Royal Canadian Mounted Police | Gendarmerie royale du Canada

Research and Evaluation Branch

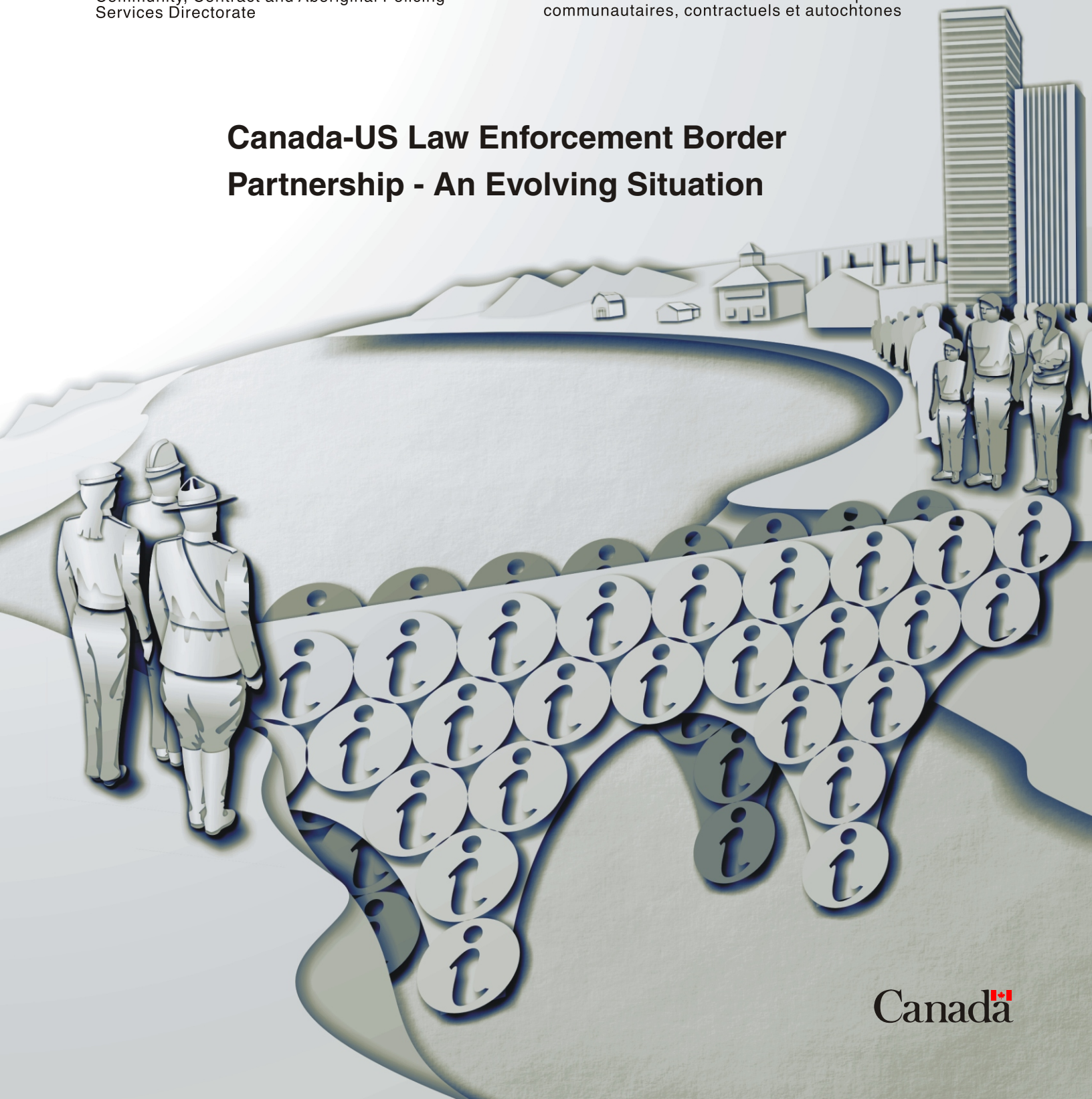
Community, Contract and Aboriginal Policing Services Directorate

