Securing Borders by Opening Doors

The Securitization of the US Visa Waiver Program and Debordering America After 9/11

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<tbody>
<tr>
<td>CEE</td>
<td>Central Eastern European (countries)</td>
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<td>DHS</td>
<td>Department of Homeland Security</td>
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<td>DoJ</td>
<td>Department of Justice</td>
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<td>ESTA</td>
<td>Electronic System for Travel Authorization</td>
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<td>GAO</td>
<td>Government Accountability Office</td>
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<td>GCC</td>
<td>Gulf Cooperation Council</td>
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<td>IBIS</td>
<td>Interagency Border Inspection System</td>
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<td>IIRIRA</td>
<td>Illegal Immigrant Reform and Immigrant Responsibility Act</td>
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<td>INA</td>
<td>Immigration Nationality Act</td>
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<td>INS</td>
<td>Immigration and Naturalization Service</td>
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<td>IRCA</td>
<td>Immigration Reform and Control Act</td>
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<td>NCIC</td>
<td>National Crime Information Center</td>
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<td>NIV</td>
<td>Non-Immigrant Visa</td>
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<td>NSEERS</td>
<td>National Security Entry-Exit Registration System</td>
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<td>US-VISIT</td>
<td>United States Visitor and Immigrant Status Indicator Technology</td>
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<td>USA PATRIOT Act</td>
<td>Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act</td>
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Introduction

The attacks of September 11, 2001 were sobering signals of the complex challenge for the United States to secure its borders and keep the doors open at the same time. As a sudden reaction to the terrorist attacks, the Bush Administration instituted a series of restrictive measures on international travel and visa issuance in a steadfast attempt to keep out the enemy and prevent another devastating attack on US soil. In the distrustful and overwhelmingly suspicious political and public atmosphere, the “home front” once again became the “battlefront” resembling the distant Anglo-American war of 1812. Public anxiety and political unease about the controversial visa-processing practices which led to the issuance of student or tourist visas to all of the arrested 9/11 hijackers lead to the securitization of migration and the visa process. Open debate on whether nationalistic restrictionism and drastic border measures were suitable responses to the problem of terrorist travel was virtually non-existent on the public level. In the wake of the attacks, US policies reverted to Cold War-style attitudes leading to a relentless effort to seal US borders and to the enforcement of nationality-based threat assessment. There were two major premises of this policy. First, that America can best be protected if it is “closed” and, second, that terrorists can be identified by their country of origin. Since 2001, experience has shown that neither of these suppositions is accurate. It has become increasingly clear that there exists a significant and growing al Qaeda presence in Europe and that the United States has suffered major losses in its soft power due to restrictionism.

What is the alternative then? Can open doors actually mean more security? How can the United States resolve the seemingly contradicting goals of harnessing the soft power benefits of its attractiveness and guaranteeing maximum national security to its citizens? This paper will seek to answer these questions utilizing two emerging concepts: the academic framework of the Copenhagen school’s securitization theory and innovative policy solutions of smart or “virtual” borders. While the application of securitization theory to migration is not a novel idea, its relevance to visa policy and linkage to the changing topology of border control is an under-researched field. This paper attempts to partially fill this gap by assessing the circumstances, reasons and consequences of the US Visa Waiver Program’s securitization by US policy makers.
and within the American public discourse. The post 9/11 securitization of migration and the Visa Waiver Program (VWP) respectively, offers a chance to debunk the “openness vs. security” paradox and points to a new topology of border control that is more suitable for addressing adaptive threats. The Visa Waiver Program, which allows the vast majority of European travelers to enter the United States without a visa is a two decade old program that has fundamentally changed the circumstances of transatlantic travel. Apart from governmental assessments and reports it has received very little if any academic attention. It is therefore important to track the evolution of the program and place it in a theoretical framework in order to evaluate its significance.

The first chapter of this paper will present the emergence of the US Visa Waiver Program as a key diplomatic tool to enhance the United States’ bilateral economic relationships. Diplomatic hurdles and serious policy incongruence between the emerging European Union and the United States will be assessed as well as the political and theoretical considerations behind them. The second chapter will demonstrate the soft power potential of the WVP and its importance in supporting US interests abroad. This chapter will also argue that a long-lasting American resistance to the expansion of the VWP to countries in Eastern Europe (which were ardent supporters of the “Global War on Terror” and had no significant ties to Al Qaeda) was one of the many negative side-effects of a flawed approach to post 9/11 US border security. The circumstances leading to the creation of a virtual “fortress America” will be assessed followed by a description of the securitization process of migration and the VWP. The third chapter will then focus on how this process has changed the very conceptualization of borders in transatlantic migration security. The chapter will also briefly address considerations such as the visa overstays problem and “clean state terrorist operatives” which fall beyond the scope of this paper. Finally, the paper concludes that in the age of international terrorism and massive migration flows, managed soft power is a more efficient tool of homeland security than traditional border control measures.
1. The Origins and Development of the US Visa Waiver Program

1.1. The Cold War Conception of Waiving Visas

The Visa Waiver Program was born as a Cold War project during the Reagan administration with the twofold intention of alleviating the consular workload associated with visa processing and encouraging business and tourist travel to the United States from allied countries overseas.¹ The VWP was driven by the necessity to reduce major backlogs at US consular outposts where officials were facing serious difficulties processing the massive number of travel visas.² The introduction of a pilot version of the VWP aimed to kill two birds with one stone: to solve the bureaucratic overload of visa issuance to low-risk country nationals and boost international business travel and tourism in a time when the US trade deficit was soaring and the economy was slow to recover from the 1982 recession. What gave the Program a distinctive “Cold War edge” was its indirect focus on non-Communist countries with the legal provision that a “country’s participation in the program should not have an adverse effect on U.S. … security interests.”³ The US decision to ease brief travel from developed countries that posed neither a security threat nor a likely illegal overstay problem was an obvious one. With the Cold War division of Europe, the concept of nationality-based “threat” assumption was tenable. At the time, the European Community was nowhere near to having a Common Foreign and Security Policy and jihadist militancy and terrorism were essentially limited to non-European territories in Africa and the Middle-East. It was, therefore, a reasonable assumption that whoever visited the United States from countries like Britain, Austria, France or Japan was more likely to contribute to the vitality of American society than to its endangerment.

What started out as a convenient change in visa issuance policies limited to a small number of countries, soon became a preferred “way forward” to facilitate short trips to the United States when Congress removed the “up to 8 countries” limit of the program and expanded its scope to an unrestricted number countries.⁴ Reauthorized by President Bill Clinton in 1993, the test program dynamically expanded, and although it was scheduled to expire in 1997, it survived through temporary extensions until 2000 when it was finally made permanent. During

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¹ Bush (1989)
⁴ US Public Law No: 101-649.
the expansion of the program from one country in 1988 to thirty-five in 2008 the VWP became an integral part of US visa policy and had followed an essentially bilateral approach. The emergence of the European Union and the formation of the Schengen border-free area became one of the most problematic aspects for the VWP. The legal hurdles and political wrangling resulting from the Schengen Area will be detailed in the next section. It is important to note here, however, that US disregard for the EU’s visa reciprocity requirement and solidarity clause continues to signal a bilateral approach of US visa policy toward EU member states, indicating that, in this respect, the United States continues to view the European members of the VWP as part of an economically integrated, but not yet politically centralized EU, as it did in the Cold War.

Another characteristically Cold War feature of the US attitude towards VWP expansion was the invisible iron-curtain that continued to separate the Western half of Europe from Central-Eastern European (CEE) countries. It was not until two long decades after CEE democratic system changes that countries like Hungary, Slovakia, the Czech Republic or the “Baltic Three” could also enjoy visa-free travel to the United States. It took several years of tireless lobbying to convince the United States that CEE countries do not pose any larger a national security threat to America than Western European countries.\(^5\) Visa overstays and consular visa application refusal rates were clearly defined benchmarks of the program that these countries had not met for a long period of time. At the same time, the applicability, measurability and relevance of the given standards were highly contested by immigration experts as well as several internal GAO reports.\(^6\) Independently from how pro-American these CEE countries were, or how insignificant the terrorism threat was from these countries, there had been a perceived reluctance on the part of US decision-makers to speed up their appointment to the VWP.\(^7\)

Since the inception of the VWP two decades ago the international scene has significantly changed: the bipolar division has collapsed but mass migration has become a major national security problem. At the same time and with the emergence of global jihadist movements, cooperation on data-sharing has become an essential element of border security.

\(^5\) The 9/11 hijackers had extensive ties in Western European and CEE countries.
\(^6\) Carafano (2006) 
\(^7\) Interview with Karl Altau, Managing Director of the Joint Baltic American National Committee, July, 2008.
What this means is that though the VWP was built on a legitimate premise to help reallocate scarce State Department resources while offering leniency to friendly countries that met certain criteria, the state of play has changed. Our allies are as vulnerable as we are. With [the] VWP, their vulnerability becomes ours as well.\(^8\)

So while the concept of the VWP was a characteristically Cold War “soft power” project, new threats emerging in the post-bipolar world necessitated major changes in the technical details and the nature of the program. The VWP underwent significant transformations not only in scope but also in depth as a reaction to the events of 9/11. The next section will give an overview of the legislative background of the Program and highlight the most important modifications of the technical requirements of the VWP. Observing the Program’s transformations, Congress’ unwillingness to expand the VWP and a series of conflictual interests between the EU common visa policy and US national security strategy is crucial to understanding the United States’ approach to border security threats in the post-9/11 era.

### 1.2. Legislative Background: Processes and Problems

#### 1.2.1. Introduction of the current Visa Waiver Program

The Visa Waiver Program aims to spur tourism and investment, strengthen ties between the United States and its allies while striving to reduce security risks associated with immigration. Under the VWP, nationals of certain countries designated by the Attorney General and Secretary of State are allowed to travel to the United States for business or pleasure for 90 days without having to obtain a “B” nonimmigrant visa. Thus, aliens from VWP countries do not have to go through the lengthy process of visa applications (see Appendix A). Unlike aliens entering the United States with a B visa, however, visitors who benefit from the VWP are not allowed to extend their stay or adjust their nonimmigrant status. Violating the terms of visa waiver program admissions also means that the visitor “becomes deportable without any judicial recourse or review.”\(^9\)

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\(^8\) Kephart (2006)  
Since June 26, 2005 visitors from program countries must also possess machine-readable, biometric or e-Passports. VWP visitors arriving with passports who fail to meet these technical criteria can only enter the US with a valid visa. In accordance with US biometric regulations, the EU approved a directive in July that requires all member states to introduce new biometric passports that incorporate an electronic chip comprising the owner’s biographical data, digital photo, and fingerprint.

Unlike visitors who are to obtain visas to enter the US there is only one opportunity to identify inadmissible aliens traveling under visa waivers face-to-face, that is at the ports of entry by immigration inspectors. Prior to the visa-free visitor’s arrival, his or her electronic passenger manifest is checked against various security databases. Then on arrival, he or she is shortly questioned by the immigration inspector while biographic information is processed by the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system. This primary inspection which usually takes only a few minutes substitutes extensive face-to-face interviews and background checks which all non-VWP citizens must go through.

Currently, the 35 participant countries of the visa waiver program are the following:

Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovak Republic and South Korea.

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10 Machine-readable passports have two lines of text as letters, numbers and chevrons below the personal information and the photograph of the person. Biometric passports have digital photos that are printed on the page. E-passports include an integrated computer chip that is capable of storing biographic information.

11 The deadline to obtain biometric passports for VWP citizens wishing to travel to the US without a visa was October 26, 2006. New passports issued by Visa Waiver Program countries after October 26, 2006 must contain an integrated computer chip.

12 Personal data and passenger information is checked via the Interagency Border Inspection System (IBIS) and CBP’s Advanced Passenger Information System (APIS).

13 US Department of State (2008)
1. Map of Visa Waiver Program countries as of January, 2009

The first countries to qualify for the program were the United Kingdom and Japan in 1988. These two countries constitute more than half of all VWP travelers.\textsuperscript{14} The situation with Uruguay and Argentine, on the other hand, highlights that the program is by no means a one way street. An emergency (\textit{i.e.} war, military coup, severe economic collapse, \textit{etc.}) occurring in any of the program countries may lead to the termination of its VWP membership.\textsuperscript{15} At the same time, countries that fail to meet certain qualifying criteria or maintain low refusal rates can be placed on a probationary status.\textsuperscript{16}

In order to qualify for the Visa Waiver Program a country must meet an array of requirements. The eligible country must:

- offer reciprocal privileges to United States citizens;
- have a nonimmigrant refusal rate lower than three percent for the previous year;
- issue machine-readable passports;
- report lost and stolen passports in a timely manner;
- be determined by the Secretary of Homeland Security and the Secretary of State jointly

\textsuperscript{14} The Heritage Foundation Conference (2006)
\textsuperscript{15} Accordingly, after Argentine’s economic collapse in 2001 which resulted in a sharp increase in the number of its citizens overstaying the 90-day visa-free period, the country was removed from the VWP the following year. Likewise, Uruguay after seeing an unprecedented jump in its illegal immigrants was terminated from the program.
\textsuperscript{16} Belgium, for example was on probation due to concerns about the timely reporting of lost and stolen passports and its tardiness in issuing machine-readable passports. Its status was re-evaluated in 2004.
that the candidate country’s inclusion in the Program does not compromise the law enforcement or security interests of the United States;

- certify that it has the capability to issue tamper-resistant machine-readable passports that incorporate biometric identifiers.¹⁷

Provided that these criteria are met, the Attorney General in consultation with the Secretary of State must determine whether the country’s designation would compromise US law enforcement or national security interests. In addition to the criteria specified by Section 217 of the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) and the State Department take several other factors into consideration, such as:

- Security and conditions of application for and issuing of passports;
- Application of citizenship and nationality laws;
- Security and law enforcement threats (immigration control, alien smuggling, etc);
- Political and economic stability; and the
- Degree of cooperation with the US in peacekeeping, war against terrorism and various international law enforcement issues (e.g. extradition).

After joining the VWP, program countries are reviewed every two years by interagency assessment teams with regards to the naturalization process, law enforcement policies, lost and stolen passports and visa refusal rates, the latter being the most crucial factor.

1.2.2. US legislative background

The primary law defining US immigration and visa policy was passed by Congress in 1952, overriding President Truman’s veto. The Immigration and Nationality Act (INA) reorganized an array of statutes and provisions that already existed, compiling them into one comprehensive immigration law contained within a several hundred page-long document.¹⁸ With the passage of the INA, the basic provisions of the national origin quota system were reaffirmed, but the discriminative immigration exclusions against Asians were abolished and

¹⁷ Sec.217. 1/c of the Immigration and Nationality Act
¹⁸ McCarran-Walter bill of 1952, Public Law No. 82-414
foreigners with certain education skills or relatives were given preference. Although amended and extended many times since, the INA still constitutes current US immigration policies. The INA also laid the foundations of the non-immigrant visa (NIV) issuance policy currently applied at consular sections abroad. Most importantly, the law considers all NIV applicants seeking entry to the US to be willful immigrants, unless they can prove otherwise to the officer adjudicating the NIV application.\(^{19}\) This notion stands contrary to the legal instrument of the “presumption of innocence” intrinsic in American legal tradition since in the case of visa applicants, the burden of proof is on the applicant.

The Hart-Celler Act of 1965 marked a fundamental shift in US visa policy. With the abolishment of the national origin quota system, it made family unification a cornerstone of US immigration policy.\(^{20}\) The allocation of visas was determined on a first come, first serve basis according to a seven category preference system that favored applicants who had relatives in the United States and those with special occupational skills. With the rapidly increasing number of political refugees and visa applications during the 1970s, coupled with staff shortages, an ever larger number of personal appearances for NIV applicants were waived by consular officers.\(^{21}\) Although this more lenient visa policy somewhat lightened the visa workload, the lack of scrupulous screening contributed to a significant rise in illegal overstays. By the end of the 1980s the rising number of illegal aliens residing in the US urged President Ronald Reagan to sign into law the Immigration Reform and Control Act (IRCA) in 1986 which intended to deter illegal immigration while providing amnesty for illegal aliens, who had already lived and worked in the United States since January, 1982.

