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MACDONALD-LAURIER INSTITUTE

ORGANIZED CRIME BEYOND THE BORDER

Todd Hataley
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5

**NATIONAL SECURITY STRATEGY
FOR CANADA SERIES**



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Executive Summary

On February 4, 2011, President Barak Obama and Prime Minister Stephen Harper launched a strategy for new era of cooperation called *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*.

This strategy had four goals: addressing early threats; and facilitating the growth of trade, the national economies and jobs. It envisaged a layered approach to border security, with the two nations working jointly to shift border functions away from the border itself to points inland.

As the title suggests, a perimeter agreement between the United States and Canada defines an established security perimeter around the continent, ostensibly protecting the approaches to the region. Its premise is to push the perimeter out by means of pre-clearance for customs, reducing the need for enforcement at actual ports of entry.

Like its antecedents, *Beyond the Border's* purpose is diminish marginal costs of legal cross-border activity. Yet, it does little to raise the marginal costs of illicit cross-border activity. In fact, it actually risks lowering marginal costs for illicit cross-border activity which has significant implications for law enforcement. Its assessment of the resources necessary for adopting a layered security strategy in the region is deficient and does little to curb organized crime.

Far from discouraging organized crime groups from crossing the Canada–US border, the streamlining processes in *Beyond the Border* may actually abet intra-continental organized crime. As law enforcement agencies shift their attention beyond the North American perimeter, there is potential to pay attention to those travelling within it, thereby easing the movement of organized criminals and illicit goods within North America.

Organized crime groups exploit risk management models that facilitate trusted shippers. Fitting neatly into a trusted-shipper program, either by appearing as a legitimate trader or by using corrupt officials (or better yet, both), gives them the same expedited border passage afforded to legitimate businesses.

Finally, *Beyond the Border* does not address transnational crime and related smuggling at the border point near Cornwall, Ont., which spans the Mohawk nation of Akwesasne. Without a strategy targeted specifically at this region, nefarious elements will continue to capitalize on Akwesasne's multiplier effect on the markets of opportunity created by the differences in policy in either side of the Canada-US border.

Security and economic competitiveness are at stake for both countries. However, the Americans appear to want, first and foremost, to achieve greater security, while Canadians are prioritizing economic competitiveness.

Security and economic competitiveness are a false dichotomy. Paradoxically, *Beyond the Border* skirts Canada's most pervasive and persistent cross-border security liability—that is, organized crime—and may even enhance its economic competitiveness.

Sommaire

Le 4 février 2011, le président Barak Obama et le premier ministre Stephen Harper ont démarré une stratégie qui ouvrait la voie à une nouvelle ère de coopération portant le nom « Par-delà la frontière : une vision commune de la sécurité et de la compétitivité économique à l'intérieur du périmètre ».

Cette stratégie visait quatre buts : répondre rapidement aux menaces et faciliter tant la croissance du commerce, que celle des économies nationales et celle de l'emploi. Elle reposait sur une approche multidimensionnelle en matière de sécurité aux frontières, mise en œuvre grâce à la collaboration entre les deux pays, pour déplacer vers l'intérieur du pays les fonctions exercées aux frontières.

Comme le titre le suggère, un accord sur le périmètre canado-américain délimite l'établissement d'un périmètre de sécurité autour du continent dans le but d'assurer une protection bien visible des accès à l'ensemble de la région. L'accord propose l'élargissement du périmètre par le biais de prédédouanements, de façon à réduire le besoin d'application de la réglementation aux ports d'entrée actuels.

À l'exemple des stratégies qui l'ont précédée « Par-delà la frontière » a comme objectif de diminuer les coûts marginaux relatifs aux activités transfrontalières se déroulant en toute légalité. Or, la stratégie s'avère peu utile pour relever les coûts marginaux liés aux activités transfrontalières illicites. En réalité, elle risque même d'alléger ces coûts marginaux et donc, d'entraîner des conséquences importantes sur l'application de la loi. L'évaluation du besoin en ressources nécessaires à l'adoption d'une stratégie de sécurité multidimensionnelle dans la région est incomplète. La stratégie sera de peu de secours pour freiner vraiment le crime organisé.

Loin de décourager les déplacements des groupes du crime organisé entre le Canada et les États-Unis, en fait, la rationalisation des processus proposée dans « Par-delà la frontière » pourrait plutôt encourager les activités de ces derniers sur le continent. En effet, les organismes d'application de la loi risquent de porter une attention plus grande à surveiller les voyageurs entrant dans le périmètre au-delà duquel ils déplacent leur attention, qu'à surveiller les déplacements des criminels organisés et du commerce illégal de biens à l'intérieur de l'Amérique du Nord.

Les groupes du crime organisé arrivent à exploiter à leur avantage les approches de gestion de risque fondées sur les relations de confiance avec les négociants. Ces groupes peuvent même bénéficier à la frontière du même traitement accéléré que les entreprises légitimes, en raison de leur capacité à être admis dans les programmes pour expéditeurs préautorisés soit en apparaissant comme des entreprises légitimes, soit au moyen de la corruption d'agents (ou mieux encore, au moyen des deux).