Sous-direction

Recherche et Évaluation

Direction des services de police communautaires, contractuels et autochtones

Canada-US Law Enforcement Border Partnership - An Evolving Situation



Canada

Canada-US Law Enforcement Border Partnership- An Evolving Situation

by

Marcel-Eugène LeBeuf, Ph.D.
Royal Canadian Mounted Police

Speech Delivered at The Sixth Biennial Conference:
International Perspectives on Crime, Justice and Public Order, 16-20 June 2002, London

Sponsored by
John Jay College of Criminal Justice
Metropolitan Police Service
Federal Bureau of Investigation
Centrex

Available on the Internet at : www.rcmp-grc.gc.ca/ccaps/research_eval_e.htm
Available on the Inforweb at : infoweb.rcmp.grc.gc.ca

Introduction

Today I am going to talk about the law enforcement partnership at the Canada-US border.

My presentation is based on material from a research project I started last winter. It should be considered as a work in progress.

The research project examines the impact of organized crime in Canada through partnership at the border. More specifically, the process is about the implementation of partnerships with respect to cross-border issues between Canada and the United States.

I have conducted a series of interviews and field observations. I still have a series of interviews to complete.

I am interested by the actual development of collaborative partnerships as well as by the current, evolving situation at the border.

I would like to show that organized crime can have positive, unexpected outcomes on Canadian law enforcement organizations.

Not only are there intense negotiations going on between law enforcement agencies and political stakeholders, but also between Canadian and US officials.

I would also like to show that collaborative partnership represents a challenge because of its innovative application in the field of public security.

Current situation

Partnerships between Canada and the US are nothing new. The two countries have long been seen as partners, creating, by force of circumstances, a stable, natural bond for a very long time. Canada and the US share a border that is more than 5,500 miles long, not including the coasts. The Free Trade Agreement signed by Canada and the United States in 1989 laid the foundations for new business relations between the two countries (Canada, 1987a, 1987b,1987c). Basically, the two countries agreed to ensure a certain level of trade reciprocity, to make exchanges significantly easier. In other words, the treaty established the free movement of goods and services. Trade and commerce are very important between the two countries. Truck crossings at the border are huge. There are 45,000 every day, and according to data, the economic impact is more than $1,9 billion daily in bilateral trade of goods and services.

Of course, the North American situation in no way compares to the massive changes taking place in Europe. At the time of the free trade negotiations, discussion dealt only with economic exchanges. Legal, cultural and social dimensions were virtually non-existent, except in terms of economic attributes. The idea being promoted was that the free trade agreement would foster unlimited access to both countries with no radical changes (Cetron, Davies, 1989).

The border has not traditionally been the source of any concerns with respect to mutual security (Stephens, Archer 1991). Criminal justice has been a domestic issue because the two countries' legal cultures varied in their respective approaches and philosophies. Gun control is different, violence is different; the power of the law is different.

However, the tragic events of September 11 had a determining effect on the issue of national and continental security. It attracted the attention of all governments and many strategic thinkers.

A formal negotiation process has started between Canadian officials and US political stakeholders (ministers and senior police officers) to ensure greater security along the border. The border shutdown for few days in September had a detrimental effect on the Canadian economy.

There was also ongoing discussion with respect to cross-border issues between Canadian law enforcement agencies and political stakeholders.

There are two identifiable consequences of these discussions:

1- Canadian Foreign Minister Manley and American Governor Ridge signed the Smart Border Declaration, which states that economic and national security are intrinsically linked. It includes a 30-point Action Plan (including the secure flow of people, goods, infrastructure, sharing of information) (Department of Foreign Affairs and International Trade, 2002).

