimed at getting more control of its borders and strengthening laws which expand law enforcement’s ability to pursue suspected terrorists living within its borders. Three measures having the greatest impact on current immigration policy include: creation of the Office of Homeland Security in the weeks immediately following September 11th;

passage of The U.S.A. Patriot Act in late October 2001; and passage of The Enhanced Border Security and Visa Entry Reform Act in May 2002.

Immediately after last fall's attack, President Bush created the White House Office of Homeland Security (and the Homeland Security Council). If Congress approves the creation to the cabinet level, the newly created Department of Homeland Security will be one of the most significant transformations of the federal bureaucracy in recent memory bringing roughly 170,000 civil servants under one department. The department's defining mission would be the protection of America's borders. It would be responsible for the following: border and transportation security; emergency response and preparedness; chemical, biological and radiological countermeasures; and information analysis and infrastructure protection. The new Department of Homeland Security would include the INS and would separate immigration services from immigration law enforcement. The new Department would assume the legal authority to issue visas to foreign nationals and admit them into the country. The State Department, working through the United States embassies and consulates abroad, would continue to administer the visa application and issuance process, however. In the case of information sharing and gathering, the Department would engage in threat analysis and warning in an effort to thwart potential terror attacks via improved communications with state and local public law enforcement agencies. At present, legislation creating the Department has reached an impasse in the Senate due to President Bush's insistence on waiving civil service protections and denying union rights to some 43,000 civil servants who will be moved into the Department (Hoy, 2002).

The second measure adopted, The U.S.A. Patriot Act, confers increase detention authority on the Attorney General based on predictions of threats to the national security. Specifically, the new law permits the detention of non-citizens facing deportation based on the Attorney General's certification that he has "reasonable grounds to believe" the non-citizen endangers national security. While immigration or criminal charges must be filed within seven days, these charges need not have anything to do with terrorism, but can be minor visa violations of the kind that normally would not result in detention at all (for a full critique of the Act see, American Civil Liberties Union, 2001). Though the USA Patriot Act was passed by overwhelming margins in both the Senate (98-1) and the House of Representatives (356-66) the 342-page law has been criticized by civil libertarians and constitutional rights groups as overstepping the bounds of proper law enforcement procedure. Further, and questions remain surrounding its effectiveness in preventing future terror attacks from foreign-born nationals.

Finally, the most wide-reaching law to impact current immigration policy is the border security bill that was approved by Congress in May 2002 (The Enhanced Border Security and Visa Entry Reform Act, P.L. 107-173). Recognizing that it's possible to distinguish terrorists from immigrants, the new law mandates better intelligence gathering and information sharing among government agencies. Most importantly, it provides for a "layered screening system that uses technology and linked databases to identify those with criminal or terrorist ties before they enter the United States" (Jacoby, 2002). Specifically, the law requires enhanced review of visa applicants; authorizes funds to hire additional staff and to train consular officials and diplomatic security agents; authorizes the State Department to issue all foreign guest visas that are tamper

resistant and machine readable utilizing biometric identifiers, e.g., retina scans and finger prints; finally, the Act authorizes the State Department to be given access to information contained in the FBI's National Crime Information Center database as consular officials perform thorough background checks on all visa applicants (U.S. Department of State, May 2002). According to one sponsor of the legislation in the U.S. House of Representative, Delaware Congressman Mike Castle (2002) noted:

The terrorists who launched the attacks on the World Trade Center and the Pentagon clearly exploited the relative openness of our immigration system to kill innocent Americans. It is imperative that we make immediate changes in our immigration laws and procedures to thwart future potential terrorist acts. Of particular importance is to better monitor the millions of foreign visitors who come to our nation each year on a temporary basis through tourist, student or temporary work visas (Castle, 2002).