Under increased pressure to seek any efficiency possible in the application process, the IRCA established the Visa Waiver Pilot Program - originally as a temporary program. The VWPP enabled citizens of the participating countries to travel to the United States for business or leisure for 90 days or less without obtaining a travel visa (B1/B2). The success of the Visa Waiver Pilot Program soon led to the elimination of the restriction on a number of countries that can participate, with the Immigration Act of 1990.\(^{22}\)

\(^{19}\) Public Law No. 82-414, as amended (1952)

\(^{20}\) Center for Immigration Studies (1995)

\(^{21}\) Although “all applicants for an NIV are required by law and regulation (INA sec. 222e, 22 CFR 41.102, 9 FAM 41.101 N3 and 9 FAM 41.102 N2/3) to appear for a personal interview”, the “INA provides for a waiver of this personal appearance requirement if it is deemed to be in the national interest.”

\(^{22}\) Public Law 101-649.
about 2.7 million illegal immigrants it failed to stem the relentless influx of illegal workers across US borders. A problem that was addressed by the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA or “ira-ira”) under President Bill Clinton which cracked down on illegal immigrants. Among others, the IIRIRA also amended the VWPP by giving the power to waive visa requirements and to designate countries as members of the program to the US Attorney General (in consultation with the head of the State Department).23 Although the Program was scheduled to expire on September 30, 1997 it was extended temporarily by continuing resolutions passed by the 105th and 106th Congresses.24 Finally on October 30, 2000 the Visa Waiver Permanent Program Act made the authorization of the program permanent.25 Thus, the legal authority of the VWP is provided by Section 217 of the INA, which also included important provisions to strengthen consular documentation and reporting requirements such as the following:

- mandatory machine-readable passports for all VWP entrants by October 1, 2007, 26
- checking VWP applicants against automated lookout systems,27
- collection of arrival/departure data at the ports of entry, 28 and
- Attorney General’s periodical evaluations of the participating countries.

These newly introduced security measures and technological requirements were major steps towards a cooperative system of mutually intelligible information systems on both sides of the Atlantic aiming to reconcile “competing concerns of facilitating travel and tightening immigration controls.”29 Establishing the VWP under such provisions as a permanent part of US visa policy clearly signaled US intentions to keep America open to the friendly nations who contribute to the US economy, but also to keep a closer eye on who actually enters the country.

23 Public Law 104-208.
24 Public Law 105-56, Public Law 105-119, Public Law 105-173.
25 Public Law 106-396.
26 According to Section 202 of the Act, designated program countries as a condition of the continuation of their designation were required to certify not later than October, 2001 that they have a program to issue machine-readable passports to their citizens by October 1, 2003.
27 The identity of the alien must be checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States. See 203. (a)
28 The purpose of which was to calculate the percentage of the total number of visiting nationals from each country for whom no record of departure exist (i.e. the number of overstays)
1.2.3. Effect of 9/11 on US visa policy legislation

The terrorist attacks of September 11, 2001 exposed not only the vulnerability of the world’s sole superpower but also drew attention to the loopholes of the US immigration and visa system. Although homeland security had been a priority before 9/11, openness and the facilitation of travel had been the dominant features of US immigration policy until 2001, something that was also manifested in the exponentially increasing number of visitors and visas issued to non-VWP countries.\(^{30}\) Although immigration organizations as well as inside reports have pointed to several VWP (then VWPP) vulnerabilities, little progress has been made in assuring that the increased influx of non-screened visitors does not pose a security problem for the US.\(^{31}\) After the terrorist attacks of September 11, 2001, however, authorities have refocused their attention to the inadequate efficiency level of screening nonimmigrant visitors. One of the VWP lessons learned from the attacks was that the “[p]rogram facilitated the illegal entry of terrorists and criminals into the United States.”\(^{32}\) Major inadequacies in law enforcement procedures such as inconsistent checking of passports from VWP countries and the increasing number of lost and stolen VWP passports made the Program the Achilles’ heel of the United States’ Atlantic border security.\(^{33}\) Unlike the traditional double-check non-immigrant system (see Appendix B), VWP country nationals were not subject to rigorous background checks and personal interviews at US consular posts. Significantly, “the program allows only one opportunity to identify inadmissible aliens” at the same time look-out system used to single out potential terrorists was “not a substitute for the interview” at consular posts.\(^{34}\) And although “the overwhelming majority of VWP applicants are law-abiding individuals, some terrorists and criminals have indeed taken advantage of the program to gain easy access to the United States.”\(^{35}\)

In 1993, Ahmed Ajaj who was later convicted for involvement in the New York World Trade Center bombing entered the United States with a Swedish passport under the VWP.\(^{36}\) His co-conspirator in the bombing plot, Ramzi Yousef, used a British passport to board a plane from

\(^{30}\) Siskin (2004)  
\(^{32}\) Becraft (2002)  
\(^{33}\) Fine (2002)  
\(^{34}\) Becraft (2002)  
\(^{35}\) Ibid.  
\(^{36}\) Kephart (2006)
Pakistan without pre-screening.\textsuperscript{37} British citizen Richard Reid, the so-called “shoe bomber” who wanted to detonate explosives hidden in his shoe, boarded a flight from Paris to Florida in 2001 without a visa.\textsuperscript{38} Lastly, convicted al-Qaida member Habib Zacarias Moussaui, a French citizen who was found guilty for assisting the 9/11 plot, did not need to worry about obtaining a visa either to enter the US.\textsuperscript{39} The potential threat of terrorist organizations abusing the VWP proved to be grave. As a result, numerous propositions both in and outside of Congress called for abolishing or suspending the program for, as its critics argued, the national security costs outweighed any benefits.\textsuperscript{40} Since “the US Congress, the administration, law enforcement officials, and the public have questioned the effectiveness of U.S. visa programs in protecting national security,” Congress asked the Government Accountability Office to review the program and conduct an extensive study on “the implications — specifically those affecting national security, foreign relations, tourism, and State Department resources— of eliminating the program.”\textsuperscript{41}

The GAO study found that “if current visa waiver travelers were required to apply for visas and State’s current resource levels were not increased, consular officers would be inundated with paperwork for routine and low-risk cases and would become less effective and alert in dealing with cases needing additional scrutiny.”\textsuperscript{42} It also pointed out that

The decision to eliminate the program could negatively affect U.S. relations with participating countries, could discourage some business and tourism in the United States, and would increase the need for State Department resources. For example, if the program were eliminated … it could take 2 to 4 years or longer to put the necessary people and facilities in place to handle the increased workload.\textsuperscript{43}

In light of the 2002 GAO study findings and with pressure from the travel industry and its European partners to keep the VWP alive, Congress decided to sustain the VWP, while adding

\textsuperscript{37} Ibid.
\textsuperscript{38} Letzing (2005)
\textsuperscript{39} Ibid.
\textsuperscript{42} Ibid. p. 18.
\textsuperscript{43} Ibid, p. 4. (emphasis added)
important security criteria as basic requirements for participation. Four important Acts - the USA PATRIOT Act of 2001, the 9/11 Commission Act, the Enhanced Border Security Act of 2002, and the Homeland Security Act\(^{44}\) - passed in the years following 9/11, addressed visitors and immigrants of the United States indirectly by focusing on the screening and monitoring process prior to their entry to the US.

The USA PATRIOT Act of 2001 supported by president G.W. Bush rigorously advanced the deadline of the issuance of machine-readable passports from October 1, 2007 to October 1, 2003 and gave the Secretary of State limited waiver authority over this requirement for a country making significant progress.\(^{45}\) Accordingly, twenty-one countries were granted postponement of the deadline until October 26, 2004. Even so, officials at the ports of entry could give a one-time waiver to visitors from VWP countries who had not obtained a new passport by the scheduled time.\(^{46}\)

“We must know who's coming into our country and why they're coming. We must know what our visitors are doing and when they leave”\(^{47}\) said president Bush one year later, when he signed the Enhanced Border Security and Visa Entry Reform Act which was passed by overwhelming bipartisan majority in both House and Senate.\(^{48}\) Most importantly, it required:

- consular offices to submit an electronic version of visa applications to the inspectors at the ports of entry and the Immigration and Naturalization Service;
- the Secretary of State to ensure that consular officials receive a special training to screen potential threats to national security;
- VWP countries to report the theft of passports in a timely manner; and
- Citizens of VWP countries to have tamper-resistant, machine-readable passports with biometric identifiers\(^{49}\)

As part of the US-VISIT biometric identification and tracking program, the Department of Homeland Security issued a final interim rule in January, 2004 requiring visitors to provide finger-prints, photographs and other biometric indicators upon arrival at air and seaports. At the

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\(^{45}\) Public Law 107-56
\(^{46}\) DHS Press Release (2005)
\(^{47}\) Bush, G.W. (May 14, 2002)
\(^{48}\) Public Law 108-299
\(^{49}\) The deadline of biometric passports was later extended again by one year to October 27, 2005.
time of the regulation’s issuance, citizens of VWP countries were exempt from this practice. However, in September, 2004, the DHS extended the US-VISIT processing to all VWP visitors and with the Biometric Visa Program all visa applicants were required to enroll finger scans and photographs. As these new security measures were introduced, Brussels voiced serious concerns that the US data protection system does not meet EU data privacy standards. As for the Hungarian implications, in one of his very first public announcements, President of the Republic László Sólyom asserted that he is unwilling to travel to the United States as long as US authorities require fingerprints on arrival and called such security measures as unnecessary and a usurpation of freedom rights. Machine-readable passport (MRP) requirements finally took effect on June 26, 2005 marking the end of a temporary period during which officers could grant a one-time entry to the US for VWP nationals without a machine-readable passport. Otherwise, carriers transporting VWP citizens without a MRP can be fined $3,300 per violation of the law. Other, non-legislative but perceivable changes for visa applicants included stricter and more scrupulous background checks, higher visa application fees, longer waiting times and relatively more visa denials. These factors all contributed to a slowdown in tourism, a downturn in VWP visitors and also a sharp decline in B1/B2 visas issued to tourists and businessmen (See Appendix E).

Pursuing the recommendations of the 9/11 Commission, a study group created to assess the circumstances of the terrorist attacks, Congress made significant changes in immigration and visa policy as well as in border security and data-sharing. The 9/11 Commission’s statements included important observations regarding terrorist travel which therefore had significant implications for the VWP. The 9/11 Commission pointed out that “the 9/11 hijackers

- included known al Qaeda operatives who could have been watch-listed;
- presented passports manipulated in a fraudulent manner;
- presented passports with suspicious indicators of extremism;
- made detectable false statements on visa applications;
- made false statements to border officials to gain entry into the United States; and

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50 DHS Notice (January 5, 2004)
52 DHS Notice (December 30, 2004).
53 DHS Press Release (May 12, 2005)
• violated immigration laws while in the United States”\textsuperscript{54}

The 9/11 Report also concluded that border security was not considered to be a national security issue before 9/11. As a result, neither officials of the State Department nor of the Immigration and Naturalization Service “were ever considered full partners in a national counterterrorism effort.”\textsuperscript{55} Based on these insights, Congress enacted the so-called 9/11 Act, which implemented several recommendations of the Commission. The most important policy change was the creation of the Electronic System for Travel Authorization (ESTA) which aimed to mitigate the lack of pre-screening of VWP nationals (see Appendix C): with the new system, VWP country nationals are required to provide their biographical and travel information two days prior to their departure and are only permitted to board their flights if they acquire a travel authorization based on an electronic background check. Once acquired, the authorization is valid for three years. The new system is essentially introducing an “electronic visa” for VWP countries, free of charge and, thus, the condemned lack of pre-boarding screening is solved.\textsuperscript{56}

The 9/11 Act also introduced a series of security measures including the establishment of an air exit system, which would record whether VWP nationals actually leave the country before their visa expires; moreover, the much criticized “3 percent refusal rate requirement” can also be waived if the country fully cooperates with the US on all possible security matters and its overstay rate does not exceed 10 percent.\textsuperscript{57} With the passage of the 9/11 Act, the VWP has indeed come a long way from being a travel facilitation program to a program of increased security cooperation across the Atlantic. However, as former migration expert, Doris Meissner pointed out in her testimony to the 9/11 Commission, “databases do not catch terrorists.”\textsuperscript{58} Even in its current, highly securitized form, the Program raises several practical and theoretical security questions and some counterterrorism experts are still not convinced that the Program is an efficient shield against organized crime and international terrorism.

\textsuperscript{55} Ibid.
\textsuperscript{56} Public Law 110-53.
\textsuperscript{57} Public Law 110-53.
\textsuperscript{58} Meissner (January 26, 2004)
1.2.4. The EU’s position and diplomatic hurdles

When the VWP was created in the midst of the Cold War, the European Union in its current form did not even exist. It was only with the emergence of a Common Foreign and Security Policy and the expansion of the Schengen area that bilateral treaties between the US and EU countries led to disputes between Brussels and Washington. Since 2001, Schengen members have a common list of countries that enjoy visa-free travel to the EU and another list of countries whose citizens are required to have a visa to enter the EU. As part of the Schengen acquis, the EU maintains a negative visa list, so-called Schengen Black List for countries from whose citizens a visa is required to enter the territory of EU member states. In addition, it also created a positive list, so-called Schengen White List, which includes countries whose nationals are allowed to enter the EU for three months or less without a visa. The United States with thirty-three other developed countries enjoy business and travel visa exemption.

In June 2, 2005, however, the European Council amended the Schengen acquis and “in the spirit of solidarity” the visa reciprocity mechanism was set up. Thus, the Commission, which requires regular reports on cases of non-reciprocity with third countries, now has the right to decide on the re-introduction of the visa requirement for the countries in question. The non-reciprocity of visa regulations between the United States and the entirety of the European Union is a telling indicator of the nature of EU-US relations. While US citizens are free to visit all twenty-seven member states of the EU, only twenty-two member states are in the VWP. While the EU applies common visa policy for all of its member states, the United States shows no willingness to treat the EU as a bloc of countries and apply a blanket waiver on the grounds of membership. The official position of the European Parliament is reflected in a resolution on Transatlantic Partnership adopted in June 1, 2006 concluded that the existing non-reciprocity:

- hampers transatlantic ties;
- perpetuates inequalities among EU citizens; and
- implies lack of trust in the EU’s own visa arrangements.

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60 The UK and Ireland opted out and continue to create their own migration and visa policy.
62 Council Regulation No 539/2001, as amended by Council Regulation 851/2005
63 Committee on Citizen's Freedoms and Rights, Justice and Home Affairs (2005)
According to the report, US visa policies thus result in “unjustified discrimination between the citizens from old and new Member States.” The EU therefore necessitated common treatment of its member states and called for a visa waiver for all of its new members in the medium term. Brussels also suggested certain interim measures to be taken until the non-VWP countries become visa-free such as visa fee exemption and streamlining of the visa procedure but this proved to be unacceptable for the US administration.

EU-US relations were plagued for three years by political deadlock, frequent reports pointing out US disrespect for the EU’s common visa policy and a series of diplomatic warnings on the EU’s side to reestablish the visa requirement for the US. The US repeatedly reiterated its bilateral approach to the issue noting that it does make “determination on a nation-by-nation basis,” as the US has to “measure not only intent, but actual accomplishment.” The EU continued to describe the situation as “unacceptable.” After a practically inconclusive June, 2008 EU-US summit regarding visa issues and the fourth Non-reciprocity Report issued a month later (which noted that no progress had been made on the reciprocity issue), the Commission warned the US that it might force its diplomats to apply for a visa when traveling to the EU. The EU’s consistent diplomatic pressure on the US to extend the VWP to all member states was unrealistic and by the time of threatened “retaliatory measures” it only served to jeopardize the accomplishments of a handful of Central-Eastern European countries that had already made considerable progress on the VWP accession talks and were only waiting to conclude data-sharing agreements.

The US bilateral approach to visa policy was understood by every CEE member state aspiring to become a VWP member, thus these countries joined a concerted multilateral effort to lobby for their accession. The EU’s approach to how the problem of non-reciprocity should be solved, i.e. by an EU-wide blanket waiver, demonstrated a continued disrespect for US national security interests and US visa laws passed long before the EU was formed. Brussels’ call for “retaliatory measures” can merely be characterized as a diplomatic bluff which only served to
lose the EU significant bargaining power.\textsuperscript{71} If the solidarity clause was indeed revoked, and all
EU countries had to reestablish the visa requirement for the US, Brussels would not only have
created significant internal tensions between VWP and non-VWP states, but would also have
suffered all the economic and diplomatic costs that were the very reasons why the US, even after
9/11, stuck to maintaining the VWP.