2- Diverse initiatives can also be identified. I can count at least 12 links to border issues. There are working groups looking at organized crime research and law enforcement initiatives to fight organized crime. Some are new initiatives (such as the Joint Statement of Co-operation on Border Security), and some are being rejuvenated (such as Project North Star, aimed at the sharing of intelligence). And there was also the implementation of integrated border enforcement teams that I will talk about later.

I will focus my presentation on the Canadian side only.

Border issues

At the time of negotiations between the two governments, one important issue was border security. Since both countries have an impressive 5,500-mile-long border, it is conceivable to say the border is permeable leaves citizens on either side and vulnerable not only to disease, such as smallpox, but also to bioterrorism and criminality. The security of Canada and the US are inextricably linked and intervulnerable (Sands 2001:51).

Traditionally, the border performs various functions: a revenue function, a regulatory function and an immigration function (Simpson, 2001):

- The revenue function is illustrated by the amount of customs duties collected at the border.

- The regulatory function protects people from dangers associated with dangerous food products, environment pollutants, animal and plant diseases.

- The immigration function controls entry to Canada and stops illegal immigration and terrorism.

The border can be defined in many terms:

1-Is a border just a line that you can see and stand on?

2-Is it what defines and sets a nation or people apart?

3- Can it be a conceptual, even a movable zone through which interests are both facilitated and safeguarded, whether at the 49th parallel, in a Windsor trucking depot or a Quebec port, or at a Canadian immigration centre in Hong Kong (Manley (2001:20)?

With such a broad understanding, the border is not only movable, but could also be adaptable to the environment by being a land border, marine or even an air border located in another country.

Among proposals for discussion at a conference held in Ottawa last fall, was what is called the global approach.

The global approach refers to a continental perspective or a multiple security border concept (according to Atkinson (2001) to create a North American Area of Mutual Confidence (Haynal, 2001:50).

It is illustrated by concentric rings of co-operation:

The innermost ring represents the actions to ensure security within each country: the visa screening process, followed by airline check-in (point of origin); point of initial embarkation; transit; point of final embarkation; international seaports or

airports (point of arrival); and at the centre, the Canada-US border.

A second is the co-operation among security and regulatory agencies.

A third ring is the actual border that could be managed by the creation of a bi-national Joint Border Commission.

A fourth ring represents offshore networks, cooperation and intelligence sharing with countries around the world.

Finally, the fifth ring opens the possibility of addressing the global problem of migration.

We should point out that no decision has been made yet as to which solution is more appropriate. Negotiations are ongoing. In fact the border issue is a work in progress. Choices made will definitely influence a new vision of the traditional border (and security measures will be implemented accordingly).

However, in current discussions, the border functions are less at stake than are new control measures that would strengthen the security of free movement of goods and commerce at the border. To summarize: the challenge of border management in the post-September era really comes down to addressing some not very new, but relatively neglected security, intelligence and policing issues so that commerce practices can be safely done (Campbell, 2001: 41) .

Collaborative Partnership

I already said that partnerships between Canada and the US are nothing new. But partnership between law enforcement agencies is a different matter. The police in Canada are decentralized. It means that there is no co-ordination mechanism, no overall control mechanism, no national

standards either for management of police or for police operations. Also, partnership is much more complicated when it involves international partners.

Partnership is a different concept than police co-operation.

Historically, any assistance between police departments or law enforcement agencies was described as co-operation. Formal and informal procedures make it possible to obtain or offer assistance in the area of law enforcement. Formal agreements go through channels of legal assistance such as letters rogatory, requests under treaties, etc. Others, called mutual legal assistance treaties, have promoted mutual assistance for locating persons, serving documents, producing records, executing requests for search and seizure, taking testimony, transferring persons for testimonial purposes, immobilizing and forfeiting assets, name checks, fingerprint searches, etc. (Nadelman, 1991). Other procedures exist under relatively informal agreements by FBI attachés, or DEA country attaches stationed in American embassies (Andersen, 1992), etc.