Although these measures enacted in the past year may look sensible on paper, given the size of the immigrant population in the U.S. these measures may be all but impossible to implement. To be certain, it makes sense, for example, to track whether those who come here as students are actually studying. In addition, it seems sensible to check that all those who enter the country on temporary visas to leave when they say they will, or to ask non-citizen legal migrants to report their change of address. But, as Steven Camarota (2001) at the Washington, D.C. based Center for Immigration Studies warns

Because every part of our immigration system has been exploited by terrorists, we cannot reform just one area, but must address the problems that exist throughout . . . The solution is not to single out Middle Easterners for exclusion or selective enforcement. Instead we need to more carefully check the backgrounds of all visa applicants, better police the borders, strictly enforce the law within the country, and, most important, reduce the level of immigration to give the INS the breathing space it needs to implement fundamental reforms (Camarota, 2001).

Theoretically, it makes sense to track those who come as students, or temporary visitors, the problem is that the Immigration and Naturalization Service cannot possibly be expected to fully implement these measures without major investment in the agency's personnel and data-gathering resources. To get a better idea of the problem faced consider the following:

INS Commissioner James Ziglar said that, while there are 500 million entries and exits from the United States each year, his agency has fewer than 5,000 inspectors to process these visitors and about 2,000 investigators and intelligence agents to deal with those who have overstayed their visas or violated their immigration status (Bunis, 2001).

Clearly, what is needed is an increased investment in personnel, better coordination and information sharing internationally, and within the U.S. (both horizontally among Federal government agencies and vertically between state and local governments). The list of international agencies, federal agencies, and state and local governments is long. This conglomeration of public agencies makes it essential to develop real-time information sharing across international borders and bureaucracies. A recent Brookings report notes, "that although considerable resources go into the collection, analyzing and sharing of information, serious shortfalls remain." Further, "today's information strategy lacks an overall architecture. Massive information collection can be of little value until the data is shared in a usable way" (O'Hanlon, 2002). With only 2,000 investigators and intelligence agents, the INS is clearly overextended. If the INS is to be effective, agency manpower will have to grow.

Immigration and Transatlantic Security in the Aftermath of September 11th: The E.U. Administrative Response

The Amsterdam Treaty on the European Union, which came into force on 1 May 1999, provides the legal basis for a common European Union policy in the area of immigration. The administrative mechanism by which immigration policy within the European Union is implemented lies with the Justice and Home Affairs (JHA) Directorate-General. The JHA is responsible for legal and illegal immigration, asylum, and visa and border control agreements among member states of the E.U. Obviously, the greatest hurdle faced by the JHA is shaping a meaningful and coordinated policy approach, which addresses the security concern of each member state while at the same time balancing the rights of non-citizen immigrants. Yet, this is no easy task. As one scholar of the E.U. writes

Even though JHA is arguably the most rapidly evolving policy field in the E.U., progress in this new arena has been hampered by the sensitivity of the issues tackled in the dossier, lack of coherence and consensus, member states' reluctance to transfer policy-making authority to European institutions, and the awkward institutional structures and cumbersome intergovernmental decision-making processes created by the Maastricht Treaty (Ucarer, 2002).

Before proceeding further, it would be helpful to briefly discuss the hurdles unique to an emerging federal Europe in an effort to call attention to the varied administrative traditions of individual member states. Highlighting the myriad institutional and administrative obstacles should give the reader a better appreciation of the challenges faced by member states of the European Union as attempt to construct a coordinated and integrated response to the events of September 11th. Viewed through an administrative and policy analytic lens, interest in constructing a common immigration, visa and border control regime within the federal European Union centers more around policy execution