The November 2008 accession of six CEE countries to the VWP (Czech Republic,
Estonia, Hungary, Latvia, Lithuania, and Slovakia) confirmed that concerted efforts of aspiring
countries with similar qualifications but respect for bilateral negotiations is the only successful
way forward to achieve visa reciprocity. At no point in the two decade long history of the
Program’s existence did the US ever deviate from its determination to define visa policy of itself
regardless of any legal provisions of allied states in Europe.\textsuperscript{72} The EU, on the other hand, has
been considerably more impatient and rhetorically aggressive towards the US as compared to
other countries which, similarly to the US, upheld the visa obligation for citizens of one or more
EU Member States, such as Australia, Brazil, Brunei, Canada and Singapore.\textsuperscript{73} Although the EU
called upon these countries to modify their visa policies and extend visa waiver reciprocity to all
of its member states, these warnings were by no means comparable to the forceful nature of
public pressuring and direct threatening of retaliatory measures that was aimed towards the US.
The EU’s threats can rather be considered as prestige show-offs in a time of already tense EU-
US relations. Brussels’ open blackmailing only worsened the diplomatic environment for
aspiring countries to make headway in bilateral VWP talks. The EU could not, and based on the
experience of the past decade, most probably will not be able to put pressure on the United States
to make a policy shift away from its bilateral approach. Importantly, such a shift would entail a
loss of US sovereignty on a policy making area that has not only a symbolic soft power element,
but also important security concerns.\textsuperscript{74} What lies behind the EU-US non-reciprocity problem is
in essence, that the US does not accept the notion that all EU members have the same border
control and security levels. If the US followed the EU’s recommendations and automatically
granted waivers to all EU countries then any country joining the EU, for instance Croatia or
possibly Turkey would acquire a much easier access to the US. Given the prevalence of

\textsuperscript{71} Interview with Jaroslav Kurfurst, Deputy Chief of Mission at the Czech Embassy, Washington, DC, July, 2008.
\textsuperscript{72} Interview with András Juhász, Second Secretary at the Hungarian Embassy, Washington, DC, July, 2008.
\textsuperscript{73} European Commission Press Release (July 23, 2008)
\textsuperscript{74} Interview with Lauren Neely, Executive Assistant at the Department of Homeland Security, Washington DC, July,
2008.
international terrorist organizations nearby these countries and serious inefficiencies in border control, it is highly reasonable for the US to reserve the right to form its visa policy on a bilateral basis.

**Evaluation**

With the collapse of the Soviet Union and the immigration implications arising from the emergence of the EU’s CFSP, both the narrative and the legal framework of visa regulations have changed. The EU started to regard visa waivers as discriminative to some of its member states and thus as disrespectful of its common policy ideals. With the passing of the reciprocity clause, the VWP turned into a tool of power displays and diplomatic blackmailing on both sides. US rejection of a blanket visa waiver to all of the EU countries reflected an insistence on protectionism of entry/exit to the US and US sovereignty over border crossings. This rested on the premise that America is able to control its borders effectively and that the most important thing is who enters the country and which nationality he or she is. On the other hand, EU rejection of US bilateralism and insistence on a blanket waiver reflected that the EU knows and trusts the people within its borders, regardless of their country of origin and that every EU citizen is civilized enough not to pose a security threat to the US. This was based on the assumption that EU “citizenship” comes with a lower threat level, so if someone is from the EU it, *e.g.* presumes a non-terrorist background. Both parties’ arguments were based on the presumption that they are able to efficiently control their borders, and that citizenship (whether national citizenship or “EU citizenship”) defines in some way the level of security threat.

In the negotiating process over the expansion of the VWP, the EU has lost significant bargaining power to the US. The US still fails to acknowledge the universal prevalence of visa reciprocity across Europe. Nonetheless the expansion was made in 2008. As demonstrated so far, a long-lasting American resistance to expand the Visa Waiver Program to countries in Eastern Europe which were ardent supporters of the “Global War on Terror” and had no significant ties to Al Qaeda was one of the many negative side-effects of a flawed approach to post 9/11 US border security. The ultimate expansion of the VWP in 2008 to several new EU member states and the introduction of a new electronic pre-boarding security clearance system have begun a practical reconceptualization of border control.

In the following section, I will review the security implications of the VWP drawing on theories of soft power, security cooperation and border control. Drawing upon cooperation
theory models and empirical studies of jihadist militancy resurgence in Europe as well as terrorist travel patterns and practices, I will assess the trade-off myth of soft power (as defined by American attractiveness to the world) and national security (as defined by the safe well-being of a country’s nationals).

2. The Security Dilemma of Openness

2.1. The openness vs. security frame

2.1.1. Visa waivers’ power of attraction

Soft power is a notion that is commonly considered to be a relative newcomer to the theory of international relations. It is also considered to be an element that falls outside of the scope of serious realist theorists within security studies. Yet, E.H. Carr, one of the icons of early realist thinkers of international relations, points out in his epochal book, *The Twenty Years’ Crisis*, that power has three dimensions: military, economic and public opinion. Writing as early as 1939, he describes the “power over opinion” as “not less essential for political purposes than military or economic power.”75 A decade later, classical realist scholar Hans Morgenthau in his classic book *Politics Among Nations* pointed out that

The policy of prestige has rarely been recognized in modern political literature for what it is: the third of basic manifestations of the struggle for power on the international scene…Its purpose is to impress other nations with the power of one’s own nation actually possesses or with the power it believes, or wants other nations to believe it possesses.76

What Carr labels “power over opinion” and Morgenthau calls “power of prestige,” Joseph Nye terms “soft power.” Nye’s conceptualization of soft power is a more comprehensive version of what has been a key power element in international relations theory from its very beginnings; thus it is worthwhile to assess the nature of soft power and its actual relevance to 21st century security studies. Nye, in *Soft Power: The means to success in World Politics* defines three main

75 Carr (2001) p.120
76 Morgenthau, (2005) p.83, 84
spectra of behavior for soft power: agenda setting, co-optation and attraction. Most relevant to the current topic of immigration is the “power of attraction.” This attractiveness is, according to Nye, “composed of foreigners’ attitudes on a variety of levels.” The currency of soft power is therefore, in large extent attractiveness which is significantly shaped by personal experiences through traveling to the United States. A 2002 Pew Global Attitudes Poll found that “those who have traveled to the United States… have a more favorable opinion of the U.S. compared with those who have had no comparable exposure.” A more recent 2007 Pew survey emphasized the same “familiarity breeds favorability” phenomenon: “[c]onsistently, those individuals who have traveled to the U.S. have more favorable views of the country than those who have not.”

Drawing on these findings the positive public diplomacy aspect of facilitating travel to the United States is obvious. President Clinton, when signing the Visa Waiver Permanent Program Act commented, that

it is fostering good will for the United States and an understanding of who we are as a people by giving to millions of citizens from participating countries an increased opportunity to visit our many natural wonders as well as the places that are vital to our national heritage.

When thirteen new countries sought entry to the Visa Waiver Program in 2008, President George W. Bush emphasized the soft power potential lying in foreign visitors to the US:

The best foreign policy for America is one that lets visitors get to know this great country firsthand….throughout history, some of the strongest advocates of freedom have been those who came to America and saw the blessings of liberty with their own eyes.

78 Ibid. p. 35
79 The Pew Global Attitudes Project (December 4, 2002)
80 The Pew Global Attitudes Project (June 27, 2007)
81 Clinton (October 30, 2000)
82 Bush (October 17, 2008)
Although there is no silver bullet for ensuring a steady and high number of visitors to the United States and guaranteeing the positive effect America has on their views, it is safe to say that inefficiencies in the visa issuing system and difficulties entering the US are understood as American attempts to keep foreigners out. Immigration and visa policy in and of itself is a clear message to the world outside: it can either be welcoming or unwelcoming. A restrictive visa policy implies exclusiveness, while encouraging visa regulations and smooth immigration control are like putting out the welcome mat and extending a friendly greeting. As former Secretary of Homeland Security, Michael Chertoff recognized: “[t]he logic is simple: In order to garner greater support for the country and for its battle against terror and tyranny, the United States must not only keep sending Americans into the world; it must also continue inviting the world to America.” Chertoff also noted the potential in the “countless Muslims” who recognize US commitment to reject the gruesome alternative of Taliban in Afghanistan and Al Qaeda around the world and who are now speaking out in support of democratic values promoted by the United States in the Middle East. As the Travel Industry Association argued, the total effect of encouraging travel actually surpasses the net effect of what a visit in America has on the individual since “nine out of ten travelers tell their friends and relatives about their travel experiences.” This multiplier-effect makes travel an even more important, underappreciated tool of public diplomacy for America, a nation that more often than not takes its positive image abroad for granted.

Another “soft” aspect of welcoming visa policies is their economic impact. As we have seen, one of the key arguments for establishing the Visa Waiver Program and facilitating visa free travel was to spur trade and encourage business through tourism. Indeed, the VWP has contributed to US economic growth (see Appendix D): it is estimated, that visitors form VWP countries stimulate the US economy with an additional $75 billion to $100 billion in economic activity each year through travel spending. On average, visitors under the Program spend almost twice as much per visit on average as other, non-VWP visitors ($2,253 compared to $1,274 per visit). This is mainly because visitors from VWP countries on average have higher income than non-VWP countries, they are more likely to dine in restaurants, rent a car, visit amusement parks

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83 CSIS Commission on Smart Power (2007) p.68.
84 Chertoff (2008)
85 Ibid.
86 US Travel Association (January 21, 2009)
and go shopping. With over fourteen million arrivals in 2007 alone, VWP visitors make up about one-fourth of all visitors to the US and more than two-thirds of all overseas visitors. VWP visitors are not only important targets of US “citizen diplomacy,” but also as significant purchasing power to US sectors of the tourism, entertainment, dining, business and airline industries. That the VWP stimulates economic growth and remains to be vital to American public diplomacy efforts are two clearly positive side-effects of visa free travel.

2. Proportion of VWP visitors of all overseas visitors in 2007

Business travelers also constitute a large part of VWP visitors. The United States attracts the largest inflow of capital in the form of Foreign Direct Investment (FDI) and the VWP plays an important part in facilitating healthy business relations. Five of the top ten US trading partners are VWP countries (UK, France, Germany, the Netherlands, and South Korea) and the combined volume of their trade tops US-China trade volume and nears the level of US-Canada trade (See Appendix). The leading investors into the US who provide the most important FDI inflow, Japan, Germany and the UK, are also VWP countries. It is clear that the ease of doing business largely correlates with the ease of travel into the target country. Foreign investors view the efficiency, predictability and transparency of the target country’s visa regime as a key indicator of the ease of doing business in that country. Facilitating easy international travel of tourists and businessman under the VWP is a key factor of US competitiveness worldwide and as we will see, any inefficiency in the visa system translates into medium-term business losses and a decline of US competitiveness.

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88 Office of Travel and Tourism Industries, Historical U.S. Travel and Tourism Statistics, 1997-2006
89 US Census Bureau (February, 2009)
90 OCO Global (March 4, 2008) and Reuters (March 4, 2008)
91 US Department of Commerce (November, 2007)
92 Bliss (Dec 26, 2006) , see also: State Department (June 2007) and Brickman (February, 2008)
However, to understand the complicated nexus of soft power, non-immigrant visa policies and homeland security it is worthwhile to assess the potential downsides of the VWP. The *homo oeconomicus* would approach the problem as follows: “An extra dollar spent on hard power will not necessarily bring an extra dollar’s worth of security.”\(^93\) Scholars of international relations have pointed out that power is indivisible and, in the long run, one part is helpless without the other.\(^94\) In other words, hard power security measures can only be effective if their contexts are conducive to their implementation. The case of border security in this respect is a complex one, laying on the frontier territory of hard and soft power and exposing a series of inherent conflicts that exist between the two in real life implementation.

### 2.1.2. The ripple effects of the 9/11 shock

The negative effects of the 9/11 shock on US soft power potential and its visa policies are difficult to understate. Despite an alleged aim of the Bush administration to balance openness and security, the daunting effects of an almost paranoid insistence on border security reverberated in the fields of diplomacy, business, healthcare, education, science and the arts. Almost all of the administration’s resources allocated to prevent another potential attack were poured into increased controls at the borders, tighter security and background checks of “aliens,” and an “aggressive enforcement against anyone caught committing even the minor infraction of the labyrinthine immigration regulations.”\(^95\) Since it was impossible to decide how much security is actually enough, the administration erred on the side of security and not openness. Soon after the attacks, the highest level of national security alert short of a complete closure of the borders was introduced requiring the indiscriminate and thorough examination of *all* incoming cargo and people who intended to enter Fortress America.\(^96\) The immediate results of these draconian border measures were discouraging traffic jams for long months on the northern and southern borders, never before seen slowdown of trade, an extreme overload of border patrol and immigration officers, and a dramatic drop in foreign visitors.

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\(^93\) CSIS Commission on Smart Power (2007) p.17.  
\(^94\) Carr (2001) p.120.  
\(^96\) Alden (2008) p 42.
Changes in visa policies such as obligatory one-on-one interviews, collection of biometric data (fingerprints) from all applicants, and in some cases the requirement of a Security Advisory Opinion from Washington on the issuance of visas created major staffing insufficiencies and work overloads for US consular posts abroad which resulted in unprecedented waiting times that in some cases reached sixty days.\textsuperscript{97} Sufficient funding, however, was not allocated to finance additional staff or infrastructural changes; these shortfalls not only frustrated both sides, the applicant and the office, but also had a significant impact on US related businesses, exchange programs and tourism flow. The negative impact of post-9/11 visa policies was real and measurable.

According to a much cited survey of eight leading international trade associations by The Santangelo Group conducted in 2004, the vast majority of the companies experienced unexpected delays or seemingly arbitrary visa denials; the majority reported to have suffered “material impact” from these in the form of lost sales, relocation of conferences or employees, and increased costs.\textsuperscript{98} The survey estimated that US companies lost $30.7 billion due to delays or denials of business visas. Because of post-9/11 visa hassles, large multinational companies like Boeing, Lockheed Martin or Moore had to train their foreign employees outside of the US, move their conferences to Europe or relocate their work offshore.\textsuperscript{99} In a 2003 press release, the US Chamber of Commerce, representing three million businesses across the nation urged the State Department and DHS to find a greater balance in the visa process because the existing visa rules and consular practices strained US businesses and their international partners and created burdensome costs for the US economy.\textsuperscript{100}

Visa delays caused hardships to visiting doctors, patients, artists, foreign students and scientists.\textsuperscript{101} The US security spillover also created diplomatic tensions with important US allies like Taiwan, Saudi Arabia and the UK. Even high level officials were subject to rigorous searches and scrutiny: not only visas, but visa free travel became a headache.\textsuperscript{102} An International Travel Survey conducted in 2007 put the United States on the top of the visitor-unfriendly list of all the travel destinations in the world, by a greater than 2:1 margin; the majority of those

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\textsuperscript{97} Government Accountability Office (April 4, 2008)
\textsuperscript{98} The Santangelo Group (June 2, 2004)
\textsuperscript{100} US Chamber of Commerce Press Release (July 10, 2003)
\textsuperscript{101} Miami Herald (August 3, 2003)
\textsuperscript{102} The New York Times (February 6, 2007)
\end{flushleft}
surveyed said US immigration officers are rude and expressed a fear of being detained for a misstatement or a simple mistake.\textsuperscript{103} The survey highlighted an important detail: even those who never had to obtain a visa started their visit in a climate of “fear and frustration” which was undeniably damaging to the traditional American image of openness and hospitality. Another study concluded that “the perception that U.S. visa and entry policies do not welcome international visitors is the largest factor in the decline of overseas travelers to the United States.”\textsuperscript{104} Prominent columnist, Fareed Zakaria in a 2007 \textit{Newsweek} article pointed out that because of the “hassle and humiliation factor” in the US visa and border security process, America was not only losing great minds, good businesses and important allies, but it is becoming more and more like a caricature propagated by its Cold War enemies in the 1970s.\textsuperscript{105}

3. Visitor trends from VWP countries

![Graph showing visitor trends from VWP countries](source: US visa statistics)

The US entry process created by an overwhelming fixation on a universal effort to seal the border and “security concerns,” in practice, overrode all other concerns. Its tangible impact represented itself in falling visitor numbers, official diplomatic grievances and contributed to a

\textsuperscript{103} Discover America Partnership (November 20, 2006)
\textsuperscript{104} Tourism Economics (June 2007)
\textsuperscript{105} Newsweek (February 26, 2007)
worsening image of America abroad. In fact, visitor numbers show that those countries which were regarded as US allies and thus enjoyed visa free travel were less inclined to travel to the US than visitors from all other countries. While the total number of visitors fell by 20 percent, the number of visitors from VWP countries fell by a 30 percent. It seemed that citizens of US friendly countries took unfriendliness more as an offense.