Enfin, « Par-delà la frontière » ne s'attaque pas à la criminalité transnationale ni à la contrebande connexe présentes près de Cornwall en Ontario, sur le territoire de la nation mohawk d'Akwesasne, qui se situe de part et d'autre de la frontière canado-américaine. Faute de stratégie visant cette région en particulier, Akwesasne continuera à servir de levier aux éléments les plus méprisables, ceux qui exploitent les occasions de profit découlant des différences de politiques entre les deux pays.

La sécurité et la compétitivité économique sont un enjeu des deux côtés de la frontière canado-américaine. Cependant, les Américains semblent vouloir, d'abord et avant tout, assurer une plus grande sécurité dans leur pays, alors que pour les Canadiens, la compétitivité économique est plus importante.

La sécurité et la compétitivité économique constituent une fausse dichotomie. Paradoxalement, « Par-delà la frontière » pose un risque considérable pour la sécurité des frontières—celui du crime organisé—en parvenant peut-être même à renforcer la compétitivité économique des pays.

Introduction

On February 4, 2011, President Barack Obama and Prime Minister Stephen Harper launched a strategy for new era of cooperation. *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness* (henceforth referred to as *BtB*), has four pillars: addressing early threats, and facilitating the growth of trade, the national economies, and jobs.¹ *BtB* envisages a layered approach to border security, working binationally to shift border functions away from the borderline to points inland. Proponents of deeper Canada-United States (US) security and economic integration across the border contend that a North American perimeter will provide greater security to both countries and streamline the cross-border trade process.² Opponents counter that greater integration between the two countries threatens the sovereignty and values of each one.³ At first glance, it looks like a well worn script: the *United States-Canada Partnership Forum* (1999), the *Smart Border Declaration* (2001), and the stillborn *Security and Prosperity Partnership* (2005).

BtB aims to address early threats, and facilitate the growth of trade, the economy, and jobs.

Like its antecedents, *BtB*'s purpose is to raise the marginal costs of illicit cross-border activity while diminishing marginal costs of legal cross-border activity. But security and economic competitiveness are a false dichotomy. Paradoxically, *BtB* skirts the greatest persistent cross-border security liability – that is, organized crime – and may even enhance its economic competitiveness.

This study first examines the principle of layered security relative to its practice in terms of resource allocation. It then explains why borders are prone to exploitation by organized crime. The third section explores why and how organized crime breaches the border. The fourth section analyses how well various components of *BtB* measure up to the challenge of organized crime. The discussion of the findings in the fifth section concludes that, although *BtB* is a step in the right direction,

- its assessment of the resources necessary for adopting a layered security strategy in the region is unrealistic;
- its strategy for combating transnational organized crime is inadequate; and
- the repackaging of existing programs is problematic since their effectiveness remains unconfirmed.

The study concludes by re-evaluating the nexus of perimeter security and economic competitiveness in light of organized crime.

Layered Security Beyond the Border

Borders are no longer just “spaces of places” but “spaces of flows.”⁴ The territorialist epistemology and the Limes inherited from the Romans viewed boundaries as markers between sovereign states.⁵ The example par excellence of this pervasive mentality is Operation Gatekeeper, launched by the US Immigration and Naturalization Service in 1994. In an effort to “hold the line,” the number of US Border Patrol agents has quadrupled in less than 20 years.⁶ The convergence of private, public, and union interests in the form of profit motives stemming from a border-security industrial complex, opportunistic lawmakers looking to boost employment in borderlands that are often economically depressed, and unions seeking to boost their membership, has been estimated to cost US taxpayers a staggering \$700 billion since 9/11 (a figure that does not include opportunity cost of the cost of war), while the incremental costs in Canada have been pegged at \$72 billion.⁷ However, “borders are no longer only about territorially bounded authority. They are not just sea and air ports of entry, or border crossings. Borders are also increasingly virtual or simply impalpable.”⁸

Borders are as much about lines as they are about flows.

The realization that borders are as much about lines as they are about flows was not lost on the Obama Administration’s border czar, Alan Bersin.⁹ In the 2012 *Northern Border Strategy*, the US Department of Homeland Security (DHS) describes the networks of global supply chains essential to the economic success in North America in terms of secure flows.¹⁰ This concept requires a layered security strategy along the Canada-US border. In its effort to “push the border outward,” a layered strategy effectively means a functioning security apparatus at the border and, increasingly, away from it also.¹¹

The idea of pushing beyond the border is not new. The 1893 *Canada Agreement* (later known as the *North American Agreement*) allowed the US to post immigration officers at Canadian seaports to stem the flow of illegal immigrants from Canada into the United States.¹² Layering border security in this way is based on a capacity to carry out border functions at border zones or areas away from the border. Nowadays, this means Canada Border Services Agency (CBSA) agents work at locations other than ports of entry, a practice more commonly known as “inland enforcement.” Like its US counterparts, Customs and Border Protection and the Border Patrol, the CBSA has traditionally used a forward deployment strategy, whereby the bulk of resources guard the points of entry into the country. The 2010-11 CBSA Departmental Performance Report¹³ shows almost half of the CBSA’s enforcement resources posted at ports of entry. Compared to the 2011-12 CBSA Departmental Performance Report (see table 1),¹⁴ the change in the strategic distribution of human resources is notable. Yet, as Sokolsky and Lagassé have cautioned, that does not mean progress on “thinning” the border by trading “belt” for “suspenders”:¹⁵ the fundamental focus on enforcement at the border rather than the touted shift away from the actual borderline appears unchanged.¹⁶

Layering border security means carrying out border functions away from the border.