(implementation) rather than policy making (politics). Developing policies is one thing, implementing them is another. By focusing on the role of public administration in this regard, this author is more interested in whether member states of the E.U. can design and develop administrative standard operating procedures for making and implementing policies rather than policy making itself. To which, Richardson (1981) argues that most societies develop legitimizing norms for policy activity reflecting deep-rooted values in society often in the forms of constitutional and legal values. Public administration and policy implementation within the E.U. is extremely diversified and complex and can be best understood within a functional framework. That is, civil servants in functionally specific bureaucracies, “operate on the boundaries between national and international policy making. Above all their experience, interests and career profiles equip them to operate effectively in the immensely complex and expanding interstices between domestic and regional [and transnational] milieu (O’Neill, 1996:42). Nevertheless, it is possible to identify elements of administrative order in the policy process while at the same time taking into consideration unique historical, linguistic and cultural identities of E.U. member states.² Here the focus on administrative responsibility not only falls on policy makers but national and sub-national bureaucratic entities divided into separate administrative spheres of responsibility or functional sectors. In the German case, for example, administering public policy is distinctive reflecting a particular historical experience and cultural attitudes which have come about largely as a result of the devastation of war and the labor of reconstructing a polity and society in its aftermath.

² At the national level, Wallace notes (1990) civil servants “push towards positions in conformity with interests known as national and on the other to achieve results in a policy network where consensus is normally seen as a major value itself . . . [N] ational officials quite often fulfill time-consuming and troublesome roles as active ‘brokers,’ linking the national and international arenas.” (Wallace, 1990:235)

One aspect of the German administrative and policy style, which sets it distinctly apart from other E.U. members, is its approach to problem solving characterized by a high degree of objectivity – *Sachlichkeit* – and on attitudes that has a cultural distaste for the materialism of politicking. (Dyson, 1982; see also, Aberbach, et. al., 1981; Katzenstein, 1993; Peters, 1989). Conversely, in the Greek case, administrative patterns are characterized by a bureaucracy, which has a relatively low status, in part because it is generally politically appointed. Patronage is generally widespread throughout the Greek civil service (Page, 1995). Nevertheless, in this pattern of public administration Greek officials still regard themselves as the servants of the state. According to Bourdouvalis (1998) Greece’s seemingly disparate approach to a more formal Weberian type public administration found in Germany should be viewed with regard to Greece’s cultural and geographical singularity within the EU.

Greece’s geographical position – separate from the other member states and at the end of the Balkan Peninsula – inevitably affects Greece’s role in the EU . . . Greece is the only EU member state that borders the Balkan states . . . the Greeks are not deterred by the shaky legal framework, bureaucratic foot dragging, and delays in obtaining licenses and permits that are still an inevitable part of doing business in the Balkans.” (Bourdouvalis, 1998:257).

The differences in policy and administrative styles serve to underscore the complexities of integrating a more coherent response to September 11th within a federal framework. Further, federal systems within the E.U. such as Germany, Belgium and Austria limits their bureaucratic power within legalistic parameters. As a legal concept, federalism within each of these countries can best be described as states and / or regions who possess a constitutional right to protection from the encroachment of the federal government (Page, 1995: 261). To which Ucarer (2002) adds “even though member

states have historically not been comfortable with aligning their national-legal systems or working very closely with each other's law enforcement agencies, such reticence and the resultant incomplete integration could produce significant internal security gaps in a frontier-free Europe." This descriptive model of federalism in Europe reflects the administrative autonomy of individual E.U. member states not found in the U.S. case. Reflecting an American view of constitutionally mandated federalism, Kenneth Wheare (1964) defined federal government as an association of states so organized that powers are divided between a general government in certain matters . . . independent of the governments of the associated states, and in their turn, independent of the general government (p. 2). In the case of the European Union, member states, while embracing the principles set forth in the Amsterdam Treaty nevertheless continue to exercise significant autonomy in many policy and administrative arenas. As the following discussion illustrates, while agreeing in-principle on the necessity to construct a common visa and immigration regime as well as a common approach to combating terrorism, implementing such polices presents the biggest impediment to a federal Europe.