One of the most harmful side-effects of new restrictionist migration policies was the introduction of special screening measures and registration systems for aliens of Arab and Muslim origin. US public diplomacy in the Muslim world was already dismal, even before restrictionist visa policies took effect, as evidenced by pictures of Muslims celebrating the fall of the Twin Towers and burning American flags which most Americans saw with horror in the days after 9/11. US domestic reactions to the attack only worsened the already strained relationship. The United States fell into the common trap of collective scapegoating which stressed US relations to formerly friendly Arab countries. The Department of Justice (DoJ), which after 9/11 was quick to issue warrants, wholesale detentions and interrogations, created the National Security Entry-Exit Registration System (NSEERS) which targeted visitors from twenty-five Arab and Muslim countries.\textsuperscript{106} The program required visitors from designated countries to provide more data for visa applications than any other country nationals and thirty days after their arrival, to re-register at the Immigration and Nationalization Service and they could only leave the country through certain airports and ports of entry. Those who did not comply with these draconian measures were subject to potential arrest, detention and even deportation from the US.\textsuperscript{107} The program was a public diplomacy nightmare: the evident racial profiling element of the system was subject to ceaseless criticism and had serious public relations costs for the US. Through September 30, 2003, when the system was finally relaxed more than 290,000 individuals were registered, but not one of them was charged with terrorist activities.\textsuperscript{108}

While DoJ insisted that hunting down visa overstays is an important tool of fishing out suspected terrorists, the real effect of NSEERS was summarized in the comment of former commissioner of the INS, James W. Ziglar, “As expected, we got nothing out of it. To my knowledge, not one actual terrorist was identified. But what we did get was a lot of bad publicity,

\textsuperscript{106} The following countries: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

\textsuperscript{107} US Immigration and Customs Enforcement (December 31, 2008)

\textsuperscript{108} DHS Press Release (December 1, 2003)
litigation and disruption in our relationships with immigrant communities and countries that we needed help from in the war on terror.”109 Racial profiling was literally institutionalized by government authorities leaving behind a climate of distress and fear for nationals of the very countries that the United States could have enlisted to mitigate the negative effects of staunch anti-Americanism in the Arab and Muslim world.

The main argument to maintain NSEERS and re-registration depended on an uncomfortable reality: all nineteen hijackers entered the US on a valid temporary tourist or student visa; none of them entered the country illegally or as immigrants.110 Three of them, however, were out of status by the time they committed the plot either because of visa overstays or not attending the school to which the student visa was given.111 This alarming fact lead the administration to come up with a system that would track visa overstays and report them to the INS. The program however came at much cost which, according to experts, dwarfed its positive impact while not addressing the issue in a comprehensive manner.112 NSEERS brought up the efficacy of racial profiling as a counterterrorism tool with most experts agreeing that terrorist groups adapt to policies very quickly and will simply recruit agents who do not look like the mental image of a terrorist as defined by US security measures.

The sweeping profiling by US immigration officials had a palpable negative impact beyond US borders while the practice’s national security benefits remained ambiguous, at best. DHS asserted that the arrested 12,000 males whom the INS identified through the call-in system and found to be overstaying the visa period had a disruptive and deterrent effect for terrorist organizations because it “signaled a clear message to those ‘sleeper’ terrorists embedded in U.S. communities, that U.S. immigration law would be enforced” and that it made “the job of carrying out a terrorist mission much more difficult, therefore disrupting the mission.”113 But NSEERS looked much more like America slamming the door on its own feet. While the deterrent effects of the new policies on terrorist organizations were dubious, they most certainly deterred harmless individuals from dozens of Arab and Muslim countries from going even near the United States. The drop in the number of Arab and Muslim visitors was twice as dramatic as the slump in the overall number of visitors: from the year 2000 (a peak year of visitation from Arab and Muslim

110 Griswold (April 1, 2004)
111 General Accounting Office (October 16, 2003)
112 Center for Immigrants’ Rights (March 31, 2009)
countries) to 2003 visitor numbers fell by more than 234,000 or 48 percent compared to an estimated 20 percent global visitation drop. In their 2003 Foreign Affairs article, Peter Singer and John Paden noted that “[r]ather than combating the growing radicalism and anti-Americanism of many Muslim youths around the world, the stringent new visa policies are only feeding such resentment. At a time when the United States needs pro-American ambassadors more than ever, its government seems bent on turning away the next generation of them.”

What some academics labeled “Washington’s Destructive New Visa Policies” threatened to cause serious harms to its soft power potentials. EU officials also raised discontent about new US rules on passenger information collection which, according to officials, ran against EU privacy laws. The privacy debate was oil on the fire of an already heated debate on visa non-reciprocity, but post-9/11 US security concerns toughened American stances on all visa-related issues. The US did not compromise either on requiring passenger data or on expanding the VWP any further. The post 9/11 security environment was hostile to any kind of change in border security policies that would point to less enforcement or US oversight. It was a vicious cycle:

We cast our net very, very broadly without recognizing that by doing so it would be almost impossible to walk it back quickly and efficiently, because any attempt

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114 Paden and Singer (2003)  
115 Ibid.
to walk back would appear to be dismantling security safeguard that had been put
into place for what appeared to be legitimate reasons.\footnote{Alden (2008) p.232.}

The United States set out to build the world’s most secure border control system in order
to prevent a future attack, but unintentionally created mechanisms that undermined its own
power, be it economic, diplomatic, or the power of attraction. In his book, \textit{The Rise of the
Creative Class}, Richard Florida argues that the foundation of US economic prosperity and global
success has been its openness and low barrier of entry. He argues that if the United States is
becoming a less and less attractive environment for the world’s brightest minds, it will soon lose
its capacity to be the maker and shaper of world trends through its amazing pool of creative
ideas. “Our increasingly restrictive climate may ironically be undermining aspects of our
national security.”\footnote{Florida (2002) p.14.} Although not a foreign policy expert, Florida struck a chord by alluding to
the fact that security has a softer side, a consideration which has been completely ignored and
sacrificed on the way to make US borders “perfectly” safe. As Alden similarly notes, the “Bush
administration was convinced that protection from terrorist attacks would come only once the
United States had taken total control over its borders.”\footnote{Alden (October 4, 2008)}

US border security, once characterized by a culture of trust and welcome, thus
transformed itself into a culture of distrust and unwelcome. On the same note, Francis Fukuyama
argues that a culture of trust is a key component for a society to flourish economically as well as
functionally. The lack of trust at the same time creates higher administration costs, lower
a reversion to a Cold War mentality of general distrust where no one was automatically placed
beyond the shadow of doubt. Indiscriminate security systems that tried to screen all entries, all
bags and all cargo ships were not only harmful for the US economy and its image abroad, but in
fact failed to create a better security environment on the whole. 9/11 blinded America from
seeing the widespread negative consequences of security policies which aimed to improve its
position: the soft power side of the story became the forgotten dimension.

\begin{thebibliography}{9}
\footnote{Alden (October 4, 2008)}{Alden (October 4, 2008)}
\end{thebibliography}
Ironically, *en route* to perfecting its security system America became less and less like America. A nation that was founded on limited government and narrow powers of the executive came to be characterized by an array of executive orders that were later deemed unconstitutional coupled with a gargantuan expansion of the federal government. A nation that was considered to be a “nation of immigrants” no longer welcomed new comers to its soil. A nation of diversity, whose motto is “*E pluribus unum*”\(^{120}\) started to slide down the slippery slope of racial intolerance. In a nation whose Statue of Liberty read “Give me your tired, your poor, your huddled masses yearning to breathe free” masses of certain ethnic origin grew more and more tired of not being able to live free of harassment. The United States was not only losing visitors, businesses, allies and friends, but it lost part of its national character as well.

### 2.2. The Securitization Process

#### 2.2.1. The (over)-securitization of migration: a policy cul-de-sac

The main argument for closing America’s borders, instituting visa re-registrations and the non-expansion of the VWP was that openness and attractiveness posed critical national security risks for the US. The reason why these policies created more overall harm than good for the United States lies in the flawed framing of the “post-9/11 homeland security dilemma.” The dilemma was presented as a continuum where one end of the scale represented “openness and insecurity” and the other end represented “isolation and security.” It was clear that US attractiveness resulted in unidentified masses moving in and out of the country without extensive scrutiny. The quest became a never-ending, time consuming and very costly pursuit for “perfect border security.” Given the circumstances and the geographical features of the US, this was and still is an impossible mission, which was only deemed an appropriate solution due to a flawed discourse on security and migration.

While the theory of securitization in international relations is relatively new, the dilemma of the state’s sovereignty over migration to its territory is as old as the state itself. The constructivist approach of the Copenhagen school developed a framework of analysis which defines the process of securitization as a process of extreme politicization of a certain issue which thus becomes a self evident goal to pursue. Buzan *et al.* argue that “‘Security’ is the move

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\(^{120}\) One out of many.
that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or above politics.”¹²¹ When an issue becomes “securitized” it is presented as an existential threat that requires emergency measures and “justifying actions outside of the normal bounds of political procedure.”¹²² One of the best indicators of securitization is that the issue is presented as one of supreme priority which requires imminent emergency actions and justifying measures outside of the bounds of “politics as usual.”

The elevation of border security and migration to issues which are of paramount importance to the security of the American people are consequences of such a securitization discourse fuelled by the shock of 9/11. Restrictive measures detailed so far and the seeming ignorance of their economic, diplomatic and political effects was imbedded in flawed rhetoric. If there was discourse at all, the discourse itself was at best ambivalent. In the aftermath of the attacks, America as a nation became more willing to accept draconian measures on the borders (including shutting down airports and land borders), racially prejudiced visa policies aimed at Muslims and Arabs and an extreme overstretch of the executive power. Buzan notes that in the process of securitization it becomes irrelevant whether the policies are rational or the threat is real because “what may seem legitimate securitization within a given political community may appear paranoid to those outside it.”¹²³ In other words, objectivity is replaced by a collectively subjective idea of what the threat is.

In connection with the migration discourse in Western societies, Ayse Ceyhan observes that “the migration issue, which was not at the origin inherently securitarian, became one involving new actors and leading to stricter public policies and to new surveillance and control devices.”¹²⁴ She sets out to dispel the myth within the rhetoric of border security pointing to the fact that as more emphasis is placed on efforts to make borders impermeable for unwanted aliens, the level of illegal immigrants is constantly increasing. The divergence between the number of unwanted aliens and the importance of strengthening borders lies in an incoherent discourse based on the false notion that a state is completely able to control its borders and exercise full sovereignty over its territory.¹²⁵ In reality, short of complete diplomatic and economic isolation, no border can be sealed and no state can apply full control over one hundred

¹²² Ibid.
¹²³ Ibid. p. 30.
¹²⁴ Ceyhan et al. (2002)
¹²⁵ Ibid.
percent of its territory. The United States, even though the most powerful nation in the world, struggles with an estimated number of 11.6 million illegal immigrants, a third of whom overstay their visas and are practically invisible in the eyes of the government.

The impossibility of perfect migration control and border security was completely left out of the discourse after 9/11 because it was simply not in the interest of those in power. The reason why migration and tourism including the whole visa process came to be viewed through a “security prism” lies in those primarily responsible for decision-making and whose interest was vested in propagating it. As Buzan and Bigo point out, the securitization process has to be in the interest of some group or another, or even the entire political elite from where it would then spread to the entire public. According to Johnson, “few events could generate the political support and incentive for aggressive border enforcement created by the terrorist attacks of September 11.” Bigo notes that securitization of migration “is anchored in the fears of politicians about losing their symbolic control over the territorial boundaries.”\textsuperscript{126} In the process, securitization becomes over-securitization used as a “political technology” and a mode of governing public unease to affirm the role of the central government as the principal provider of protection.\textsuperscript{127} In the seven years following the attacks, the number of Border Patrol Agents doubled, enforcement expenditures tripled, and 250,000 illegal immigrants were deported per year, “all in the elusive quest for border security.”\textsuperscript{128} But the fundamental question was never asked: is shutting down the borders the only way to keep the United States safe? Wouldn’t more openness actually result in more security? These questions where considered to be too far-fetched in a time when border security and controlling migration flows were securitized issues and became an incontestable, domineering fixation of US homeland security policy.

Accordingly, the visa issuance process became the main target of national security concerns because it was the country’s visa policy where border security and migration met. Congressman Dave Weldon chairing the House subcommittee hearings of post-9/11 visa policy issues summarized this phenomenon: “The State Department views the issuance of visas a diplomatic tool. The day is past when it should be viewed that way. It is now clearly a national homeland security function.” Securitization of visa policy was evident not only at the rhetorical level. Immigration and visa policy, which since its conception in 1870 as a federal policy area

\textsuperscript{126}Bigo (2002)
\textsuperscript{127}Ibid.
\textsuperscript{128}Alden (October 4, 2008)
has been part of the Department of Justice, was assigned to the newly created Department of Homeland Security in 2003, thereby institutionalizing migration and visa policy as a security issue. Buzan notes that “securitization can be either ad hoc or institutionalized.” Control of migration through US visa policy and securing borders became such an omnipotent element of the post-9/11 security discourse; it was therefore no surprise that the matter was soon institutionalized. Since institutionalization of any policy field is a matter of political choice, one has to examine what was the motivation behind the institutionalized securitization of visa policy. What was the threat posed by the US visa system in the 9/11 era? Were these threats legitimate ones? What were the implications for the VWP?

2.2.2. Securitization of the VWP

The official, government mandated report of the 9/11 Commission on Terrorist Travel presented the appalling story of how the nineteen hijackers tricked US immigration and consular officials and abused almost all facets of the US visa system to gain entry to the United States. The report recounts that the terrorists had all together sixty-eight encounters with consular and immigration authorities, yet they successfully entered the United States an aggregate of more than thirty-three times. The State Department, which was responsible for issuing visas abroad, including visas issued to the terrorists, became the ultimate subject of blame and shame. Dianne Feinstein, an ardent hawk of the post-9/11 visa scandal, who supported a student visa moratorium, the suspension of the VWP and a series of other draconian border security measures, summarized the political agony around the State Department’s visa practices during one of the related Congressional hearings:

Clearly our system is not able to prevent a terrorist from getting a visa legally to come into this country...[our visa system] doesn’t keep people out who would come in and destroy us. So what else would you have a visa system for if not just to do that?  

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130 The 9/11 Commission (2004b)
The “colossal failure” of the US visa system was manifest in the fact that although many of the hijackers did commit visa frauds it did not stop them from boarding their planes.\textsuperscript{132} Making matters worse, all of the countries involved were US allies. The hijackers and conspirators obtained their visas in Germany, the United Arab Emirates and Saudi Arabia. In all of these countries, visa processes were either lax or corrupted. In Germany, a Visa Waiver country, two conspirators of Egyptian and Lebanese origin obtained tourist visas and were basically treated like visa waiver citizens because of their spotless record as students in Germany.\textsuperscript{133} Nor were the terrorist who obtained their visas in the UAE interviewed, as “the UAE was treated as a de facto visa waiver country” because it was a welfare country that “took good care of its citizens.”\textsuperscript{134} Consular practices in the third issuing country, Saudi Arabia, were perhaps the most disturbing: under a State Department issued program, called the Visa Express, most Saudi citizens were issued a visa through a travel agency by filling out a form, submitting a photograph and paying the visa fee. Personal interviews were rare and most Saudis therefore never even visited the US embassy in Riyadh or met an American before entering the country. State Department officials later labeled the Visa Express an “open door policy for terrorists.”\textsuperscript{135}

It remains a matter of debate whose fault it was that the hijackers were not ferreted out by either consular officials or border control authorities. Nevertheless, the fact that the system allowed for abuses across-the-board was obvious and the spillover effect hit the Visa Waiver Program hard. It was a matter of fact that convicted terrorists Ramzi Yousef, Richard Reid and Zacarias Moussaui all abused the VWP, as one expert testifying to the 9/11 Commission asked: “Do we need more proof than that of the continuing threat to U.S. national security of the visa waiver program?”\textsuperscript{136} Several bills, introduced during the 108\textsuperscript{th} and 109\textsuperscript{th} Congress would have suspended the VWP which nevertheless failed to pass due to already discussed negative externalities. Still, many counterterrorism and immigration experts familiar with the program believed that the VWP indeed posed a national security threat to the US, and the country should learn from previous abuses of lax US visa policy by terrorists.

