The Intersection of Academics and Attacks: American and German Student Visa Policy After the September 11th Attacks

By Andrea Detjen

Introduction

In an apartment in the Harburg section of the Hanseatic city of Hamburg in the late 1990s, a group of men from around the Middle East began planning a terrorist attack that eventually targeted the World Trade Center and other locales in the United States in September 2001.[1] This group gained entry to Germany by various means, but the leader and mastermind, Mohammed Atta, along with Siad Yarrah, Zakaria Essabar, and Ramzi Binalshibh, gained legal entry and stay in Germany on the basis of pursuing degrees at various universities and technical schools in the Hamburg area. Only one, Mounir El Motassadeq, achieved legal entry by submitting a false claim of asylum. The others were either German citizens (Zammar), or there on military scholarship (Alshehhi). Some of these men went on to become hijackers (Atta, Alshehhi, Yarrah) in the September 11th attacks, while others aided these efforts (El Motasseadeq, Mzoudi, Binalshibh, Essabar, Zammar).

The realization that the group had used Hamburg as a safe location from which to plan the attack created a stir among policy makers in Germany, that the country's security measures were not high enough. At the same time, some of the hijackers' subsequent use of student visas to gain entry into the United States made it apparent that the agencies responsible for entry and immigration had not been able to limit the access of nefarious

[1] The following information is from: "Der 11.September und die 'Hamburger Zelle," *Deutsche Presse Agentur,* August 14, 2003, and "Visum für Pakistan," *Der Spiegel,* October 14, 2002.

characters such as the September 11th hijackers to the country. Both Mohammed Atta and Marwan Alshehhi obtained U.S. student visas, contrary to Immigration and Naturalization Service (INS) procedure, which stated at the time that visa applicants who leave the country during the application process are disqualified. [2] The two future hijackers were able to stay in the country while on track to obtain student visas, allowing them to attend the Huffman Aviation flight school in Venice, Florida. Fellow hijackers Hani Hanjour, Nawaf al Hazmi, and Satam al Suqami also obtained entry and permits for residence as students in the United States.[3]

Thus, in both the United States and Germany, some of the September 11th hijackers and their assistants found safe harbor for their activities as a result of their student visas. Certainly, both German and U.S. government officials reacted to these late realizations with alarm. In Germany, there were concerns that the country's government had partial responsibility for the attacks because its security services had failed to pick up on the nature of the group's activities before September 11th.[4] Similarly, President Bush dubbed the INS failure an "inexcusable blunder," because it had not barred entry or stay to the hijackers, and had failed to improve its system following the attacks, as evidenced by the notices the service sent to some of the hijackers six months after their suicides.[5]

From these similar circumstances of hijackers as students, we would expect similar policy reactions from both governments, but as we shall see, this has not been the case. The United States implemented many changes in the way it issued student visas, whereas German authorities tightened general immigration procedures. The nature of

[2] "INS 'Failure' Cited in Visa Case," *Washington Post,* May 21, 2002.
[3] Michelle Malkin, *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (Washington: Regnery, 2002), 239.
[4] "Jahresrückblick 2001, 11. September und die Folgen – Innere Sicherheit," *Focus*, December 21, 2001.

each country's attention to student visa policy (or lack thereof) following the 2001 attacks indicates differing perceptions about the role of domestic institutions in providing national security, and acceptable levels of security. Yet, it may be countered that the countries have similar levels of threat perception. Finally, the differences between these two varying approaches - German and American - to student visas and what that might mean for future levels of national security in both countries are examined.

Initial Reaction and Policy Responses

United States

A U.S. Justice Department Inspector General's report on INS actions in relation to the September 11th hijackers found that the agency was "ill-equipped to handle the threat posed by terrorists," and that its system for keeping track of foreign students was "antiquated and inadequate."[6] Michelle Malkin's book *Invasion,* an indictment of U.S. immigration policy and practice in light of September 11th, calls the INS management "incompetent, negligent and corrupt." Malkin views these deficiencies in immigration policy as all the more serious because immigration is for her an issue of national security.[7]

Malkin goes on to cite a scholar who points to several cases of citizens of Iraq, Iran, and Jordan studying nuclear physics and similar subjects at American universities with little supervision. Indeed, the new discourse about student visas and immigration in the United States is now about national security policy. Other U.S. governmental agencies had been ill-equipped to deal with this entirely new threat; traditional military

[5] "INS 'Failure' Cited in Visa Case," *Washington Post,* May 21, 2002.
[6] Ibid.

force focuses its energy on foreign perpetrators of anti-American aggression abroad, whereas domestic law enforcement focuses on U.S. citizens in the homeland.[8]

The subsequent American response to these inadequacies reflected an increasing defensiveness on the issuance of student visas because they were used in planning the attacks. Overnight, immigration and visa issues become a national security issue rather than the status quo: economic, environmental or cultural issue. Many of the changes in U.S. student visa policy that occurred after the 2001 attacks had been planned in 1996. The Patriot Act of 2001 then mandated the acceleration of these plans in reaction to the attacks, and the Enhanced Border Security and Visa Entry Reform Act of 2002 clarified the requirements to collect information, and required universities to report the failure of any foreign student to enroll within a month of the registration deadline.[9]

SEVIS (the Student and Exchange Visitor Information System) was finally implemented in 2003, seven months after the deadline set by the Patriot Act. The system electronically tracks students instead of using paper forms. This technological upgrade intends to serve as a tool for schools to provide information to the government about cultural exchange visitors and non-immigrant foreign students studying at universities, language and technical schools, or F, M, and J visa holders.