Table 1 Human resources deployed by CBSA, 2011 vs. 2012

Program	HR 2011	%	HR 2012 ¹⁷	%
Risk Assessment ¹⁸	1273	8.7	1022	7.1
Enforcement ¹⁹	2203	15.2	970	6.7
Facilitated Border ²⁰	249	1.7	381	2.6
Conventional Border ²¹	6892	47.5	6228	43.1
Trade ²²	580	4.0	838	5.8
Recourse ²³	88	0.6	138	1.0
Internal Services ²⁴	3234	22.3	4859	33.6
TOTAL	14,519	100	14,436	99.9

If *BiB's* objective is to develop a layered security framework with better controls over border flows than previous agreements, then we would expect to observe a strategic reprioritization of assets away from the border towards inland enforcement. The CBSA has increased human resources to facilitate various trade and administrative functions (see table 1) by about 50 percent. At the same time, it has reduced resources for active enforcement activities by 10-50 percent. In the absence of a clear commitment of resources to inland enforcement, a layered security approach to regulate border flows defaults to the status

Layering does not reduce flows generated by organized crime.

quo: enforcement continues to rely on a forward deployment strategy and, instead of actual enforcement, the control of flows relies increasingly on self-regulation through risk modelling. Yet, as the study explains below, this approach does not actually reduce the cross-border flows generated by organized crime.

The Marginal Cost of Borders

Obtaining a firearm in Canada is costly, difficult, and could expose the buyer to scrutiny by law enforcement. Instead, that person could reduce risk by procuring one inexpensively and legally across the border at a gun show in Ohio.²⁵ Similarly, different levels of taxation between Canada and the US on alcohol and tobacco products create illegal markets for these regulated goods. The mere existence of a border, therefore, can offer incentives to cross²⁶ and opportunities for organized crime groups to profit from the redistribution of goods and services that are regulated, illegal, or in short supply.²⁷ By creating markets for opportunity, the border can affect marginal costs and, consequently, the strategic behaviour of terrorists.²⁸

However, Lösch and Helliwell point out that borders increase marginal costs for legitimate cross-border trade and traffic.²⁹ For example, Moens and Gabler illustrate the financial costs for industry and taxpayers associated with increased security along the Canada-US border.³⁰ Post 9-11, the border has become a zone for sorting legitimate from illegitimate movement. Newman articulates this sorting function as a fundamental character of borders that defines “the nature of exclusion and inclusion” between and within states.³¹ Enforcement generally falls to security agencies such as (in the case of Canada and the US) the Royal Canadian Mounted Police, Canada Border Services Agency, US Border Patrol, and Customs and Border Protection. The border also demarcates the cultural and legal differences between Canada and the US that lend themselves to exploitation by criminal organizations.

What Is Organized Crime?

Criminologists do not agree on what constitutes organized crime. The US has no statutory definition.³² And the *Criminal Code of Canada* defines it too broadly to allow meaningful analysis:

[A] group, however organized, that

(a) is composed of three or more persons in or outside Canada; and

(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.³³

The definition does not even include a group of persons that forms randomly to commit immediately a single offence.

In contrast, Finckenauer developed a framework for thinking about organized crime, its functions, and its essential components:³⁴

- Ideology (or lack thereof)
- Structure
- Continuity
- Violence/use of force or the threat of the use of force
- Restricted membership/bonding
- Illegal enterprises
- Penetration of legitimate businesses
- Corruption

Finckenauer's framework provides a baseline with which to delimit criminal movement across the border in order to explore public policy levers and strategies to curtail transnational crime.³⁵

Borders can create markets for opportunity, incentivizing organized crime and increasing costs for legitimate trade.

Transnational Organized Crime Between Canada and the US

The Royal Canadian Mounted Police and its US counterparts recognize that organized crime groups between Canada and the US actively exploit the border for criminal gain, and that those activities pose a threat to both countries. Given Canada's geographic proximity to the US and its "loose border and liberal immigration and justice policies," criminal organizations are firmly entrenched in Canadian society as a safe haven, transit, and source country.³⁶ Those who see Canada as a conduit for organized criminal organizations want to step up efforts to secure the border between the two countries.³⁷ The Canadian position is similar: "Canada and the United States recognize that organized crime activity is a threat to the economic integrity and national security of both countries. At the Canada/US border crime groups exploit the ports of entry and the area between the ports of entry [...] They are not restricted by jurisdictional boundaries."³⁸

Favoured Products for Trafficking

Weapons, particularly handguns, are more difficult to obtain and own in Canada than in the US. The result is a thriving black market.³⁹ A 2011 Ontario Provincial Police investigation called Project Folkstone resulted in the arrest of 22 people and the seizure of 30 firearms believed to have come from Kentucky.⁴⁰ A 2008 Toronto Police investigation named Project Blackhawk netted 237 handguns obtained from suppliers in the Chicago area and smuggled into Toronto.⁴¹ Firearms are but one example where different statutes create markets between international borders that encourage organized crime groups to exploit the resulting countervailing transaction costs.