Collaborative partnerships mean something else.

Collaborative partnerships mean the capacity to share the power structure and the willingness to embark on a learning process with respect to tasks to be achieved (Armstrong, Lenihan, 1999).

Collaborative partnerships imply the need to think, plan and act horizontally and adopt new approaches to policy development, program design and service delivery.

In collaborative partnerships, roles and responsibilities are not often specified. It can range from sharing offices to efforts to co-manage policy areas, programs and resources (Armstrong, Lenihan, 1999:14). It can create dynamic arrangements that change and grow as they respond to new circumstances. In fact, it implies various stages and kinds of collaboration.

Since the Canadian federal government had established as its priority to fight organized crime (and terrorism) on its soil, there are Canadian national police partnerships aimed at fighting

organized crime, but not exclusively. These projects involve contributions from police departments (federal RCMP and local police departments) and law enforcement agencies. Most of the time, they are developed to address specific but broad concerns such as drug smuggling, or telemarketing scams, etc. Most of them are set up in major cities. They are ad hoc organizations.

Partner agencies are diverse, depending on the objectives. The partners have different mandates, roles, responsibilities and powers under the law. They have to learn to work together in a setting where professional cultures collide.

Partnership at the border

We have said that the tragic events of September 11 had a determining effect on developing partnerships between law enforcement regarding the border. There was the need to actually set up teams in strategic areas in order to ensure security at the border and ensure that border facilitation was sustained.

With respect to the border, the question was not so much "are borders seamless?", given their length, but rather "are existing controls effective?"

Obviously, there is a need to develop partnerships since criminal organizations are often more shrewd than police in their use of high-tech equipment, smart techniques and unlimited financing (Arlacchi, 2001). At one time, it was noted that cross-border travel between the US and Canada was difficult to control, and expected to become more so, posing more significant problems for law enforcement (Lyons et al., 1989).

As we speak here today, partnership at the border is relatively new–even though we have seen the implementation of partnerships among law enforcement agencies, for instance, with respect to border control in the past.

There is an RCMP initiative called Integrated Border Enforcement Team, or IBET. It is more or less a replication of the EBET, Border Enforcement Team, set up in the Vancouver area at the end of the nineties.

The new Integrated Border Enforcement Team (IBET) is a partnership involving many agencies operating along the Canada/US border, whether in a land, air or marine environment. Each agency retains its own chain of command and operational procedures. Participants bring something to the table (manpower, technology or intelligence).

IBET is intelligence-driven. All information must be shared. Each agency must agree to respond to the needs of the other while respecting the laws and jurisdiction of each nation (Working Group Report, 2002).

Intelligence support builds upon existing interagency intelligence structures by enhancing information gathering, evaluation, fusion, analysis and reporting. The primary mission is to provide tactical and operational intelligence for specific cross-border activities related to national security and organized criminal activity.

Enforcement operations target cross-border criminal activity geographically, regardless of the direction of travel or the commodity involved, and are designed to arrest as many perpetrators and seize as much contraband as possible.

The IBET partners are the Royal Canadian Mounted Police, Canada Customs and Revenue Agency, Citizenship and Immigration Canada, the US Customs Service (USCS), US Immigration and US Border Patrol, and the US Coast Guard. IBETs may identify additional local agencies at each location.

In fact, IBETs are set up based on regional needs, and local organizations. A great many IBETs will be set up in different locations at the Canada/US border in the next 18 months. Funding is provided by the government.

What is essentially new about the IBET model now implemented is not so much the idea of grouping together law enforcement agencies, but 1) expanding the project to law enforcement bodies from another country; 2) seeing a firm political will behind the project; and 3) the availability of funding, as needed. The first two components constitute current challenges to a complex situation related to continental security and the free flow of commerce.

