

BORDER SECURITY IN THE AL-QAEDA ERA

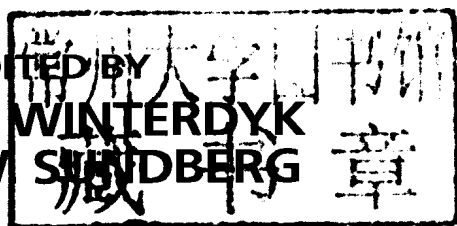
**EDITED BY
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CRC Press
Taylor & Francis Group

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Boca Raton London New York

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CRC Press
Taylor & Francis Group
6000 Broken Sound Parkway NW, Suite 300
Boca Raton, FL 33487-2742

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Printed in the United States of America on acid-free paper
10 9 8 7 6 5 4 3 2 1

International Standard Book Number-13: 978-1-4200-8544-0 (Hardcover)

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Library of Congress Cataloging-in-Publication Data

Border security in the Al-Qaeda era / editor(s), John A. Winterdyk and Kelly W. Sundberg.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4200-8544-0 (alk. paper)

1. Freedom of movement (International law) 2. Border security. 3. Boundaries. 4. Schengen Agreement (1985) 5. Admission of nonimmigrants. 6. Aliens. 7. Emigration and immigration law. I. Winterdyk, John. II. Sundberg, Kelly W. III. Title.

K3265.B67 2010

363.325'163--dc22

2009011184

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<http://www.taylorandfrancis.com>

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<http://www.crcpress.com>

Foreword

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

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

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

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

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

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

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

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

Rob Vineberg

Senior Fellow

Canada West Foundation

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

Acknowledgments

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

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

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

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

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

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

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

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Cheers,
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Contributors

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

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

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

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

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Introduction

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

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

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

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

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

[†] Schengen is a small town in Luxembourg.

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

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

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

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

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

[†] It is noted that the majority of the incidents in both France and Spain involved separatists’ acts.

addressed—“Justice must be seen to be done.”⁷ However, in the process of responding, States must be mindful to balance fairness with justice, while remaining sensitive to constant and dynamic changes within society.

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

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

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

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

⁷ Lord Chief Justice Hewart, from England, is generally credited with using this aphorism during a 1924 ruling in the *Rex v. Sussex Justices, Ex parte McCarthy* case (Seen to be done 1999).

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

In addition, President George W. Bush¹ used the phrase “war on terrorism” to heighten both public fear and gain domestic and international support for American anti-terrorist measures that would restrict or rescind some of the basic freedoms Americans enjoyed in their country.² Referring to the ongoing terrorist activities between India and Bangladesh, Sen (2005) suggests that such a strategy is essential to not only sensitize the public, but also to gain their support for government actions. Again, as noted in *Crime and Criminal Justice in Europe* (Council of Europe 2000, 11), “Elections can be won or lost on people’s perceptions of their (government’s) ability to handle crime.” However, when the public does not fully understand the meaning and purpose behind a terrorist act, their support of government initiatives may be ill founded (Mueller 2006). For example, terrorist acts against governments can be divided into four main types: religious ideological terrorism, secular ideological terrorism, ethnic nationalistic terrorism, and left-wing or right-wing single-issue terrorism (Europol 2007). However, concerns about maintaining border security (that is, the entry of potential terrorists) is currently focused mainly on Islamic terrorist activities, which pale in numbers in comparison to the threats, potential threats, and incidents by the other types of terrorism—at least within Europe (see, for example, Europol 2007).³ Therefore, an issue that can be raised is to what extent do the measures taken to protect one’s borders from Islamic terrorism erode the civil and human rights of the citizens of the State? This is one of the themes that will be explored by the contributors.

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

¹ While Bush is credited with using the phrase, it should be acknowledged that the whole Administration and mass media helped support and fuel the tenure of Bush’s choice of describing the 9/11 incident.

² It has also been suggested that using the word “war” also served to escalate the conflict between the United States and the Islamic world to a more dramatic level than “perhaps” intended.

³ It should be noted, however, that according to White (2006), among others, that, globally, 1970s religious terrorist attacks have increased in frequency, superseding secular, ethnic national, and religious motivated terrorism.

The issue of balancing liberty and safety within a nation is reflected in many of the earlier writings about the role of law, social responsibility, and equality. Question 90 of Thomas of Aquinas's (1225–1274) *Summa Theologica* states: “Law is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (Wade 2007, 4). The French scholar Jean-Jacques Rousseau (1712–1778) in a non-secular context used the term *social contract* to describe his premise for ensuring political order. He argued that by surrendering one's claims to natural or individual rights for the common good of all, a society functions best. Hence law is an instrument to help guide its citizens. Another related expression of law representing an instrument and extension of the people comes from the work of the English jurist and social reformer Jeremy Bentham (1748–1832) who, borrowing from various ancient Greek philosophers, felt that people's actions are dictated by two constructs: pain and pleasure. Since we value pleasure over pain (hedonism),⁷ governance should try to optimize the safety and well-being of its citizens. This notion was referred to as “utilitarianism” by the English scholar John Stuart Mill (1806–1873). Within such a framework, the global reactions to 9/11, which include numerous nations implementing restrictive laws that stifle individual freedoms and liberties, may not be deemed fully justified. The reality of the post-9/11 threat is one where the threat is ambiguous, the terrorists are for the most part anonymous, and the targets are speculative; one must question how warranted it is to diminish long-established civil liberties of a domestic population in the name of “national security.” These and related issues are explored by the contributors in reference to their country, and we will revisit these issues in the Epilogue once the reader has had the opportunity to read and reflect on the comments put forth by the authors.

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

⁷ Derived from Greek implying that pleasures are the greatest pursuit of humankind.