Cigarettes are similarly heavily regulated in Canada but less so in the US. As a result, a lucrative cigarette smuggling industry has emerged between the two countries. A 2007 study conducted by the Canadian Tobacco Manufacturers' Council suggests that the illicit trade in tobacco between Canada and the US costs the federal and provincial governments \$1.6 billion per year in lost revenues.⁴² A recent study by the Macdonald-Laurier Institute raises some hard questions about the linkages between tobacco smuggling, organized crime, and national security.⁴³

Organized crime groups exploit the Canada-US border, posing a threat to both countries.

Demand for illegal products, such as narcotics, encourages organized crime to get involved in transnational smuggling across the Canada-US border. For reasons such as a comparative advantage in the production of illegal products and more lenient penalties, the production of marijuana and ecstasy in Canada for export to the United States is flourishing. The CBSA's 2010 *Canada – United States Joint Border Threat and Risk Assessment* finds that most of the marijuana and ecstasy produced in Canada is destined for export to the US.⁴⁴

Favoured Weak Links

The designated "high-trafficking corridor" between British Columbia and Washington state aside, the most notorious region along the Canada-US border for illicit cross-border activity straddles the Mohawk Territory of Akwesasne. The region is central to three major urban areas in Canada (Ottawa, Montreal, and Toronto) and provides ready access to the densely populated eastern seaboard of the US (Boston, New York, Philadelphia, and Washington DC). The RCMP knows that organized crime groups use the area as a transit route for people, drugs, tobacco, currency, and weapons.⁴⁵

Jurisdictional issues plague these 19 kilometres of border. Spencer writes

The jurisdictional quagmire on the reservation has confounded government attempts to secure the region. Akwesasne spills into the municipalities of New York State, the Provinces of Ontario and Quebec, and the federal jurisdictions of both Canada and the United States. The St. Lawrence River bisects Akwesasne, cutting a forty-nine acre swath of water and islands through the reservation.⁴⁶ (See figure 1.)

The geographic uniqueness of the Akwesasne area creates a problem for Canadian and US law enforcement authorities intent on securing the border region and putting a dent in transnational organized crime.

Penetration of Organized Crime Groups

Finckenaue’s framework on organized crime proposes a connection between organized crime and the penetration of legitimate business that is obvious in transborder drug trafficking. NAFTA has turned out to be a blessing for cartels moving drugs across the border. For example, research on drug cartels broaching the US-Mexico border illustrates the degree to which NAFTA associated cross border traffic can be exploited by organized crime groups for nefarious purposes.⁴⁷ With so many trucks crossing the border and only a fraction of them actually inspected, trucks are a ready-made way to transport drugs.⁴⁸ A recent RCMP report obtained by a freelance journalist through an Access To Information request cautions that the Canadian trucking industry is at risk of being exploited by drug trafficking groups.⁴⁹ In fact, commercial trucks carrying large amounts of illegal narcotics have already been intercepted at the Canada–US border.⁵⁰

With or without the complicity of management and/or owners, organized crime groups are penetrating legitimate trucking companies to ship drugs or other contraband across the border. Corruption makes this possible. Along the Canada-US border, corruption can extend to customs agents, border officers, customs brokers, and police officers as well as to bonded trucking companies, since use of such “trusted shippers” reduces the chances of inspection at the border. In 2006, CBSA customs inspector Marilyn Beliveau was convicted of participating in a conspiracy to import drugs as part of a lengthy investigation into the illegal activities of the Montreal mafia.⁵¹ In 2007 a Canadian border guard was arrested and charged with assisting a drug ring with importing 208 kilograms of cocaine at a port in Canada’s Pacific Northwest.⁵² And in 2012, an unnamed CBSA security officer at the Pigeon River point of entry near Thunder Bay was dismissed for maintaining “a social relationship with known organized crime figures,” failing “to take enforcement action on these individual as his duties required” and attempting “to evade the law during a police operation at a local bar” after an investigation by the Office of the Public Sector Integrity Commissions of Canada.⁵³ How does *BiB* measure up against organized crime? The following section addresses the contribution of nine issues presented in *BiB* towards reining in transnational organized crime.

The Canadian trucking industry is at risk of being exploited by drug trafficking groups.