Some lessons learned with respect to partnership for law enforcement agencies

Learning to work in collaborative partnerships takes time. In itself, partnership is a long process where building trust is but one of many major issues to be dealt with.

Anticipated impact of partnerships:

1- Sharing of information: By having different law enforcement partners working together in the same environment (building) and with the same objectives, the sharing of information is easier given the immediate access to agency data banks. Most of the data banks are not connected or linked within Canada, or with the US. There are many questions partners need to resolve. How do you reconcile security, intelligence sharing and the protection of information? What are the mandates of specific areas? Who gets access to data banks? Are partners going to share information with other departments? Must these departments be held responsible to the same standards as the partners?

2- Integrated team work: By working together, and taking part in joint operations, not only do law enforcement partners work on the same cases, but they also get involved together at all operational levels. They should plan and carry out operations as if only one agency were involved.

Closely associated with integrated team work is team building. In order to be able to establish efficient teams, partners from different law enforcement agencies, with different mandates, law

enforcement powers, training, abilities and priorities must learn to work together as one team. This in itself is a challenge because of relationship, mandate and legislative issues.

3- International police collaboration: In the current context, Canadian law enforcement agencies must work together, but they also must work with their US counterparts, i.e. US Border Patrol, US Customs, US Coast Guard, etc. At the border, it is not just a provincial issue. Joint operations mean starting an operation from the Canadian side and completing said operation from the US side. It can mean sharing intelligence, equipment and officers, etc. It means looking at a very important issue: Canadians are not allowed to carry guns into the US, just as US officers are not to carry guns into Canada.

4- Efficiency in fighting organized crime: The objective is that if team work yields the results it is supposed to, the fight against organized crime will be more efficient because of the tools used and the approach suggested.

Unanticipated outcomes

1- High level of involvement of political stakeholders: There has been and still is a high and continuous level of interest from political stakeholders with respect to border security. The Smart Border Declaration, with its 30-point Action Plan, was signed between Canadian Foreign Affairs Minister Manley and U.S. Governor Ridge. It stresses economic and national security. The IBET model is a follow-up to the accord; it is also a high priority for RCMP senior management.

2-New funding available: Following 9-11, a new budget was voted by Parliament to allocate new funding to national security. The 2002 April budget also gives new funding to national security issues. For the IBET initiative alone, $25 million was made available between now and 2004. All together, huge amounts of money have been made available to law enforcement agencies to fight organized crime and terrorism.

3- New organizational structure redesign: With respect to national security and border integrity,

the RCMP has created new positions and a new reporting structure (for senior people as well as field officers) to meet current and evolving needs (local and regional). In fact, since the fall of 2001, the current situation is evolving rapidly and police organizations have to react in the same fashion. You can say that we are learning as we go.

4-Internal organizational challenge: As new positions are created to meet new challenges with respect to border issues, there is paradoxically internal inertia within police organizations to fix important issues such as HR (ability to staff), training, development of experts, etc. to meet local needs. The organizations themselves have difficulty to following the pace of external changes. There is a need for more resources to expand investigations with specific competencies. For instance, policies with regard to human resources, selection of personnel, job-specific competencies, etc. are designed for traditional police work. With the IBET model, we have entered a new era where flexibility in HR management becomes a priority; competencies, expertise, leadership, and communication skills take on a new perspective; they have to meet and reflect the reality of integrated police work.

5- Partners: As previously mentioned, law enforcement agencies see the need to invite partners either from police organizations or other regulatory bodies. Since such an extended exercise of sharing resources is new, there is a shortage of personnel, because everyone wants the same partners.

However it is evident that members of participating agencies really want to work together and to be successful in the fight.

Critical success factors

1-It helps to have urgency around a file. This sense of urgency enhances opportunities to have dialogue between partners: not only between political stakeholders and law enforcement agencies, but also among law enforcement agencies themselves.

2- Environmental ambiguity could be positive. By that, I mean that not necessarily knowing what to do with regard to an issue, having to share the power structure, helps to redesign the structural and operational perspective. In that context, the IBET initiative and on-going current negotiations are certainly a good illustration.