The most cited vulnerability of the VWP was that it reduced a two step scrutiny (consular interview abroad and port of entry check) to a one step scrutiny (port of entry check). As noted

\textsuperscript{132} Feinstein (February 5, 2004)
\textsuperscript{133} The 9/11 Commission (2004b) p.11.
\textsuperscript{134} Ibid. p. 33.
\textsuperscript{135} Mowbray (2002)
\textsuperscript{136} Ting (December 8, 2003)
before, reducing the hurdles for gaining entry to the US was partly fuelled by economic interests, symbolic diplomatic gains and a certain level of trust between the US and VWP countries. Experts argued that the VWP substituted informed judgment of trained consular officials for electronic database checks.\textsuperscript{137} Database checks, moreover were mostly done by the airline companies themselves who were mandated by the US government to screen their customer lists before take-off. Not only did the VWP eliminate one of the screening stages, but it also privatized or “contracted out” the responsibility of ferreting out possibly inadmissible or dangerous aliens. An additional problem was the illegal overstay of those entering under the VWP. Since there was and still is no efficient tracking system to identify those who overstayed their ninety day period, the VWP is an open door for aspiring illegal immigrants. In a 2008 report, the GAO found that “although most long-term overstays are likely motivated by economic opportunities, a few overstays have been identified as terrorists or involved in terrorist-related activity, including some of the September 11, 2001, hijackers.”\textsuperscript{138} As noted before, to address this issue, Congress passed legislation that the VWP could not be expanded unless DHS established an air exit system which could verify the departure of ninety-seven percent of aliens who exit the US through American airports.\textsuperscript{139} Despite warnings from the GAO, the VWP was expanded in 2008 with seven countries, including Hungary, without DHS developing a working system that would have addressed the problem. The problem of illegal overstays, therefore, remains a major vulnerability of the VWP until this day.

On the other hand, to address the problem of the one-stage screening process, DHS did create a state-of-the-art screening system, ESTA, which solves the problem of pre-screening in a most forward looking manner. It remains a question, whether ESTA which is a lookout system that checks visitors’ personal data against terrorism checklists and Interpol data systems can effectively replace knowledgeable consular officials, who through experience and human interaction are able to gather much more information about a visitor even in a few short minutes than any online screening system.\textsuperscript{140} As Doris Meissner testified to the 9/11 Commission that the “immigration system can only set up gateways and tracking systems that exclude terrorists about

\textsuperscript{137} Federation for American Immigration Reform (September 2008)
\textsuperscript{138} Government Accountability Office (February 28, 2008) p.3.
\textsuperscript{139} Ibid.
\textsuperscript{140} Riley (August 8, 2006)
whom the United States already has information.”¹⁴¹ That is, if one has no criminal records and has no connections to Al Qaida known to US intelligence, no immigration official would spot him out. This, however is a contestable supposition, since

many of the hijackers…should have been rejected because they were young, single, and had little income – precisely the kind of person likely to overstay his visa and become an illegal alien, completely apart from any terrorist connections.¹⁴²

What lies behind immigration expert Mark Kirkorian’s argument leads to a more complex issue and a major concern of most counterterrorism experts against the VWP who argue that the visa requirement is a “vital, additional layer of security that is being ignored by [the US] government.”¹⁴³ The issue behind all these concerns is that trustful allies of the US across Europe are not only home to friends of the US but foes as well.

The securitization of the VWP, just like the securitization of migration, occurred on a rhetorical and institutional level. Today, the VWP is inherently linked with a screening system that uses the most modern screening technologies to identify potential threats, but as FBI director, Robert Mueller III noted in an address to the Council on Foreign Relations in February, 2009, “[t]oday, we still face threats from al Qaeda. But we must also focus on less well-known terrorist groups, as well as homegrown terrorists. And we must consider extremists from visa-waiver countries, who are merely an e-ticket away from the United States.”¹⁴⁴ The fundamental problem with the VWP then lies in the deep transformations of European societies in light of increased migration flows which results in a European population that is less homogenous now than ever before; which is ridden with new types of societal tensions and ethnic conflicts and grave assimilation problems.¹⁴⁵ In the process, Europe’s immigration problems will become America’s immigration problems and “Europe’s Angry Muslims” ultimately become an American concern. The following section will assess one of the main targets of the opponents of the VWP, namely radicalization of certain groups in Europe. After a broad overview of Al

¹⁴¹ Meissner (January 26, 2004)
¹⁴³ Cutler (September 9, 2008)
¹⁴⁴ Mueller (February 23, 2009)
¹⁴⁵ American Enterprise Institute (July 11, 2005)
Qaida’s presence and homegrown terrorism in Europe the last part of the chapter will explain why the dispersion of militant jihadist cells from failed states to developed democracies presents a security policy interdependency scenario.

2.3. The Enemy Within

2.3.1. Europe’s Radicalization Problem: America’s security problem

Since nearly all of the major terrorist attacks against the United States were staged from the Old Continent, Europe holds a crucial place in the pattern of global terrorism.\textsuperscript{146} While it is the United States that created the Department of Homeland Security, it is Europe where global jihadists are increasingly successful in advancing their interests.\textsuperscript{147} For various cultural, economic and historic reasons, the United States proved to be much more successful in assimilating Muslims, while the increasing ghettoization and continued marginalization of European Muslims remains a fertile breeding ground for Al Qaeda recruitment efforts. The transatlantic partnership bound together by countless economic, political and diplomatic ties therefore faces an inherent paradox: American security problems may stem from the very heart of its strongest allies.\textsuperscript{148} As preferential visa policies to friendly countries in Europe harness economic benefits and diplomatic gains, the same system has to selectively filter out internal elements of the same societies who present a potential danger to the security interests of the United States. Europe’s terrorist problem is an inherent national security problem for the United States because “Europe has served as a launching pad for terrorists plotting attacks elsewhere.”\textsuperscript{149} But it is still the United States that remains the declared prime target of global jihad.\textsuperscript{150}

Some counterterrorism experts argue that “it is not farfetched to speak of Europe as a ‘new Afghanistan,’ a place that pro-Al Qaeda groups have chosen as its main arena to direct operations worldwide.”\textsuperscript{151} Europe, with the increased mobility within the Schengen area, developed modes of transportation and significantly lower level of migration monitoring is a comfortable terrain for terrorist organizations. Offering a vast array of empirical research, Walter

\textsuperscript{146} Greenberg (2005) p.43.
\textsuperscript{147} Tibi (2007) p.23
\textsuperscript{148} Gerecht (2005)
\textsuperscript{149} Kifir (2005)
\textsuperscript{150} Osama Bin Laden (1996)
\textsuperscript{151} Laskier cites Vidino (2008) p.105.
Enders, in *The Political Economy of Terrorism* argues that liberal democracies are more plagued by terrorism than their autocratic counterparts and terrorist groups are 3.5 times more likely to be found in democracies than autocracies.\(^{152}\) This is because the geographical environment of intertwined liberal democracies offers a wide territory in which to operate. The access to communication and dissemination of ideas is easier; the availability of tools of operations is less difficult; they move freely across borders and take advantage of civil rights guarantees of democratic systems.\(^{153}\) Because of the higher sensitivity of established democracies to threats of public safety and the prevalence of the 24 hour news cycle, liberal democracies offer a wider and more vulnerable audience to terrorist attacks. According to Mia Bloom, the essential logic of suicide terrorism dictates that if the public does not resonate to attacks, the tactic will fail because it does not succeed in winning over the hearts and minds of the people and convince the public of the truthfulness of their goals.\(^{154}\) The insurgents will therefore aim to choose targets that will predictably have the largest possible psychological impact and are “the easiest to reach.”\(^{155}\) Bloom’s observations help to understand the growing significance of developed democracies in Europe as the “next best option” for global jihad and why the phenomenon presents a lasting threat.

Leaders of the global jihadist movement became particularly interested in recruiting members who can benefit from and abuse the toolbox of democratic societies and are familiar with the workings and weaknesses of Western cultures.\(^{156}\) Conflicts emerging from domestic culture clashes and the sustained underprivileged status of Muslim immigrants in France, Germany, the UK and the Netherlands make Muslim enclaves easy targets for these recruiting efforts. Social alienation, partly stemming from the identity crisis of many second generation European Muslims and their estrangement from the mainstream culture as well as their real or perceived discrimination in an increasingly competitive European social environment, made them predisposed and more receptive to extremist ideologies than their American counterparts.\(^{157}\)

The effect of extremist recruiting efforts in Europe is alarming. The most recent EU Terrorism and Trend Report (TE-SAT 2008) revealed that the number of EU member states who

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\(^{153}\) European Commission Communiqué (August 29, 2005)

\(^{154}\) Bloom (2005) p.81.

\(^{155}\) *Ibid*. p. 81

\(^{156}\) Dailey (December 18, 2007)

\(^{157}\) Roy (2006)
reported arrests connected to jihadist terrorism increased from nine in 2006 to fourteen in 2007.\footnote{Europol (2008)} In 2007, Europe saw four failed terrorist attacks: two in the UK, one in Germany and one in Denmark. At the same time, France, Italy, Spain and Portugal reported an increased activity of al Qaeda in the Islamic Maghreb (AQIM) which has a critical impact on their national security level. In Austria, Belgium, Germany and Bulgaria, the majority of those arrested with terrorist activities had EU citizenship.\footnote{Ibid.} The report also shows an increasing activity in recruitment, propaganda, training and logistical support: an increasing number of EU nationals attended terrorist training in Pakistan, Iraq attracted the largest number of recruits from the EU, smugglers across France, Spain and Italy contributed to North African Islamist recruitment, and the Eastern border states of the EU are used as transit countries for networks outside the EU.\footnote{Ibid.}

According to the formula used by the Direction Centrale des Renseignements Généraux, or the French domestic intelligence service, to estimate the number of fundamentalists in a given country, within the Muslim population of a country, about five percent are fundamentalist and of that five percent, about three percent can be considered dangerous. That would mean that 9000 potentially dangerous persons exist only in France.\footnote{Moniquet (April 27, 2005)} Confidential British sources leaked after the London bombings estimated that there are about 10,000 British Muslims who attended extremist conferences and hundreds of them are prepared to commit terrorist attacks.\footnote{The Sunday Times (July 10, 2005)} German official estimates of homegrown extremists with potential security risks run over 31,000.\footnote{Congressional Research Service (December 27, 2004)} The Netherlands reported that more than 20,000 Dutch Muslims are predisposed to extremist ideology.\footnote{Leiken (2004) p. 6.}

In 2004, the Nixon Center conducted a survey of 212 suspected or arrested terrorists who resided in or transited through North America or Western Europe between the first (1993) and second (2001) World Trade Center bombings.\footnote{State Department (April, 2008)} The study found that 86 per cent of the terrorists surveyed were Muslim immigrants and those who were from Western Europe were mostly second generation citizens.\footnote{Leiken (2004) p. 6.}. Moreover, several studies focusing on the profiles of...
suspected or arrested Western-based terrorists show that they tend to be male Muslims under the age of 35 who are local residents of liberal democracies and often second or third generation immigrants of their home country, with a middle class background and mid-level education who, most importantly lead “unremarkable” or ordinary lives and have no criminal history.\textsuperscript{167} The most important problem for both European policy makers and US homeland security is that Europe is home to an increasingly large number of Muslim minorities who are technically EU citizens but not culturally or socially connected to their host societies.\textsuperscript{168} This “new generation” of terrorism poses a new type of challenge to the United States mainly because they “speak European languages, handle computers, surf the internet, exchange e-mail, and are familiar with post-industrial infrastructures and customs. Unlikely to be watch listed, the new \textit{mujahideen} not only navigate a modern society but can enter the United States freely.”\textsuperscript{169}

The openness dilemma, therefore presents itself in a more complex version than before. In the Cold War era, before the surge of jihadist violence in Europe, a citizens’ nationality was a fair indicator of economic and homeland security threat assessments from the US point of view. With the increasing proportion of homegrown affiliates of Al Qaeda in Europe, however, one’s nationality has become an inaccurate factor in measuring homeland security threats to the US. Lorenzo Vidino, a foremost expert in al Qaeda in Europe anticipates only more activism and wider spread of al Qaeda in Europe: “[j]ihadism is a global movement whose characteristics mutate rapidly... it is likely that they will be replicated with greater intensity and in more countries in the near future.”\textsuperscript{170} Due to increasing tendencies of self-radicalization and self-recruitment, the extremist challenge in Europe is unlikely to fade.\textsuperscript{171} Hence, if against all efforts, Euro-jihad marches on and keeps conscripting native Europeans, how does this affect the American attitude of openness?

\textbf{2.3.2. Terrorist Travel and Policy Interdependencies}

As Daniel Benjamin notes, “[i]t is a disturbing oddity that the U.S. immigration system is now optimized to allow in people from the area of the world where Islamist radicalism may be

\textsuperscript{167} For studies on terrorist profiles see: Leiken (2004), NYPD (2007), Sageman (2005)
\textsuperscript{168} Leiken (2005a)
\textsuperscript{169} Leiken (2005b) p.1.
\textsuperscript{170} Vidino (2007)
\textsuperscript{171} Coolsaet (2008) p.11.
It is clear that al Qaeda uses and abuses all forms of immigration, whether it is temporary visas or student visas, legal or illegal ways of entering the country. The Visa Waiver Program covers a considerable fraction of visitors to the United States: the vast majority of EU citizens now travel under the Program to the United States and the overwhelming majority of these citizens despise all forms of Islamist extremism. With the securitization of the Visa Waiver Program it is more and more difficult for terrorist organizations to exploit the US immigration system but not impossible. If the VWP implications of the 9/11 attacks proved anything on the long run it was the policy interdependence of national security in the era of intense migration flows. As in other policy areas involving dynamic threats (drug and human trafficking, organized crime, or nuclear proliferation) it is the logic of weakest link considerations that has to determine US policy. Any inefficiency within the system will result in a security risk for all players of the system, but the risk will be the largest for the one that is most threatened, the United States.

The travel patterns of the hijackers have shown that US visa policy was abused where it was most vulnerable and the weakest. For international terrorism, the weakest link issue is addressed by imposing common security standards for all participants. As Sandler notes, “[i]n a globalized world, a country's interests can be attacked in places where defenses are inadequate, so weakest-link nations are everyone's concerns.” Hence, if the US leads in adopting security upgrades, the EU is better off following the same standards. In this respect, security risk management is not a zero-sum game, but one in which everyone has an interest to be involved in, most of all, the hegemon itself. Just like the aim of the creation of the Department of Homeland Security was to achieve satisfactory levels of interdependent security levels domestically, the aim of the VWP’s ESTA reform was to create a homogenous system of facilitating travel which at the same time operates with the same level of scrutiny and makes the US and its allies interdependent. The reformed VWP “raised the bar” for “safe and secure international travel and countries that are willing to participate will be committing to enforce higher standards, more vigilant security, and stepped-up enforcement.” It created an invisible security community based not on the repression but the facilitation of travel. It also indicated a paradigm shift from a

172 Benjamin (April 5, 2006)
174 Ibid. 109.
175 Ibid.,p. 105.
176 Carafano (March 22, 2007)
country-by-country assessment it now applies, to individual-by-individual assessment through pre-departure online screening of every traveler. Yet, weakest link considerations remain applicable: if one country in the VWP is more liable to passport fraud, fails to monitor terrorist activity or share passenger data, it will be a major blow for the entire system. One vulnerability in question is the challenge of lost and stolen passports.