Immediately after the attacks of September 11th E.U. cooperation in the area of law enforcement and border protection was revitalized. Some European capitals have long served as "safe havens" for radical groups, which refrained from attacking those cities in exchange for being allowed to conduct fundraising and recruitment. This tacit arrangement began to crumble almost immediately after September 11th. British police cracked down on suspected militants in the London area; the German parliament gave its security forces extra money to stop fundraising activities by suspected terrorist groups; French counter-terrorism officials stepped-up arrests and detention of people thought to

be associates of Osama bin Laden; and Spanish officials arrested eleven suspected Islamic terrorists who police said were engaged in recruiting other terrorists and providing them with forged documents and other logistical support (Valasek, 2001). On September 21, 2001 member states were summoned to an “Extraordinary European Council Meeting” in order to analyze and discuss the security situation in light of the terror attacks on the U.S. At that meeting the Council reaffirmed its solidarity with the U.S. and proposed measures similar to that adopted by the U.S. in its war on terrorism: enhance law enforcement and judicial cooperation through the introduction of a European arrest warrant; directing the Justice and Home Affairs Council to undertake stepped up identification and surveillance of presumed terrorists in Europe and organizations supporting them; directing all member states to share with EUROPOL³ (European Police Office) all useful data regarding terrorism; and strengthening administrative cooperation in the fields of external borders, visas, asylum and immigration (European Council, Conclusions and Plan of Action, 2001).

Following the Extraordinary European Council Meeting the JHA Directorate convened a meeting in October 19th to bring forward substantive policy proposals. Although many of the proposals had long been under discussion, member states were now committed to speedier adoption and implementation. In the area of law enforcement, the issuance of a European arrest warrant coupled with improved extradition procedures is designed to strengthen the level of integration and confidence between member states of the E.U. and ultimately, expedite the apprehension of suspects

³ EUROPOL was established in the 1992 Maastricht Treaty on European Union. EUROPOL’s mandate is to support law enforcement activities against drug trafficking, terrorism, illegal immigration networks, and human trafficking. EUROPOL is currently developing a computer system which, when operable, should provide a means to share computer data among member states of the E.U. as well as the U.S.

involved in terrorist activities. The establishment of a single European arrest warrant replaces national extradition procedures with a single procedure to hand over persons who have committed terrorist acts, on the basis of a European arrest warrant (European Union News, 2001). Additionally, cross-border police cooperation and EUROPOL was assigned added responsibilities via a newly established anti-terrorism unit responsible for sharing intelligence and data between member states of the E.U. and the U.S. government.

Finally, in May 2002 the European Council announced the most wide reaching border control and immigration reform to date by adopting the Action Program for Administrative Cooperation in the Fields of External Borders, Visas, Asylum and Immigration (known by the acronym, ARGO). ARGO, a successor to the Odysseus Program⁴ which came to an end in January 2002, is a high-impact law enforcement undertaking which is designed to wrestle control of the E.U.'s external borders. To this end, ARGO is aimed primarily at addressing and strengthening member states administrative needs in the area of asylum, immigration, visa issuance and border control. The program's objectives are to promote co-operation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions; to promote the uniform application of Community law; to encourage transparency of actions taken by the national authorities and to improve the overall efficiency of national administrations in their tasks. In addition the program will assist in constructing effective border control measures; harmonize the

⁴ The Odysseus Program was designed to promote training and exchange among E.U. and non-E.U. states in the areas of immigration, asylum, and border crossing. The program was adopted in March 1998 on the basis of the Treaty of European Union (TEU).

issuance of visas; strengthen the review of the visa application process; establish a common European Asylum System; and adopt a homogenous set of rules on illegal immigration (Adopting the ARGO Program, 2002).

ARGO is a real attempt at getting federal control over immigration, visa, asylum, and border control issues within the European Union. Its objective is to reinforce administrative practices and assist the national administrations in the implementation of community legislation. It envisions cooperation possibilities ranging from exchanging equipment and best practices to the creation of full-fledged joint border patrol units. In light of the events of September 11th, responsibility for controls at the E.U.'s external borders will become all the more important as the E.U. struggles to keep out potential terrorists from entering its borders. Furthermore, especially in the face of growing numbers of unauthorized entries, the E.U. needs to be even more careful about monitoring immigrants and asylum seekers. Viewed in this light, ARGO should be seen simply as a modest forerunner of more extensive coordinated activities in this field. As of this writing, ARGO is in the process of being implemented.