3- There is a significant element of risk associated with urgency, and it must be part of the problem-solving approach chosen before any decision is made. Too often, the risk is doing nothing which in itself is a risk, but with uncontrollable consequences.

4- There is a need for strong leadership from senior management not only to help set up priorities, but also to make sure that the decisions made at the senior level will be implemented.

Bibliography

ANDERSEN, A. (1992). Transnational Crimes. A Global Approach. *FBI Law Enforcement Bulletin*, 61, 3:26-32.

ARLACCHI, P. (2001). Nations Build Alliances to Stop Organized Crime. Speech Delivered at the Australian Institute of Criminology's Fourth National Outlook Symposium on Crime in Australia. New Crimes or New Responses. 21-22 June. Available at www.usinfo.state.gov/journals Consulted 2002-01-25.

ARMSTRONG, J.; Lenihan, D.G. (1999). *From Controlling To Collaborating: When Governments Want To Be Partners. A Report On The Collaborative Partnerships Project*. New Directions. Number 3. Toronto: The Institute Of Public Administration Of Canada.

ATKINSON, J. (2001). Dimensions of Border Security. Introduction. Canada's Policy Choices. Managing Our Border with The United States. November 28-29, 2001. Toronto, Ontario. Available at http://www.ppforum.com

CAMPBELL, A. (2001). Security and Policing. Canada's Policy Choices. Managing Our Border with The United States. November 28&29, 2001. Toronto, Ontario. Available at http://www.ppforum.com

CANADA (1987a). *The Canada - U.S. Free Trade Agreement. Synopsis.* Ottawa: External Affairs Canada.

CANADA (1987b). *Canada-U.S. Free Trade Agreement. Overview.* Ottawa. External Affairs Canada.

CANADA (1987c). *The Canada-U.S. Free Trade Agreement. Securing Canada's future*. Ottawa: External Affairs Canada.

CETRON, M.; Davies, O. (1989). *American Renaissance. Our Life at the Turn of the 21st Century.* New York: St. Martin's Press.

Department of Foreign Affairs and International Trade. (2002). The Canada-U.S. Smart Border Declaration. Action Plan for Creating a Secure and Smart Border. Available at http://www.dfait-maeci.gc.ca

HAYNAL, G. (2001). What are the Policy Options? Introduction. Canada's Policy Choices. Managing Our Border with The United States. November 28-29, 2001. Toronto, Ontario. Available at http://www.ppforum.com

LYONS, T.; Burton, G.; Sonnichesen, R. (1989). Law Enforcement Views on Future Policing Issues. D.J. Loree (ed). *Future Issues in Policing: Symposium Proceedings.* Ottawa: Research and Program Development Branch, Canadian Police College

MANLEY, J. (2001). Notes For An Address. Canada's Policy Choices. Managing Our Border with The United States. November 28-29, 2001. Toronto, Ontario. Public Policy Forum. Available at http://www.ppforum.com

NADELMAN, E.A. (1991). The Role of the United States in the International Enforcement of Criminal Law. *Harvard International Law Journal*, 31, 1:37-76.

SANDS, C. (2001). What are the Policy Options? Canada's Policy Choices. Managing Our Border with The United States. November 28&29, 2001. Toronto, Ontario. Available at http://www.ppforum.com

SIMPSON, J.P. (2001). Statement. Canada's Policy Choices. Managing Our Border with The United States. November 28-29, 2001. Toronto, Ontario. Public Policy Forum. Available at http://www.ppforum.com

STEPHENS, P.; Archer, K. (1991). The Borderlands Project. *ACS Newsletter*. 13, 1: 13-14.

Working Group Report (2002). Integrated Border Enforcement Teams and Joint Enforcement Co-ordination. Ridge/Manley Actions. February 28. Not for circulation.