DISCUSSION

As *BtB*'s full name suggests, a perimeter agreement between the US and Canada defines an established security perimeter around the continent, ostensibly protecting the approaches to the region. It pushes the perimeter out by means of pre-clearance for customs at overseas ports and reduced enforcement at ports of entry. This was the idea when President George W. Bush proposed a study of a perimeter model for North America in the *Enhanced Border Security and Visa Entry Reform Act of 2002*.⁵⁴ The same Act also required the development of an entry and exit system, compatible with other law enforcement databases, that would allow US border enforcement agencies to conduct shared Canada-US inspections along the border, and increased funding for technology to enhance security and facilitate the movement of people and commerce at ports of entry. If these programs sound familiar, they are. They were stated in earlier border agreements between Canada and the US, including the *Canada–United States Partnership Forum* (1999) and the *Smart Border Declaration* (2001).⁵⁵ Many of the same issues are reprised in *BtB*.

BtB is presented in six parts, three of which are pertinent to border security and combating transnational organized crime between Canada and the US. See below for further details.

Part 1: Early Threats

- Enhance our shared understanding of the threat environment through joint, integrated threat assessments, improving our intelligence and national security information sharing.
- Share information and intelligence in support of law enforcement and national security.

Two observations are noteworthy here. First, the language of these proposals is geared towards national security investigations, which, in Canada, relate to terrorism, *not* to organized crime. While cross-border terrorism poses a *potential* yet manageable risk to the US and Canada, organized crime *is* having a deleterious effect on both countries. The effect is estimated in the billions of dollars, not counting the human cost of trafficking in women and migrants.⁵⁶ Second, law enforcement agencies already have a number of mechanisms for sharing intelligence and information between US and Canadian partners. *BtB* states: “We will utilize the *Cross-Border Crime Forum*, and create *other forums* to discuss other ways to improve law-enforcement information-sharing practices...” (emphasis added). Rather than proliferate mechanisms, why not just improve the ones already in place? The Cross-Border Crime Forum, Integrated Border Enforcement Teams, liaison officers, the Canadian Police Information Centre (CPIC), and the Integrated Threat Assessment Centre (ITAC) are examples of mechanisms for sharing intelligence and information with US law enforcement partners. Creating other forums – especially at a time of financial restraint – is an unnecessary redundancy that, at best, risks duplicating work and, at worst, makes the issue of intelligence- and information-sharing more complex for policy-makers and frontline managers and operators.

- Enhance domain awareness in the air, land and maritime environments.

Rather than create new mechanisms, why not improve ones currently in place?

This point states that the governments of Canada and the US will identify gaps and vulnerabilities at the border, create a vision for deploying new technology, and a plan for procurement and deployment.

There are three issues with regards to this objective. First, experience with the use of technology and manpower along the US-Mexico border suggests that plugging the gaps through use of more and better widgets is expensive and ineffective. The US-Mexico border is breached daily,

both between and at ports of entry. The impact on the flow of undocumented persons and drugs appears to be limited.⁵⁷ How much of that impact is a function of this surge in manpower and equipment, and how much is simply a function of a flagging US economy and a higher tempo of immigration enforcement under the Obama administration is impossible to ascertain.

Second, organized crime relies on corruption to facilitate operations because technology, for the most part, requires human input and management. The use of technology may be successful in monitoring low-level or one-time breaches (for instance, by economic refugees), but it is less successful in detecting organized crime groups that use corruption to circumvent or, as in the case of trusted shippers, co-opt technology.

Third, enforcement along the border conventionally assumes the transnational movement of a tangible commodity, be that drugs, weapons, people, money, or cigarettes. This type of surveillance, however, does not address transnational organized crime in which the commodity is information. Cyber-espionage or insider trading may be transnational in nature, but inspection at the geopolitical border is unlikely. As transnational organized crime groups become increasingly sophisticated in the crimes they perpetrate, the jurisdictions they exploit, and the methodologies they employ, it would be unwise to assume that the border can be an effective point of interdiction.⁵⁸

Plugging gaps in the US-Mexico border is expensive and ineffective.

- Develop a harmonized approach to screening inbound cargo arriving from offshore that will result in increased security and the expedited movement of secure cargo across the Canada–United States border, under the principle of ‘cleared once–accepted twice.’
- Canada and the United States will develop a joint strategy to address risks associated with shipments arriving from offshore based on informed risk management.

Although this initiative appears to bring Canada on board with the US Container Security Initiative⁵⁹ (a program that targets and pre-screens US inbound containers before leaving foreign ports), it does not address corruption as a weak link in securing supply chains. A 2004 report by the Criminal Intelligence Service of Canada notes that Canadian ports, including Vancouver, Toronto, Montreal, and Halifax have been infiltrated by the Hell’s Angels and the Mafia.⁶⁰ Kevin Perkins, Assistant Director of the Federal Bureau of Investigation, testified before the Senate Committee on Homeland Security and Governmental Affairs that US ports of entry along the border, as well as marine and air ports, were susceptible to corruption by organized crime.⁶¹ In short, corruption at ports of entry makes irrelevant any efforts to screen out contraband products.