Policy Recommendations:

The devastating terrorist attacks of September 11th on the World Trade Center and the Pentagon have, in a single stroke, transformed the national security debate in the United States. The post-Cold War world is finally over; terrorism has emerged overnight as the new great threat. This threat will either unite or cripple America and its allies. . . The most strategic partnership for the United States remains America's alliance with the Europeans. The end of the Cold War eliminated the common threat that had helped bind America and Europe together in the past, and the period since has seen a marked drift in the transatlantic relationship prompted by multiple causes (Gedmin, 2001).

In light of the shared threat of future terror attacks in both the U.S. and the E.U. a stronger, more trusting, deeply coordinated, transatlantic partnership should follow. Both the U.S. and the E.U. need to broaden their strategic horizon and consider immigration, visa issuance and border control as credible security issues. While constructing a meaningful transatlantic security agenda with immigration serving as one of its core elements may prevent future terror attacks, achieving a true partnership between the U.S. and the E.U. will be no easy task. The goodwill which existed between the U.S. and the E.U. in the immediate aftermath of September 11th is dissipating and the anti-terrorist campaign that could have been a source of consolidation of the trans-Atlantic alliance around common values and interests is instead becoming a source of deep divisions. To this point an editorial which appeared in the March 13, 2002 edition of the *International Herald Tribune* made the following observation:

America is starting to look like the unilateralist hyper power that acts alone and sees only military solutions to the world's problems. Europe advocates political solutions to international crises but fails to overcome its own internal divisions in foreign policy and ignores hard security issues (Gordon and Gnesotto, 2002)

Clearly the U.S. and the E.U. share a commitment to the joint defense of common interests, yet they lack a transatlantic strategy which would strengthen immigration, visa and border controls. At a minimum Washington and Brussels should develop common administrative practices, which would utilize information technology effectively and have as its core component a prevention-based strategy.

During the summer of 2002 this author traveled to Brussels as part of the Atlantic Council Transatlantic Security Program where he met with policy makers, security analysts, this author was able to explore in-depth the security issues associated with

large-scale immigration in the European Union and the United States and what role public administration can play in protecting borders against terrorists who take advantage of liberal immigration and visa granting regimes. To this end, this author met with senior diplomats, policy planners and an array of public servants who staff offices at NATO, the European Union, European Commission and the European Council and who are currently working on transatlantic security issues as they relate to international immigration. During this series of meetings the following three principles were discussed as a possible springboard from which to further strengthen and deepen administrative cooperation in the field of immigration, visa and border control.

First, reform visa entry requirements in the U.S. and the E.U. so as to ensure that students admitted to study are fully enrolled and matriculated. This would require universities and schools to notify the U.S. Immigration and Naturalization Service and the respective E.U. member state's Interior Ministry if a foreign student has not reported to school within a fixed period of time - not to exceed thirty days. In addition, the collection of a student's entry date, date of school enrollment, and date student leaves the school should also be included.

The U.S. and the E.U. must implement an integrated entry and exit system for nationals of countries other than the U.S. and the member states of the E.U. Further, this information should contain arrival (and if possible, departure information). Consular officials in both the U.S. and the E.U. should begin issuing all foreign guests visas that are tamper resistant and machine readable using standardized biometric identifiers including retina scans and finger prints. Consider the following, U.S. and German

investigators believe that accomplices of the 19 terrorists who carried out the attack on the World Trade Center may have shuttled between the U.S. and Germany planning the attacks over a three year period. They are believed to have received help with the logistics and planning of the attacks, arranging visas, passports and other documentation, allowing the main hijack team to concentrate on flight training.⁵ A fully integrated visa database between the U.S. and the E.U. would have been able to pick up on this suspicious activity each time these individuals arrived in either Germany or the U.S.