A lost or stolen passport is a virtual jackpot for terrorist organizations and by the beginning of the year 2009 there were 17 million of them.\textsuperscript{177} The use of stolen travel documentation is a common practice utilized by al Qaeda on which it has depended in many cases. The 9/11 Commission noted that “[f]or terrorists, travel documents are as important as weapons.”\textsuperscript{178} From the 1993 World Trade Center bombing, through the attacks in Madrid in 2004 and in London in 2005, to the 9/11 attacks, lost and stolen passports were indispensable elements of the successful terrorist plots.\textsuperscript{179} After the attacks, INTERPOL created a stolen and lost travel documents database (SLTD) which is endorsed by the EU, the G8, OSCE and APEC members as well as a 2005 Security Council Resolution which recognizes the critical importance of a centralized lost and stolen travel document database to prevent terrorist travel.\textsuperscript{180} However, forty INTERPOL member states, including critically important Mexico do not contribute to the established system. Visa Waiver countries are required by law to report lost and stolen travel documents in a timely manner, but newly joined countries already have a great passive stockpile of unrecorded lost passports. Since INTERPOL estimates that although its database records over 16.7 million lost travel documents, the total number in circulation may amount to 40 million.\textsuperscript{181} As INTERPOL Secretary General Robert Noble warned, “The failure of a country to notify other countries via INTERPOL when its citizens’ passports have been reported lost or stolen undermines the screening of any one country – and makes us all vulnerable.”\textsuperscript{182}

The issue of lost and stolen passports is yet another example of a weakest link security scenario when one country’s failure to comply by the set standards makes all other members more vulnerable – but, again, the compliance problem hits the biggest player the hardest, that is the United States. Inventing technology to better monitor and detect terrorist travel documents

\textsuperscript{177} Interpol Press Release (April 1, 2009)
\textsuperscript{178} The 9/11 Commission (2004b) p. 384.
\textsuperscript{179} Noble (January 26, 2009)
\textsuperscript{180} UNSC Res. 1617 (2005).
\textsuperscript{181} Noble (January 26, 2009)
\textsuperscript{182} Noble (April 1, 2009)
through global tracking system is the most important and urgent step to constrain terrorist mobility.\textsuperscript{183} But again, “no set of reforms will catch every terrorist every time;” it can only reduce the risk of systematic abuse.\textsuperscript{184}

**Evaluation**

The immediate response to the terrorist attacks was a massive attempt to seal America’s borders. The DHS and a massive federal bureaucracy were created in an effort to guard America’s borders. These measures as well as the psychological effects of the attacks resulted in a drastic drop in tourism and a major step back in diplomatic efforts to make travel to the US easier through the VWP. Regarding the VWP, the issue of expansion was taken off the table since any kind of effort to increase America’s openness was feared. Instead, every effort was concentrated on an imperfect system of border control: the general approach to visitors and immigrants was that *everyone* who comes from non-VWP countries and especially Arab countries is a potential threat to US national security while Europe faced an ever-increasing movement of extremist jihadists within their very own borders. This nationality-based threat assessment had serious negative effects: it created major backlogs in consular administrations abroad impeding travel and tourism; it alienated allies of America in CEE and the GCC; it had xenophobic side-effects coupled with racial profiling at and beyond American borders; it also had serious consequences on major soft power areas as student and scientific exchange programs were badly affected by harsh homeland security measures.

The main argument for closing America’s borders and the non-expansion of the VWP was that openness and attractiveness (as important soft power features) are also the most important national security risks for the US. This “openness as riskiness” approach led to the securitization of migration and immigration issues, as well as the securitization of visa issuance. This sweeping approach, however did not take into account the complex reality of the issue. First, that unsystematic screening of targeted nationalities is unmanageable and leads to major diplomatic hurdles and economic disadvantages. Second, that it is exactly American openness which is a precondition of its predominant place in the world.

Furthermore, the nationality-based approach ignored an increasingly important facet of the reality of Europe’s immigration problems, namely the spread of radical Islam and Al Qaeda cells across Europe. Thus, one country’s assimilation problems (e.g., Britain, France, Germany) becomes another country’s (i.e. the United States’) national security problem. The Europeanization of Al Qaeda and the ease by which it exploited the advantages of EU citizenship has been ignored for long five-six years until ESTA was finally created in 2008 to pre-screen VWP countries as well. Again, the dominating presumption during this time period was that the enemy would come from hostile territories instead of advanced democracies. Research shows, however, that advanced democracies prove to be a more comfortable operative environment for Al Qaeda. The number of arrested AQ members and alleged terrorists with European citizenship is a major blow for the nationality-based approach to border security. The nationality of arrested terrorism suspects vary greatly and shifts more and more to second and third generation “born again Muslims” in Europe.185 This phenomenon, at the same time highlights the increasing policy interdependence of the US with both its allies and non-allies. 9/11 has shown that terrorists abuse the weakest links of migration systems and navigate through the loopholes easily. In its current form, the VWP ceased to exist as an ordinary entry permit to the US. With the added layer of the ESTA system, the Program is now a system of security cooperation. At the same time, whichever European country will have the least efficient policy solution for tackling domestic presence of al Qaeda will end up being the weakest link in the globally connected security game which also means more concentration of terrorist organizations within the country. Weakest link considerations will drive the most powerful party to implement the strictest measures, however the enforceability and negative economic and diplomatic consequences of applying stricter than necessary measures poses serious problems.

185 Roy (2004)
3. Security Beyond Border Control

3.1. The Changing Topology of Border Control

United States border security and visa policy has come a long way since the attacks of 9/11 but the paradigm dominating public discourse on controlling migration flows is still one based on the ultimate control of physical borders. When the American people persist on “sealing the border” they demand the most fundamental function of the state that is maintaining sovereignty over the state’s territory. The most immediate US responses to 9/11 were formed within the classical Westphalian framework: crash programs of border policing, obsession with identifying the enemies within by racial profiling, and improving intelligence gathering efforts abroad.186 The previous chapters, however, have shown that increased migration flows, more complex security problems and individualized national security threat that comes in the form of suicide bombers and not thermonuclear weapons, may challenge the idea of effective sovereignty over state borders. This chapter will analyze the complex relationship between openness of borders and heightened homeland security involving the theory of concentric border security layers. Using the emerging paradigm of the changing topology of homeland security and through the example of the Visa Waiver Program, I will demonstrate how openness when coupled with security cooperation is the adequate policy solution for managing migration flows as opposed to the popular conception of sealing borders as the ultimate answer.

3.1.1. Layers of security: the changing paradigm of border control

As noted earlier, the securitization of the visa issuing process came as a reactionary measure in 2001, mainly due to the fact that “[u]ntil the events of September 11, the visa process was seldom considered a major element of national security.”187 More and more attention focused on the consular officer’s work as America’s “first line of defense,” “forward based defense,” or simply “America’s other Border Patrol.”188 The securitization of the visa issuing process entails an important evolution of national security and border control which, instead of

focusing on the physical boundaries of the state, comprises of several layers of security.\textsuperscript{189} Scholars and administration officials differ on exactly how many layers this means, but most of them agree that ideally homeland security begins abroad.\textsuperscript{190} If borders are no longer perceived as protective walls against all odds and the fragmentation of national security is coupled with displaced virtual borders we arrive at a much more complex approach to homeland security than plain border policing. The new paradigm of border security instead of demarcating and delimitating allows “circulations to take place, controlling them, sifting the good and the bad, ensuring that things are always in movement.”\textsuperscript{191}

The idea of smart borders that are decentralized and diffuse, which extend both beyond and inside the geographical boundaries of the state and involves an array of check points that provide surveillance of migration flows, is one that is based not on the restriction of movement but the “government of movement.”\textsuperscript{192} Smart borders mean in effect a “reterritorialization” of homeland security, involving intelligence agencies home and abroad, integrated information sharing databases, electronic monitoring of border crossings and advanced technologies at the actual borders.\textsuperscript{193} The first step toward this innovative approach to border security was the US-Canada Smart Border Declaration made a few months after the 9/11 attacks.\textsuperscript{194} The agreement was, in essence, an acknowledgement that cross-border economic activity (Canada is the largest trading partner of the US); the physical features of the border (the US-Canadian border stretches over more than 8,891 kilometers including Arctic coasts, deep forests, swamps, lakes and national parks and Indian reservations); and maintenance of good-neighbor relations does not permit the securitization and militarization of the border, “Southern style.” The Smart Border initiative includes a series of measures, which essentially “push the border out,” such as away-from-the-border processing of truck and cargo, air preclearance, advance passenger information systems, and remote join border facilities in addition to wide scale information and database sharing agreements.\textsuperscript{195} Essentially, this means that:

\textsuperscript{189} Hawley (November 15, 2007)
\textsuperscript{191} Amouore, Marmura and Salter (2008) p. 97.
\textsuperscript{192} Cote-Boucher (2008) p. 144.
\textsuperscript{193} Grondin (2009) p.110
\textsuperscript{194} The Smart Border Declaration:Building a Smart Border for the 21st Century on the Foundation of a North American Zone of Confidence, 2001.
The smart border apparatus does not end at the 49th parallel, but penetrates and extends well into the Canadian territory in order to survey other populations considered to represent a security menace. To this end, the smart border includes parts of the counterterrorism legal framework, using anti-terrorism at home as a border measure.\textsuperscript{196}

The reason why it is important to understand the US-Canada security cooperation is because it gives a relatively deterritorialized solution to a problem that stems from cross-border migration between advanced democracies; a challenge that the US faces not only on its northern border but also on its Atlantic coast.

Very recent initiatives on the US-Mexico border also point in the same direction although US-Mexico relations are qualitatively different form US-Canada relations. This is manifest in the heavily militarized nature of the Southern border and the existence of the Southern border fence, which, in the light of the US-Canadian Smart Border initiative, appear much more like a medieval solution to a complex problem than a forward looking policy direction. Although it is the US-Mexican border, which represents a bigger migration flow management challenge, from the European perspective the US-Canada cooperation has more relevance because on the US-Mexican border, the biggest issue is the control of millions of seasonal migrants, oversight of guest workers and, more recently, the prevention of extensive drug trafficking and smuggling activities. These are challenges that the Euro-Atlantic travel community faces on a much smaller scale. Yet, even on the “Southern front”, policy solutions start to steer away from traditional border patrolling measures to integrated security systems. As Secretary of Homeland Security, Janet Napolitano pointed out, “What doesn’t make sense is some notion that if you build a fence along the border, you have a policy for immigration and border security.”\textsuperscript{197} As governor of Arizona, she insisted that sealing the border makes no sense, as she famously said, “Show me a 50-foot fence, and I'll show you a 51-foot ladder.”\textsuperscript{198} Instead, DHS intensified collaboration with the government of Mexico through increased counternarcotics enforcement cooperation, greater intelligence sharing, strengthening the security cooperation through funding Mexican law enforcement and crime prevention efforts.\textsuperscript{199} Law enforcement and border control efforts on the

\textsuperscript{197}The New York Times (April 5, 2009)  
\textsuperscript{198}Der Spiegel (March 16, 2009)  
\textsuperscript{199}Napolitano (March 24, 2009)
Southern border are more prone to securitarian nationalism; therefore the increasing emphasis on “away from border” solution is even more remarkable. These observed policy changes underline the notion that “[t]o be fully effective, security must not be focused on geographical border or the home territory, but projected outward.” In both cases (US-Mexico and US-Canada border management) there has been a notable shift towards a comprehensive, more holistic and intelligence-based approach, in line with the concept of physical “debordering” and virtual “rebordering.”

On the “Atlantic border” of the United States, we are witnessing very similar processes. With the securitization of the Visa Waiver Program, visa-free travel is transforming into a security cooperation, a transatlantic smart border. Instead of overloading US consular posts overseas with extensive background security checks, for visa free travel, VWP citizens quid pro quo have to pre-register online, cooperate with the US on travel data sharing, report lost and stolen passports, reach an enhanced level of travel document security and maintain high law enforcement, counterterrorism and border control standards. And while it is the principle interest of the United States to keep security standards high, it is the shared interest of all member countries to cooperate, as they are receiving substantial benefits (e.g. waiver of the over $100 visa application fee, the opportunity costs of in-person visa application, ease of doing business). In exchange for ease of access to US markets and business opportunities and considering the already presented internal security threats that some European countries pose to the US, this is not a high price to pay. In fact, it is a price that the EU is better off paying anyway if it wants to maintain high levels of aviation security in the transatlantic travel space, its prime area of trade relations.

3.1.2. The consequence of permeable borders: technologization

Although divided by the Atlantic Ocean, the security of EU-US migratory relations is not guaranteed by the existence of a virtually insurmountable maritime space. As we have seen, it has been through this channel that the United States was attacked in 2001 and terrorist infiltration came from Europe’s direction as well. At its current stage, through the VWP, the United States is bound, by bilateral security agreements to most EU countries, thereby

establishing a “security outpost” for itself. The VWP’s security measures created a new spatialization of the US border by diffusing overseas and relegating it to “the virtual realm of databases.”

The new security system of the ESTA-enhanced VWP virtually starts border checking in the very homes of intending travelers, followed by background checks at the point of departure and the point of arrival as well. The technologization of security systems triggered by the US is spreading like wildfire from the US to its close neighbors, across the Atlantic to the EU, from Russia to Pakistan and India. “Identification technologies, surveillance and risk assessment have become the centerpiece of security policies since 9/11” and doing away with the consular screening process meant increased reliance on databases and identification technologies to spot potential threats.

The problem with the application of integrated technology systems, however, remains that a fast adapting enemy will be smart enough to change its face. “Although technologies can provide an edge in protecting our borders, that edge can be dulled by adversaries’ counter technology effort.” Therefore, protecting against diverse adaptive threats, may not be as easy as applying the newest screening technologies to visitors. In effect, terrorist organizations can only remain relevant if they shape their own strategies to the toolbox of their target countries. The spread of global jihad in Europe represents exactly this adaptation. As noted earlier, the terrorist threat to America is increasingly acquiring a European face, one that is hard to single out in the flow of millions of tourists and business visitors from Europe every year. The very real problem of seeing the ultimate solution of insecurity in identification technologies is that we might not know the identity of the target. However complex an issue the “war on terror” might be, traditional mechanisms of hunting have to be applied: i.e. somehow one ultimately has to identify, localize, name and depict the target.

Surveillance technologies have serious limitations because “established terrorists” are unlikely to go through channels of travel that require their biographical, while “potential terrorists” are recruited exactly on grounds of their “blending in ability.”

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203 Biometric passports use fingerprint, iris scan and facial recognition for identification.
204 Ceyhan (2008) p. 103.
207 Koslowkski (2006)
Short of thought policing a responsible government’s only choice is to rely on already acquired intelligence data; so the principle goal has to be the acquisition of the widest possible range of information on the threat with the biggest possible number of contributors to the system. Hence, in the face of a highly flexible enemy whose identity and whereabouts are increasingly hard to define, it is ever more important to keep expand and multiply layers of security. In order to “keep the data flowing and the planes flying” border security has to extend both inside and outside the physical borders.\(^{208}\) To extend it outside as much as possible, it is essential to get the maximum amount of data possible about the scope and form of threat that has to be screened. To extend it inside of the borders to monitor those who already made it through the borders is equally, if not even more important.

### 3.1.3. Overstays: the undefeatable security risk of open borders\(^ {209}\)

The external expansion of border security is just one necessary dimension of the dual widening process of national security.\(^ {210}\) Virtual fencing, however, is irrelevant to an estimated forty-four to fifty per cent of illegal immigrants who simply overstay their visas after entering the country.\(^ {211}\) Efficient tracking of visa overstayers pose an even greater problem than managing those who have not yet entered the country, because “the appearance of legality helps ensure long-term operational stability” for terrorist who practiced embedding techniques to make the best out of the internal resources of their target country.\(^ {212}\) Although only a fraction of al Qaeda operatives between 1993 to 2001 used visa overstays as part of their strategy, the issue of visa overstays is important because it is nearly impossible to track them down after legally entering the border.\(^ {213}\) Also, as most overstays come from tourist, student or business visas, overstay rate is a pressing issue for both VWP and candidate countries. DHS was repeatedly called upon instituting a tracking system that would efficiently and accurately monitor the entry and exit of visa holders and non-visa holders, whose permitted legal period of stay has expired but to this

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\(^{208}\) BBC News (2006, May 30)

\(^{209}\) By “visa overstay” we mean the intentional violation of the permitted period of stay in the United States. This includes both visa holders staying over their permitted period of time and VWP travelers staying for over 90 days.