Corruption aside, transnational organized crime groups prefer legitimate transit to move contraband across borders over crossing illegally beyond ports of entry because the former is easier and more cost-effective. Corroborating Payan’s observation about Mexican drug cartels moving their wares using NAFTA-cleared containers, a 2009 ABC news story noted that most drugs entering the US do so on trucks entering through legitimate ports of entry.⁶² The colossal volume of cargo entering the US relative to the limited capacity for inspection reduces exposure and liability for organized crime groups. In short, risk assessments, cargo screening, and targeting are already part of the North American cargo supply chain and have shown (in the case of drugs entering along the US southwest border) to be an ineffective tool in combating the reach of organized crime across the border.

- Canada and the United States will screen travellers seeking to enter either country in order to:
 - ...identify individuals who seek to enter the perimeter for mala fide purposes...
 - prevent individuals from assuming different identities...
 - identify those who have committed serious crimes or violated immigration law....

These propositions are directed at potential immigration and refugee violators. They assume that individuals travel under different identities, that screening programs weed out false identification, and that sufficient information exists to identify criminals from abroad. Yet, in terms of transnational organized crime between Canada and the US, most of the individuals involved are already living *within* the perimeter so they cannot be screened out. Of course, all organized crime groups are not geographically restricted to North America. Both countries already use screening methodologies and targeting mechanisms to flag suspect individuals. Anybody involved in organized criminal activities understands the limits and risks to transborder movement, and tries to limit their exposure by appearing as legitimate as possible.

- Establish a common approach to screening travelers.

Essentially, Canada will align its programs with those already in place in the US. But since individuals involved in organized crime try to “fit in,” *BtB* misses a key variable – in fact, it may even *aid* in the transborder movement of organized crime. As law enforcement agents turn their attention beyond the North American perimeter, they are likely to pay less attention to those travelling within it, making travel within North America a less risky proposition for organized criminals.

- Establish a coordinated entry and exit system, including a system which permits sharing of information so that the record of a land entry into one country can be utilized to establish a record from the other.

Corruption at points of entry makes screening irrelevant.

Canada and the US do not currently have exit controls, which makes the two countries an anomaly in the democratic world.⁶³ The idea was first proposed in 2002, and is long overdue. This will be very useful in tracking undocumented or illegal migrants, including visa overstays, deportees, and other non-admissibles. Currently, a deportee from Canada who is technically admissible to the US can

enter the US and sneak back into Canada unless the agent with DHS’s Office of Field Operations asks an authorized and trained intelligence officer to query the separate Canadian database.

The *BtB* has two shortcomings. First, it will simply push the transborder movement of undocumented or illegal migrants to areas between ports of entry. This could create a human trafficking industry between Canada and the US similar to the one that sprang up along the US-Mexico border in response to US efforts to make the southern border less porous. Canada should be wary of the unintended consequences of policies that could expand the role of organized crime in transborder smuggling. Second, *BtB* targets refugees and migrants, not organized crime groups who prefer to move legitimately across ports of entry. Moreover, it poses challenges for Canada’s refugee system. If an individual is illegal within one country, will s/he be illegal in the other? Or should Canada and the US also harmonize their refugee policy?

Part II: Trade Facilitation, Economic Growth, and Jobs

- Adopt a common framework for trusted trader programs that will align requirements, enhance member benefits, and provide applicants with the opportunity to submit one application to multiple programs.

Aligning programs such as Partners in Protection, Customs Trade Partnership Against Terrorism, and Free and Secure Trade makes good sense in terms of streamlining trusted shipper programs and improving

efficiency at the border. The drawback to any risk-based program is the potential for abuse by organized crime groups, which often trade in legitimate goods to launder money. According to a report by the *Los Angeles Times*, Mexican cartels buy items such as toys, fruit, and fabric for export to the US as a mechanism for laundering drug money.⁶⁴ This is nothing new. However, import/export risk-management programs provide a point of penetration for organized crime groups to add an additional layer of protection between illegal enterprises and law enforcement – by allowing for the exploitation of secure and trusted trader programs. By usurping legitimate transporter companies that comply with risk-management programs as trusted shippers that benefit from moving within the perimeter with vastly reduced chances of being searched at the border, organized crime groups can extend their geographic reach to markets within the perimeter that were previously too costly to cover.

BtB targets refugees and migrants, not organized crime groups who prefer to move legitimately across ports of entry.

S1 Part III: Cross-border Law Enforcement

- Cooperate on national security and transnational criminal investigations.
- Canada and the United States will develop integrated cross-border law enforcement operations, including deploying regularized Shiprider teams.

Officially known as Integrated Cross-border Maritime Law Enforcement Operations, the Shiprider program involves reciprocal arrangements by which law enforcement personnel from both countries work alongside on board each other's vessels operating in sovereign waters. It operates under the 2007 *Canada–US Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations*.⁶⁵ Shiprider is governed in Canada under Part 1 Section 7.(1)(d) of the *RCMP Act*,⁶⁶ and in the US under Title 19 USC 1401.⁶⁷ Shiprider is a forward-deployment strategy to support border security, similar to the strategy employed along the US-Mexico border (without the concomitant level of cross-border cooperation), which has not been effective in terms of cost or in keeping organized crime groups from breaching the border to smuggle drugs, money, or people.

Trusted trader programs create the opportunity for organized crime groups to usurp those companies to use for their own ends, with less scrutiny.