Today the U.S. visa system is in such disarray that the government cannot say whether a visa holder who has entered the country remains here. The place to start is to make certain that the U.S. State Department, the U.S. INS and the respective E.U. member state consular officials and interior ministries have immediate electronic access to CIA, FBI, EUROPOL, INTERPOL, and individual E.U. member state intelligence agency watch lists of potential terrorists. Civil libertarians and citizens alike have raised justifiable fears about the potential massive use of data sharing between governments. We recognize this fear and encourage privacy protection while at the same time making full use of immigration and visa databases. Requiring judicial review of collection methods can enhance privacy protection. We simply cannot seal our borders, nor do we wish to, so it is imperative to work more closely with one-another to identify potential terrorists who may be using non-immigrant visa programs as a gateway to commit terrorist acts.

Second, we must add additional personnel. In both the U.S. and within the member states of the E.U. administrative agencies responsible for border security, immigration policy and visa issuance have reached (or exceeded) their capacity. Additional

⁵ Bin Laden: The European Connection. BBC News. October 24, 2001.

resources in the form of increased personnel must be made available to front-line civil servants such as consular officials, border patrol agents, and judges who must make administrative decisions with little background information on the applicant. In addition we need to add more counter-terrorist agents, intelligence specialists, and linguists to our respective administrative bodies. As noted earlier, with only 2,000 investigators and intelligence agents, the U.S. INS is already overextended. Clearly agency manpower must grow. In addition, better use of state and local law enforcement officers in the U.S. and within the member states of the E.U. can also improve information collection, surveillance, and prevention. In the U.S. there are 3,000 counties and 18,000 cities that must be protected. We must recognize the central role our national, state and local administrative agencies and their personnel play in defending our borders terrorists who wish to enter (or have already entered) while at the same time ensuring the rights of non-citizens are protected. Because the civil service systems in the U.S. and the E.U. are based on merit system principles, we need to ensure that hiring and promotion keep pace with the emerging challenges facing the administrative state in a post 9-11 world. To this end, better training and resources would help state and local law enforcement officials in both the U.S. and the E.U. recognize suspicious patterns and identify potential terrorists to national officials quickly, allowing them to apprehend or interdict potential terrorists.

Finally, we must begin a serious attempt at strengthening existing transatlantic institutions such as NATO. To date, NATO has played only a limited, largely symbolic role. We should utilize NATO assets in the form of international intelligence gathering, intelligence sharing, identifying illicit financial transactions, diplomacy and supporting local police and national militaries in an effort to track down and arrest terror suspects.

By utilizing NATO and a broader coalition of nations, i.e., the NATO – Russian relationship and the NATO Partnership for Peace we can adopt a more comprehensive and global approach to preventing future terror attacks. To which Senator Richard Luger (2002) adds, “NATO is the natural defense arm of the transatlantic community and it is the institution we should turn to for help in meeting new challenges such as terrorism.” With the end of the Cold War the Alliance needs to be retooled so that it can handle the most critical threats to our security. That means it must consider immigration and border security as a critical issue, which needs to be addressed.

One cannot overstate the enormity of change that has affected the transatlantic partnership as a result of September 11th. At its center is a shared vision of addressing common threats and pursuing common agendas. As we together grapple with complex and intractable international issues, it will be up to both the United States and the European Union to demonstrate that we can achieve practical solutions to difficult problems and that these solutions are best achieved by international cooperation. In the area of immigration, visa and border control the single most important means to achieve this objective is to work towards a more coherent and forceful transatlantic cooperative approach which draws on our own inherent strengths and thus counterbalances and complements one another. This will not be an easy task. Developing policies that protect the security of citizens while ensuring the rights and civil liberties of non-citizens is a balancing act. Invigorated by the events of September 11th, the U.S. and the E.U. are presented a singular opportunity to rethink their administrative approaches to immigration and visa control.

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