\(^{211}\) Pew Hispanic Center (2006)

\(^{212}\) Kephart (2005)

\(^ {213}\) Kirkorian (2006)
day no such system is in place.\textsuperscript{214} As long as there is no reliable method of administration and management of overstays there is no point of reference in the debate. It is almost impossible to track down visa overstays and the existing checking procedure is all but professional.\textsuperscript{215} But even having a database of overstays will remain to be an indicator of just that and not their illegal activity.\textsuperscript{216} The overstay problem is one that is subject to renewed calls for attention but lacks a credible response. Even with state-of-the-art visa tracking system, which, for example registers and disseminates the names of overstayers to federal criminal databases, visa overstayers, whether terrorists or not will only be hunted down if they are actually confronted with the Police.\textsuperscript{217} Unless they commit a crime, document fraud, or are stopped on the road for speeding, overstayers will be able to live in the shadows for as long as they want to. Without creating a virtual police state where personal documents are checked on a nearly daily basis, overstayers can embed themselves for years without being noticed.

There are many reasons for visa overstays “from ignorance of immigration law, to bureaucratic red tape while trying to get a visa extension, to intentional violations of the visa terms.”\textsuperscript{218} Entering with or without a visa it is the traveler’s personal decision to abide by immigration rules after arrival or not. The overstay problem is just as much a contested issue as illegal immigration itself, which is probably the most complex question on the US agenda and falls outside of the scope of this paper. From a national security point of view, however, only the last one deserves attention, all other reasons have economic motivation and should be addressed accordingly (by encouraging legal forms of staying in the country). From this perspective, the unresolved issue of visa overstays puts yet another emphasis on the importance of the border being the “last line of defense” instead of the first line. When potential terrorists do get into the country by illegal means, only effectual intelligence-led policing can help track them down and for that purpose, international intelligence cooperation and data gathering is crucial.

\textsuperscript{214} Government Accountability Office (June 28, 2007), GAO (February, 2008), GAO (September, 2008)
\textsuperscript{215} The current consular practice is that US officials randomly call persons with outdated visas on the phone number that was provided by the visa holder on the interview and if they fail to reach the person, he or she is considered to be overstaying the visa.
\textsuperscript{216} Senate Judiciary Committee Report (June 1, 1998)
\textsuperscript{217} Kirkorian (2006)
\textsuperscript{218} Sánchez (2003)
3.2. Permeable borders: debunking the openness vs. security paradigm

The crucial underpinning of moving beyond border control and extending it both in scope and depth is the realization that the “openness vs. security” paradigm is not a tenable one in the era where accelerating rates of trade, commercial exchanges and migration of people is the foundation of national supremacy and competitiveness. Isolationism for the sake of security might have worked in an era where global trade, financial activities, and migratory trends were not decisive components of a nation’s strength. But it cannot be the answer in the 21st century. From the post-9/11 American experience of trying to shut down borders completely, it became evident that “time losses and geographic constraints inherent in traditional border-control practices guarantee their continuing inability to tame the…growing array of threats that confound the international system.”219 Smart border initiatives like on both the physical and virtual borders of the United States are slowly debunking the openness vs. security paradigm by shifting to a layered defense approach, one that aims to push out borders in both the internal and external dimensions without interrupting the healthy flow of people and goods. Instead of a physical border line, where border police and customs officers check every single visitor one by one with the same scrutiny, the border of the future will therefore consist of a series of checkpoints and security layers built into the entire network from end-to-end.220

This new approach handles global trade and migratory movement as an asset not a saddle, because the more trading partners engage in it, the better the system is. Intelligence-led border control has to be the ultimate direction of security systems, because the flow of trade and people has accelerated to such an extent that terrorists, drug and weapons smugglers could otherwise swim like fish in the sea across borders. Border security and customs experts have repeatedly pointed out, that the solution of the “finding a needle in the haystack problem” lies in reducing the number of haystacks that have to be checked.221 With attractiveness and intense trade and migration, there are more and more haystacks to hide in, correspondingly, the scope of information sharing and intelligence gathering has to expand. There are obvious limits to every man-led screening process and nothing guarantees that human error cannot lead to serious

219 Flynn (2000)
220 Howard et al. (2005) p. 159.
221 Fitzgerald (2006) p. 5. and USA Today (September 11, 2007)
national security problems. In fact, it was a series of human errors as well as inadequate intelligence sharing that led to the issuance of travel and student visas to all of the 9/11 hijackers. Intelligence-led border security integrating both federal and international agencies provide the ability of distinguishing which haystack is, in effect, worth monitoring and which one is not. Instead of rudimentary and indiscriminate checks, with good enough intelligence, the right haystacks could be filtered out, which “may make all the difference in detecting criminal activity and terrorist incidents.” By shifting from a border-focused approach to one that is based on international collaboration of intertwined screening systems, cooperation on data-sharing and pre-screening, the concept of border control and national security becomes inseparable from increased trade and openness, two major sources of US soft power.

The paradigm shift not only brings efficiency to the system but also minimizes negative externalities stemming from screening every single visitor with the same level of scrutiny, not distinguishing friends from foes, or applying practices of racial profiling as a primitive means of narrowing down the haystack. As outlined in the second chapter, the disruption of the flow of controlled migration and trade comes at a very high cost, because “unilateral border control initiatives...could end up fueling the very flames of transnational threats that lead to the adoption of tighter controls in the first place.” US national security overreactions and draconian border control measures hardly helped US-Canada, US-Mexico, US-European or US-Arab relations in the aftermath of 9/11. The introverted, sometimes even arrogant border procedures hurt US image abroad and thus America lost much favorable public opinion trying to secure its borders which made cooperation all the more cumbersome. The ripple effects of rebordering reverberated in the fields of diplomacy, businesses both at home and abroad and hurt the American economy. The US lost serious soft power potential, which it is now trying to recover by increased efforts and funds channeled into public diplomacy. Avoiding unintended negative externalities of “sealing the border” is impossible in an era where power is vested in not only military power, but a fair share in the international economy itself.

The changing topology of border control exposes the openness vs. national security paradigm to serious criticism. With the multi-dimensional expansion of border security which rests primarily on international cooperation and mutual information sharing, it is exactly through
cooperative openness of soft power that national security can be strengthened. Openness of borders and a welcoming visa policy is the means through which the United States can best promote its interests, because it serves as an incentive to ever deepening forms of cooperation. The openness vs. national security paradigm is a false paradigm, because it disregards both the soft power elements essential to national security (as described by Carr, Mearsheimer and Nye) and ignores the necessity of cross-border “soft” cooperation to ensure national security. The fading importance of physical borders vs. virtual or “smart borders” and the decreasing relevance of a nationality-based threat-assessment vs. individual-based assessment both undermine the notion that openness cannot usher in even more security. The developing phenomenon that great powers like the United States have to face is that border security does not start and does not end at the physical borders of the country. In fact, it starts at the borders of its partners and ends within the country itself. The decentralization of war and the shift from traditional means of warfare to individualized threats, where civilians become the national security concern instead of states, contributes to the securitization of migration and visa policy, which in return becomes subject of cooperation between the states concerned. Security interdependency and weakest link security cooperation will only reinforce the importance of “cross-border border security” solutions and re-emphasize the necessity of the “soft” side of national power. It is therefore imperative to realize that soft power and national security lie not on the polar opposites of the power scale and the discourse of “balancing openness and security” is not a helpful frame for future policy solutions.

3.3. Implications for the Visa Waiver Program

The Visa Waiver Program has been one of the main venues of the changing topology of border security and a policy evidence of the false trade-off of soft power vs. security. The securitization of the VWP marks the paradigm change in border control and presents a valuable example of how more openness can actually bring more security into bilateral relations. Had the VWP been abolished as promoted by some immigration experts and hawkish Congressmen, the US and its partners would have ended up with a lose-lose situation: the US would not have harnessed the soft power benefits of visa free travel, European countries would not have benefited from easy access to the American market and neither party would have enjoyed the security gains of data sharing or cooperation on travel document security. On the other hand, the
enhanced VWP creates a win-win situation for both parties: enhanced security can also facilitate travel from which both countries benefit.\textsuperscript{224}

The Enhanced System of Travel Authorization (ESTA) is one that puts trust back into US bilateral relations, a much needed step in order to restore mutual faith in transatlantic travel security. ESTA manages to push out the boundaries of US border control and at the same time re-introduce much needed security checks to travelers from friendly US allies without disrupting smooth travel. In the end of 2008, six Eastern European countries joined the VWP thereby expanding the geographical scope of tight security cooperation to the vast majority of EU countries thereby “removing boundaries of transatlantic” relations left over from the Cold War.\textsuperscript{225} For CEE countries, this was a major symbolic step to “tear down the remaining parts of the iron curtain” and the US sent a powerful message to Eastern Europe that “America is open for business.”\textsuperscript{226}

Further expansion of the Program would be of added security values to the US since the VWP “enhances law enforcement and crime-fighting efforts through data-sharing agreements between member countries” in addition to the soft power benefits of its positive public diplomacy message.\textsuperscript{227} Aspiring countries like Bulgaria, Poland, Croatia, Cyprus or Greece, who already signed a “Road Map,” that is the first step in the lengthy review process of their application, are hopeful subjects to future expansion which should be promoted. Just like in the case of the six CEE countries who have joined in 2008, the “US visa divide” within Europe maintains the impression that there are “winners and losers” in the game. But “sending the message of winners and losers is not the way to build alliances.”\textsuperscript{228} Chronic consular overload was one of the main reasons why high-risk individuals were not given enough attention before 9/11, which contributed to the “fatalistic acceptance of massive lawbreaking by a demoralized bureaucracy.”\textsuperscript{229} Bringing in new countries also has the added benefit of allowing consular officers to focus on high-risk individuals instead of applying the long and painful standards of processing low-risk individuals.\textsuperscript{230} The reality of overloaded consular visa issuing posts is that due to budget constraints and obvious limitations of human efficiency levels, more applications

\textsuperscript{224} DHS Press Release (April 18, 2008)
\textsuperscript{225} Remark of Jaroslav Kurfurst at the Heritage Foudnation’s Conference on the Visa Waiver Program, June 2008.
\textsuperscript{226} Remarks of James Dean and James Carafano at the same conference.
\textsuperscript{227} Carafano (2008)
\textsuperscript{228} Remark of James Carafano at the same conference.
\textsuperscript{230} Carafano (2009)
will result in more human failure and the massive workload lead to a “culture of courtesy” and lax enforcement.\textsuperscript{231} The pressure to issue visas as fast as possible to friendly countries has lead to “rampant and pervasive fraud” at consular offices.\textsuperscript{232} So the more intense the travel is between the US and another country the less sense it makes to subject every future visitor to the same scrutiny test. Pre-issuing fraud and false documents are easier to screen out under ESTA and the truth of the matter is that post-issuing visa fraud is not something consular officers can control.

Overstays, as noted earlier can be either intentional or unintentional and most cases are completely unrelated to terrorist activity. The much cited counterargument for VWP and easy travel to the US is that it will encourage overstays. This is not proven, however, not least due to the fact that administration officials failed to implement a trustworthy system, which tracks entries and exits and although it is required by law, DHS is unlikely to attain its goal of an efficient checkout system.\textsuperscript{233} It is extremely costly to establish a nation-wide system which tracks all exits whether it is through land, air or sea since not only the physical borders, but all international airports count as exit points. Therefore, as long as there is no system to keep track of visa overstays, the next best solution is to make legitimate visits as easy as possible, which is the best way to encourage people not to break the law.

To conclude, with due time the way forward for the United States is to further expand the Visa Waiver Program, thereby raising safety standards, internal enforcement rules and bilateral data-cooperation. It is in the interest of the United States to eradicate one by one safe havens of low standard travel security and documentation where terrorists can thrive overseas. The best incentive to tackle this problem is to offer non-VWP countries the possibility of easier travel in exchange for stricter security measures on their own territory. Currently VWP countries of all countries, cooperate with the US on the widest scale and deepest level on counterterrorism issues. Safe travel and enhanced security levels on the broadest possible scale is a vital interest of the United States which is best established by a system that binds together members by shared interests and benefits all participants.

\textsuperscript{231} Camarota (2002), Mowbray (2002)
\textsuperscript{232} Camarota (2002)
\textsuperscript{233} Carafano (2008)
Conclusions

The Visa Waiver Program was born as soft power project in the Cold War with the double aim of spurring business activities with its most important overseas trading partners and making a symbolic diplomatic outreach to its allies. With the Cold War division of Europe at the time of the Program’s conception, a nationality-based visa-free regime was a reasonable approach to control migration flows. At the time, the EU was far from having a Common Foreign and Security Policy and jihadist militancy was virtually limited to non-European territories. The VWP created a transatlantic business and diplomatic environment which was welcoming and sent the message of trust. The US thus harnessed significant soft power benefits stemming from tourism and business investments through the hassle-free nature of the VWP.

With the collapse of the Soviet Union and the increasing influence of Brussels over foreign policy issues, both the narrative and the legal framework of visa regulations altered. With the EU’s passing of the reciprocity clause, the VWP turned into a tool of transatlantic prestige war on both sides. In the negotiating process over the expansion of the VWP, the EU has lost significant bargaining potential to the US, while the US still fails rejects the idea of a universal visa reciprocity across Europe on its part. On one hand, continued US refusal of granting a blanket visa waiver to all of the EU countries reflects an insistence on protectionism of entry and exit to the US and an ultimate belief in American sovereignty over border control. On the other hand, EU rejection of the US argument and insistence on a blanket waiver reflected that the EU knows and trusts the people within its borders, regardless of their country of origin and that every EU citizen is “civilized enough” not to pose a security threat to the US. The arguments of both the EU and the US were based on the assumption that they are able to efficiently control their physical borders and that citizenship (whether “EU citizenship” or national citizenship) characterizes the level of security threat that a potential visitor poses. Insistence on the US side to make VWP expansion a case-by case basis decision, reflects an assertion of national sovereignty over migration control instead of shared responsibility with the EU. The US nevertheless still upholds its sovereignty of determining which country enjoys facilitated travel to its territory and thus symbolically rejects the idea of egalitarianism amongst European states.

The immediate US response to the terrorist attacks of 9/11 was a wholesale attempt to “seal America’s borders” and through this, make the country more secure. Both on the rhetorical and
the institutional level, migration and visa policy went through the process of securitization by which migration and security became inseparable notions and nationalist restrictionism dominated the political discourse for several years. The DHS and a massive new federal bureaucracy were set up to protect America’s borders and attention focused on the physical rebordering of the country through an array of draconian border security measures. These measures as well as the psychological reverberations of the attacks resulted in a drastic slump in tourism, FDI and trade and a major step back in diplomatic efforts to make travel to the US easier through the VWP. The main reasoning behind closing America’s borders and the non-expansion of the VWP was that openness and attractiveness pose national security risks for the US. Regarding the VWP, the issue of expansion was ignored because of a persistent fear to increase America’s openness. The general underlying notion was that if the US could somehow seal its borders it would become safer and the presumption was that America can, in fact effectively do this, it is only a matter of law enforcement. Every effort was put into an imperfect system of border control: the general approach to visitors and immigrants was that anyone is a potential threat to US national security, especially visitors from Arab and Muslim countries. This threat assessment focusing on citizenship had serious negative effects: it created major delays in visa processing; it alienated US allies in Central Eastern Europe and Muslim world; it had side-effects of racial profiling at border crossing points as well as beyond American borders and it also had serious negative consequences on student and scientific exchange programs, two very important sources of soft power. The “openness vs. national security” approach, however did not take into account the complex reality of the issue. First, that unsystematic and sweeping border screening is unmanageable, offensive and leads to major diplomatic hurdles as well as economic disadvantages.