Shiprider – and its proposed land-border equivalent – is equally unlikely to be effective at combating transborder organized crime. First, the sheer length of the Canada-US border makes it difficult for government agents to screen all the cargo and people that pass through at legal points of entry and points in between. Second, the capacity of organized crime groups to adapt to law enforcement strategies will counteract the effectiveness of tactical changes along the border. As the difficulty of crossing the border increases, so too does the likelihood of “professional” smugglers taking hold.⁶⁸

A greater uniformed police presence between ports of entry should not be discounted outright. The presence of frontline policing will add an extra layer of intelligence. However, a law enforcement presence already exists between ports of entry in the form of the police agency of jurisdiction, which is not necessarily the RCMP but, depending on the locality, may be the Ontario Provincial Police, the Sûreté du Québec, or a local municipal police service. Adding yet another layer of police creates redundancy and increases the potential for conflicting mandates.

IMPLICATIONS

Human Resources Must Match the Changing Strategy

Shiprider is unlikely to effectively combat transborder organized crime.

BtB is based on a layered approach to border security that relocates traditional screening tasks away from the physical border. To undertake such a strategic shift in border security, resources need to be re-allocated accordingly. In turn, this needs to be supported by legislative changes that accompany the new mandate for securing the border away from the border. For example, the expectation of privacy is generally considered lower at ports of entry (for example, the public accepts sniffer dogs in secure customs areas at airports) allowing more leeway for intrusion into individual rights. Will the lowered expectation of privacy also exist for CBSA officers working at locations away from the border? If so, how will such activities be justified within the *Canadian Charter of Rights and Freedoms*?

Borders Facilitate the Creation of Criminal Markets

Borders affect the structure of transnational organized crime groups through two counterbalancing pressures. On the one hand, different environments on either side of the border create incentives for transit; for example to obtain material, launder money, or trade in goods and services regulated in one country but not the other. On the other hand, borders impose transaction costs that separate networks into segments that are more disjointed than would otherwise be the case. Instead of discouraging organized crime groups from crossing the Canada-US border, the streamlining processes suggested in *BtB* may well have the opposite effect. Organized crime groups adept at corruption and/or at appearing legitimate will be able to move within the perimeter with even greater ease.

Organized Crime Groups Exploit Risk Management Models

Risk management models that facilitate trusted shippers are accessible to organized crime groups. Fitting neatly into a trusted-shipper program, either by appearing to be a legitimate trader or by using corrupt officials (or better yet, both), gives organized crime groups the same expedited border passage afforded to legitimate businesses.⁶⁹

Organized crime will grow more sophisticated as law enforcement strategies improve.

Organized Crime Groups Exploit Multi-Jurisdictions by Using Networks

Transnational organized crime groups are effective because they exploit differences between jurisdictions through networked connections. Naim cautions: “Still infused with images of cartels and syndicates – rigid, top-down organizations – we are not accustomed to thinking of flexible, even unchartable networks of intermediaries that operate across many borders and provide many services.”⁷⁰ Networked groups are not restricted to single providers of service. A crime syndicate in New York moving cocaine to Toronto will have multiple means of shipping the commodity across the border. Although the seizure of cocaine at the border represents a loss for the syndicate, it does not represent a loss of supply to the Toronto market. Alternative groups that specialize in the transborder shipment of illicit goods provide options for continued transborder movement, with limited exposure and liability

for cartels in New York and Toronto. Be it marijuana growers shipping product south or cigarette smugglers moving tobacco north, an interdiction at the border is unlikely to deter organized crime groups motivated to access a profitable market in either country.

Diaspora Criminal Organizations Are the New Global Norm

Globalization has transformed the nature of organized crime. By virtue of their global migration patterns, diaspora communities maintain a connection between the home and host countries that facilitates economic exchange, both legal and illegal.⁷¹ This has been documented for the global heroin trade.⁷²

Diaspora communities have flourished in Canada, one of world's largest *per capita* immigrant destinations with an entrenched policy of multiculturalism and a charter of rights that protects minorities. This has allowed diaspora-specific crime groups with international ties to their home states to spawn alongside legitimate communities. In 2011, police touted a crack down on Jamaican gangs in Toronto as having depressed Toronto's homicide rate.⁷³ In 2006, Human Rights Watch reported mass extortion from the local Toronto Tamil community as a means of raising money to fund the Liberation Tigers of Tamil Eelam (LTTE).⁷⁴ These examples illustrate the basis of a new norm for diaspora organized crime – internationalism. Adding layers of security to the Canada-US border is unlikely to disrupt the organized crime networks that have infiltrated diaspora groups in Canada, the US, and around the world.

The streamlining proposed by BTB will allow the most adept organized crime groups to move with ease within the perimeter.

BTB Does Not Address Organized Crime-Related Smuggling at Akwesasne

Despite the US and Canadian governments having acknowledged the presence of organized criminal activity in the Akwesasne area,⁷⁵ BTB makes no mention of the problems associated with the border in this area. A 2010 Threat Assessment states :

The unique geographical situation of the Akwesasne Territory, which borders Ontario, Québec and New York State, poses challenges to law enforcement agencies from multiple jurisdictions on both sides of the border. Many of the crime groups identified in this region have ties with other groups from Toronto, Ottawa or Montreal and major cities in the US. Several are well-established with legitimate businesses in the region, which they use to launder money. These groups are opportunistic, entrepreneurial and wealthy.⁷⁶

Diaspora communities maintain a connection between the home and host countries that facilitates legal and illegal exchange.

The geographic region of Akwesasne provides an ideal base from which organized crime groups diffuse and exploit opportunities on either side of the border (see figure 1). Raab and Milward confirm that these groups need a territorial base to be effective. Although these regions are usually found in areas rife with war and conflict, they are also found in areas where no state with a "legitimate monopoly of coercive power exists."⁷⁷

Figure 1: The Mohawk Territory of Akwesasne



Akwesasne is a point of vulnerability along the Canada-US border – arguably the most significant point of entry for contraband goods and people between the ports of entry. Without a strategy targeted specifically at this region, Akwesasne will continue to exert a multiplier effect on the markets of opportunity created by the Canada-US border.

Akwesasne is arguably the most significant point of entry for contraband goods and people between the ports of entry.

Conclusion

Two mitigating caveats need to be taken into account. First, *BtB* is a framework to provide a consensual roadmap for senior government administrators. Its implementation has not yet been finalized. Indeed, some parts, such as the impact of sequestration in the US, are beyond Canada's control. The periodic updates by the Privy Council Office's Border Implementation Team are cause for cautious optimism, as is the attention paid in *Budget 2013* to policing in First Nations communities, with funding explicitly set aside for "First Nations police services to focus on contraband tobacco."⁷⁸ Presumably, that is a (not-so) subtle reference to Akwesasne.

Second, organized crime has not yet needed to combine security and economic competitiveness. Its absence from *BtB* notwithstanding, a White House statement cited combating transnational crime as one of the *BtB*'s goals. Canada did not reciprocate. Therefore, we assume that the two countries do not agree on the centrality of organized crime to the nexus of security and economic competitiveness, and do not consider this a priority. Although security and economic competitiveness are at stake for both countries, the US wants, first and foremost, to achieve greater security, while Canadians are prioritizing economic competitiveness. Organized crime slips through the cracks and it may profit literally and figuratively as a result.

The US wants security
and Canadians
prioritize economic
competitiveness.

Organized crime is not a function of the borders themselves. Rather, organized crime groups exploit illicit markets, in which policy differences across borders play a key role in generating the countervailing transaction costs that make illegal activity worthwhile. As Canadian and US public servants collaborate on implementing *BtB*, they continue to ignore the role that polices can play to encourage or deter organized crime groups from exploiting the border. The reason for this gap may be attributable less to ignorance than to the complexity of an issue that transcends constraints of jurisdiction and sovereignty, two hallmarks of traditional border politics.

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- 21 The Conventional Border program “develops, administers and oversees the policies, regulations, procedures, alliances and working partnerships necessary to maintain border control while allowing for the free movement of legitimate people and goods (including plants and animals) into and out of Canada.”
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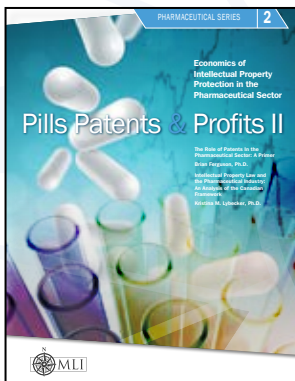


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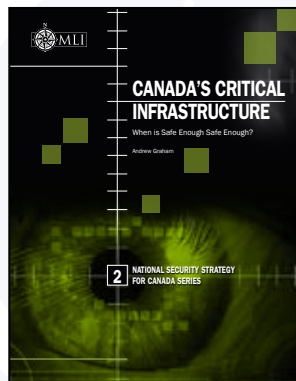
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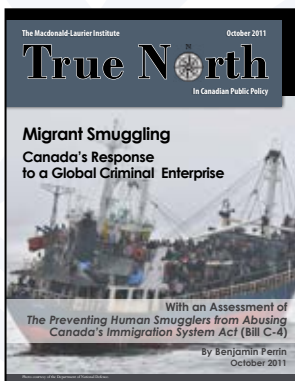
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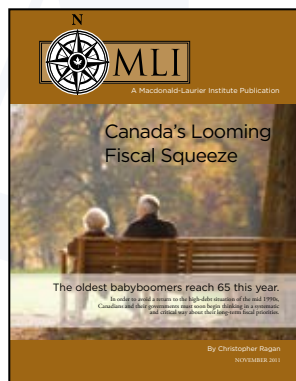
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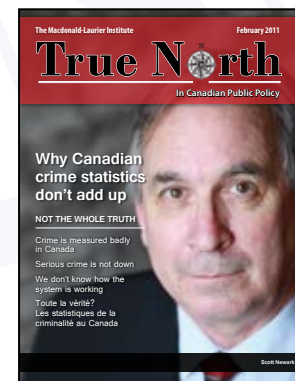
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