The nationality-based visa policy approach ignored an increasingly important reality of Europe’s immigration challenge, i.e. the spread of radical Islam and Al Qaeda sleeping cells across the Old Continent. Hence, one country’s assimilation problem (e.g. Britain’s, France’s or Germany’s) becomes another country’s (i.e. US’) national security problem. The Europeanization of Al Qaeda and the how it abused the mobility of the Schengen area and the advantages of EU citizenship have been ignored for long years during which VWP members with significant Al Qaeda presence could travel without pre-screening. Again, the presumption was that the enemy would come from hostile territories outside of Europe instead of advanced
democracies. Advanced democracies, however, are comfortable operative environments for Al Qaeda which thus benefits from the infrastructure and mobility provided by them. The significant number of arrested AQ members and alleged terrorists with European citizenship undermines the nationality-based approach to border security because arrested terrorism suspects’ nationality show a great variety and is slowly shifting to second generation “born again Muslims.” The overwhelming focus on border control ignored the interdependencies of national security and the notion that boundaries actually start at the borders of VWP countries which have easier access to the US and not at the physical boundaries of the state. Increased migration and the impossibility of sealing borders of advanced and connected democracies imply increased importance of security cooperation and surveillance technology interdependencies. Weakest link considerations will be an incentive for the most powerful party to adopt the most developed security measures.

These tendencies lead to the observation that the topology of border control is changing. In an increasingly interconnected world, with individualized warfare and national security threat potentially coming from the heart of developed, allied democracies, smart border initiatives will take the lead in effective border security. Through a paradigm shift of border security which de-emphasizes physical borders and creates multiple horizontal and vertical layers of security we arrive at a complete debunking of the “openness vs. security” myth. The reform and securitization of the Visa Waiver Program was one of the hallmark initiatives following this new logic. Through the technologization of borders, increasing data-sharing cooperation and bilateral collaboration on travel document security, increased mobility actually brings more security because every person travelling visa-free has to satisfy heightened security standards thereby increasing the system’s efficiency. Smart border collaborations, such as the security-enhanced VWP therefore demystify the soft power vs. national security trade-off and lead to the essential conclusion that soft power and national security in fact can exist in a symbiotic relationship. The post-9/11 efforts to shut down the border have shown that traditional border security measures in the 21st century come with significant soft power losses, thus actually decreasing national power and national security instead of increasing the level thereof. The lesson learned from the twenty years history of the VWP is that soft power in itself is risky, but if managed well it can actually amplify national security potentials. The only way to successfully control gradually intensifying mobility is to bring more cooperating partners and more intelligent surveillance into the system.
To achieve this, the United States has to offer carrots in the form of visa-free travel which in return will create a win-win situation where soft power and national security reinforce each other. For this reason, it would be the shared interest of the United States and her transatlantic allies to gradually involve more countries in the Visa Waiver Program and thus deborder America.

Two major concerns outlined in the third chapter, terrorist embedding techniques in Europe and visa overstays are major challenges of the future of visa-free travel. “Clean slate” operatives might be impossible to ferret out and the tracking of visa overstays continue to pose a serious administrative problem. These two challenges, however, were and will be present under even the strictest visa requirements and there might not even be a perfect solution for them in the near future. The quest for perfect security often leads to policy dead ends: paranoid fear and helplessness are never good policy advisers. Effective risk management and the intelligence-led anticipation of the interaction of diverse types of risks while resisting nationalist protectionism will therefore be one of the greatest national security challenges of the future.
Executive Summary in Hungarian

Összefoglaló

A rendszerváltást követő két évtizeden át a magyar-amerikai kapcsolatok egyik legfontosabb célja az volt, hogy Magyarország felvételt nyerhes sen az amerikai vízummentességi programba, s ez által visszaálljon a kölcsönösség a két ország közötti utazás feltételeiben. A hosszú tárgyalási folyamat eredményeként létrejött egyezmény szimbolikus lépés, mely mindkét ország hivatalos képviselete szerint eltávolította a vasfüggöny utolsó darabját is. A program 2008. novemben kibővítésével egyidőben, mely kiterjedt hat kelet-európai országra és Dél-Koreára, számos olyan alapvető változás is végbement, amely hozzájárult a transzatlanti biztonság erősítéséhez.

Az amerikai vízummentességi program 1988-as indulásától kezdve lassú átalakuláson ment keresztül. A program, kezdetben Európát a hidegháborús vonalak mentén megosztva, elsősorban a nyugat-európai országokhoz fűződő gazdasági és szimbolikus kapcsolatok erősítését szolgálta. A vízummentességi program nemcsak a benne részt vevő országok és az Egyesült Államok közötti nagyfokú kölcsönös bizalmat tükrözte, hanem a bilaterális transzatlanti gazdasági kapcsolatok létesítésének és fenntartásának is fontos feltétele volt. A vízummentességi programban rejlő „soft power” potenciál vitathatatlan értékekkel bírt a benne résztvevő országok számára: a programban résztvevő jobb módú államok polgárai átlagosan többet költöttek látogatásuk során, mint a vízum köteles országok polgárai, több gazdasági szállal fűződtek az Egyesült Államokhoz, és a közvélemény kutatások szerint látogatásuk pozitívan befolyásolta az Egyesült Államokról alkotott véleményüket. Ezzel szemben a kelet-európai országokban alkalmazott hosszú és körülményes vízumkiadási procedúra folyamatosan rontotta az Egyesült Államok imázsát. A rendszerváltások okozta geopolitikai átrendeződés, az Európai Unió külpolitikai feladatköreinek fokozatos szélesítése, s az ezredforduló után a tagországok külkapcsolataira vonatkozó vízumreciprocitás bevezetése alapvetően megváltoztatták a vízummentességi program politikai-diplomáciai környezetét. A reciprocitás jegyében, lévén hogy amerikai állampolgárok az EU tagországainak mindegyikébe vízum nélkül látogatást tehetnek, Brüsszel fokozatos nyomásnyakorlással próbálta elérni, hogy az Egyesült Államok az EU tagállamaira általános érvényenés és automatikus jelleggel kiterjessze a vízummentességi privilegiumot. Az EU álláspontja a mai napig a kérdés bilaterális rendezésének elvetése, az
Egyesült Államok ugyanakkor sem korábban, sem a jövőben nem kíván áttérni a program átfogó kiterjesztésére és ragaszkodik az egyes országok egyéni elbírálási folyamatához. A feszültség hátterében fontos felfogásbeli különbség áll: az Unió álláspontja azt tükrözi, hogy minden EU állampolgárt ugyanaz a bizalom kell, hogy megillessen a külső ország részéről; míg az Egyesült Államok ezt a bizalmat csak azokra a tagállamokra hajlandó kiterjeszteni, amelyek felől nem várható sem gazdasági, sem nemzetbiztonsági kockázat. Mindkét felfogás azon a premisszán nyugszik, hogy mind az EU, mind az Egyesült Államok a gazdasági és biztonsági kockázatot alapvetően az állampolgárság tényéből fakadóan határozza meg. Az Egyesült Államok részéről a vízummentességi program jelenlegi állása azt a ki nem mondott álláspontot tükrözi, hogy például egy, az iraki misszióban szolgált lengyel katona nagyobb kockázatot jelent, mint bármelyik, London külkerületeinek gettóiban nevelkedett második generációs pakisztáni-brit állampolgár.

A 2001. szeptember 11-i terrormerényletek hatására az amerikai nemzetbiztonsági felfogás érezhetően bezárkózó vált. A merénylet elkövetői a legkülönbözőbb módon használták ki a bizonyos országokban (főként a Szaudi Királyságban és néhány vízummentességi programban résztvevő nyugat-európai országban) gyakorolt laza amerikai vízumpolitika jelentette beutazási lehetőségeket. Ezért az tünt a legjobb megoldásnak, ha az Egyesült Államok mind a beutazás körülményeit, mind a határfelügyeletet jelentősen szigorítja, s emelett az elkövetők anyaországaiból és a környező muszlim és arab országokból származó beutazók, bevándorlók felett a legszigorúbb ellenőrzést végzi. E szemlélet jegyében mind a retorika szintjén, mind intézményi szinten végbement a migráció biztonságtasása. Ez a folyamat a koppenhágai iskola képviselői, Barry Buzan és Ole Waever szerint egy olyan retorikai-intézményesült folyamat, mely során az adott kérdés a szokásos politikai ügymenet kereteiből kilépve az állam számára alapvető biztonsági fenyegetéssé válik. A folyamatnak számos nem kívánt mellékhatása volt megfigyelhető, mely alapvetően abból a kényszeres indítatásból fakadt, hogy a Egyesült Államok minden áron szükségesnek látsza fizikai határainak teljes lezárását és az átkelőhelyek legszigorúbb ellenőrzését, mely súlyos fennakadásokkal, gazdasági profit kieséssel, diplomáciai és politikai konfliktusokkal járt; s nem utolsó sorban hatékonsága a beutazók óriási száma miatt erősen megkérdőjelezhető volt. Ezzel egyidőben a migráció biztonságiasítása úgy ment végbe, hogy annak hatásköre értelemszerűen kiterjedt az amerikai vízumpolitikára, s így a

234 Számos EU tagország (Lengyelország, Románia, Bulgária, Görögország és Ciprus) egyelőre nem tagja a programnak és a közeljövőben nem is várható felvételük, mely további feszültségeket fog jelenteni Brüsszel és Washington között.
vízummentességi programra is. Noha 1999-ig a vízummentességi program tagjainak köre fokozatosan bővült (tíz év alatt egyről huszonhétre), a terrorista merényletek általános sokkhatásai miatt 2008-ig egy tagországgal sem bővült a program, mely történetének leghosszabb, stagnáló időszakát jelentette. A szeptember 11-i merényletek tanulsága, melyet az Egyesült Államok levont saját magára vonatkozóan, az volt, hogy a gazdasági, politikai nyitottság és vonzerő túlságosan sebezhetővé teszi az országot. Ezért a vélt biztonságpolitikai megoldást a nyitottság csökkentésében és a beutazás maximális ellenőrzésében találták meg. Az arab és muszlim országok beutazói valamelyben diszkrimináció, a határellozás pontoknál tapasztalt átvilágítási tortúrák, a hamisan meggyanúsított turisták százai és a vízumkiadási folyamat hosszadalmas, kiszámíthatatlan természete azonban csak olaj volt a tűzre. Az említett problémák nem csak súlyos gazdasági veszteségeket, de jelentős diplomáciai, politikai konfliktusokat is okoztak, melyek aligha segítették az Egyesült Államokat a „terrorizmus elleni globális háborúban”.


Részben e paradoxon felfedezése, részben pedig az a felismerés, hogy a vízum és beutazási politika drákáit szigorítása súlyos „soft power” veszteségeket okozott az Egyesült Államoknak, mely ugyanúgy része egy nemzet erőterének, mint a katonai képességei, vezetett oda, hogy a vízummentességi program fontos biztonságpolitikai elemekkel és egyben hét új
tagországgal bővült 2008-ra. A nemzetközi terrorizmus lappangó európai jelenléte olyan biztonságpolitikai interdependencia-helyzetet alakított ki, melyben az Egyesült Államok nem tehette meg, hogy minél jobban elszigetelje magát. Az ESTA (European System of Travel Authorization) bevezetése a vízummentességi programban részt vevő országok számára egy olyan markáns biztonságpolitikai lépés volt, mely a jövőben egy inkluzívabb, kooperatívabb és befogadóbb, ugyanakkor biztonságosabb transzatlanti migrációt tesz lehetővé. A vízummentességi program 2002 óta számos biztonságpolitikai együttműködésre is kötelezi a tagországokat, ez pedig a transzatlanti biztonsági együttműködési rendszer új dimenzióját jelenti.235

235 Göncz (2008. október 17)
Bibliography

Primary Sources

EU
—. Recommends negotiations for an agreement with the United States of America on certain conditions for access to the US Visa Waiver Program (11 March 2008)

US
Public Law 82-414. Immigration and Nationality Act.
Public Law 99-603. Amended the Immigration and Nationality Act to effectively control unauthorized immigration into the United States, created the Visa Waiver Pilot Program
Public Law 101-649. Amended the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes. inserted further requirements for the Program and removed the limit on the number of countries that could participate in it
Public Law 103-416. Immigration and Nationality Technical Corrections Act of 1994, created a probationary status to allow countries whose nonimmigrant visa refusal rates were higher than 2 percent but less than 3.5 percent to enter the program on a probationary basis;
Public Law 104-208. Made omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes. created a new type of probationary status
for countries in the program that failed to meet certain criteria, and removed the
probationary status that had allowed countries with nonimmigrant visa refusal rates higher
than 2 percent but less than 3.5 percent to enter the program.
Public Law 105-56. Made appropriations for the Department of Defense for the fiscal year
ending September 30, 1998, and for other purposes.
Public Law 105-119. Made appropriations for the Departments of Commerce, Justice, and State,
the Judiciary, and related agencies for the fiscal year ending September 30, 1998, and for
other purposes.
Public Law 105-173. Amended the Immigration and Nationality Act to modify and extend the
visa waiver pilot program, and to provide for the collection of data with respect to the
number of non-immigrants who remain in the United States after the expiration of the period
of stay authorized by the Attorney General.
Public Law 106-396. Amended the Immigration and Nationality Act to make improvements to,
and permanently authorize, the visa waiver pilot program under section 217 of such Act.
Public Law 107-56. To deter and punish terrorist acts in the United States and around the world,
to enhance law enforcement investigatory tools, and for other purposes. (USA PATRIOT
Act)
Public Law 107-296. Established the Department of Homeland Security, and for other purposes.
Public Law 107-173 Enhanced Border Security and Visa Entry Reform Act of 2002
Public Law 108-299. Modified certain deadlines pertaining to machine-readable, tamper-
resistant entry and exit documents.
Public Law 110-53. Provided for the implementation of the recommendations of the National
Commission on Terrorist Attacks upon the United States.
Public Law 108-458. The Intelligence Reform and Terrorism Prevention Act of 2004, Sec. VII:
Implementation of the 9/11 Commission Recommendations

http://regulations.vlex.com/vid/biometric-immigrant-identifiers-22712707 (accessed March
15, 2009).
—. Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant
Status Indicator Technology System. Notice, Washington, DC: Federal Register, Vol. 69,
(accessed March 15, 2009).

Hungary

2008. évi XXXV. törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok
Kormánya között az ismert vagy feltételezett terroristák kiszűrésére szolgáló információk
cseréjéről szóló Megállapodás kihirdetéséről
2008. évi LXVI. törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a bűncselekmények megelőzése és az ellenük való küzdelem terén folytatott együttműködés fokozásáról szóló Megállapodás kihirdetéséről

**Official Statements, Press Releases, Testimonies before Congress**


Göncz, Kinga. Az egy hónapon belül várható vízummentességgel megoldódott az utolsó nyitott kérdés is a magyar-amerikai kapcsolatokban. 2008. október 17.

Grigsbald, Daniel. Securing Our Borders Under a Temporary Guest Worker Program.


**Academic Sources**

**Books, Academic Journals**


**Online Reports, Briefings, Studies**


Center for Immigrant Rights at the Pennsylvania State University’s Dickinson School of Law.


Cutler, Michael. "The Visa Waiver Program is a Danger to America." *Accuracy in Media.* October 17, 2006.


*Center for Immigration Studies*. April 2005.  


Media Sources


Polls


Personal Interviews, Conferences Attended

Interview with Karl Altau, Managing Director of the Joint Baltic American National Committee, July, 2008.
Interview with András Juhász, Second Secretary at the Hungarian Embassy, Washington, DC, July, 2008.
Appendix

Appendix A.: The Visa Application Process, or First Pre-Screening.
Appendix B.: Border Crossing Examination, or Second Pre-Screening.
Appendix C.: ESTA Implementation Timeline as Anticipated by DHS


August 1, 2008: ESTA operational in English.

Early October 2008: Fiscal year 2008 refusal rate data available.

Early November 2008: DHS anticipates publishing final notice for ESTA in the Federal Register.

October 15, 2008: ESTA operational in additional languages.

January 12, 2009: DHS anticipates ESTA authorization to be mandatory for all visa waiver travelers.

End of 2008: DHS anticipates expanding the Visa Waiver Program.

Source: Government Accountability Office
Appendix D: Trade, FDI and Flow of Goods

Appendix D1: US Trade in Goods with the European Union

Source: Travel Industry Association,
http://www.ita.doc.gov/media/Publications/abstract/topmarkets.html/topmarkets.html

Appendix D2: Major EU trading Partners

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<td>Russia</td>
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Source: DG Trade

Appendix E: Visitor Trends

E1.: US Tourism Total Income (travel and passenger fares) millions of US dollars

E2.: Top 20 countries visiting the United States