SEVIS improves on previous paper-based systems by including codes on the forms submitted to the agency that will prevent anyone from duplicating or selling applications.[10] Furthermore, the new system will allow the responsible agency to compile

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[7]Malkin, x.
[8] Ashton B. Carter, "The Architecture of Government in the Face of Terrorism," *International Security* 26, no. 3 (2001/2002), 9.
[9] Immigration and Customs Enforcement (ICE) website, <http://www.ice.gov/graphics/enforce/imm/imm_sevis.htm> (Accessed April 18, 2004).
[10] "INS Moves to Plug Student Visa Leaks," *The Washington Post,* January 30, 2003.

a list of the people who are in the country illegally (i.e., those students who have left the school for which they had held their student visa.) Furthermore, the overseeing agency of student visas shifted along with the creation of the Department of Homeland Security, which is the result of the combination of 26 previously disparate federal agencies. The Homeland Security Act of 2002 reincarnated the defunct Immigration and Naturalization Service (INS), but spread its prior functions across several entities, with the primary tasks going to: the Directorate of Border and Transportation Safety (BTS), the Citizenship and Immigration Service (USCIS), and the Immigration and Customs Enforcement (ICE), the latter of which holds responsibility for the SEVIS system.

The introduction of these changes in student visa policy was meant to achieve two pressing issues that had become apparent since September 2001. First, because it had failed in the past, the new ICE was to achieve the INS' previous mandate of keeping track of foreign students in the United States (Numerous types of negligence were claimed for the period prior to September 11th regarding this responsibility.) For instance, the INS had not properly verified the existence of schools for which it granted student visas, so that offices with no furniture and no classes were nevertheless gaining numerous foreign students with legitimate student visas per month. [11] Furthermore, the INS was granting student visas for schools that no longer existed and it did not make sure that recipients of visas actually attended classes; thus many of these "students" disappeared into the black market labor force as soon as they entered the country.[12]

Second, the improvements in student visa procedures have an enforcement aspect (hence the name of the responsible agency, Immigration and Customs *Enforcement*), in

[11] Ibid.
[12] Ibid.

that they are to play part of a chain of information that allows law enforcement agencies in the Department of Homeland Security and Department of Justice to pursue those students who have left school while on student visas. Despite the necessity of such actions, the Department of Justice conceded that the lack of resources prevents investigations based solely on this information. Furthermore, in the Department of Homeland Security, there has not been adequate investment in creating mechanisms for apprehending those who overstay the visas. [13]

Other difficulties with the new student visa system exist. Even with ample time for its preparation – from 1996 to 2003 – the SEVIS system has severe technical and logistical problems that limit the realistic ability of foreign students to study in the United States. While university administrators enter data, SEVIS network screens freeze, and these administrators often find that their university's system includes information for students at other, unrelated schools. [14] The administrators contend that when they report the mistakes they identify, the correction in the system can take weeks if not months to appear. Because of the use of the system for matters of national security, mistakes in entering information about a student, or malfunctions in the system itself, can impact the realistic chances for foreign students to receive student visas to study in the United States. It seems that the Bush goal stated in the National Security Strategy, that "border controls will not just stop terrorists, but improve the efficient movement of legitimate traffic," had not been fulfilled.[15]

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[13] T. Alexander Aleinikoff, "The Department of Homeland Security's First Year: A Report Card: Immigration," (Washington: Century Foundation, 2004).
[14] "Computer Problems Slow Tracking of Foreign Students," *The Washington Post,* March 26, 2003.
[15] George W. Bush, "The National Security Strategy of the United States of America," September 2002.

Changes in general immigration and entry procedures to the United States provide another obstacle for foreign students wishing to study in America. The Department of Justice, in cooperation with the later defunct INS, created profiling procedures for men from Moslem countries, which targeted these men in a imprecise manner by using "nationality as a proxy for religion, which was a proxy for cultural conflicts menacing U.S. national security."[16] In 2002, for instance, 10,000 men from 26 mostly Moslem countries had their applications for various kinds of visas – including student – delayed by at the minimum two months.[17] This made it necessary for some applicants to delay the commencement of their studies in the United States until the following semester. Since 2001, visas issued to students from the Middle East, Indonesia and Pakistan have fallen significantly and disproportionately more than students from other countries,[18] and there was a 27% drop in U.S. student visas issued from 2001 to 2003.[19] Furthermore, the rejection rate of student visas has risen despite the fact that applications for the visas have fallen.[20]

Germany

In comparison to other Western states, Germany seemed an attractive haven for terrorists groups lying in wait to attack because of its liberal acceptance policies for foreigners, as well as its generous social benefits and quality educational institutions.[21] Furthermore, investigations into such groups would have been rare because privacy is

[16] Otis L. Graham, Jr., *Unguarded Gates: A History of America's Immigration Crisis* (Boulder: Rowman & Littlefield, 2004), 274.
[17] "Tighter U.S. Policy Leaves Foreign Students in Limbo," *The Washington Post*, September 24, 2002.
[18] "Visa Hassles," *The Washington Post,* November 17, 2003.
[19] "Locking Out the Brainpower," *The Washington Post,* November 23, 2003.
[20] "Beware Students: Immigration Policy," *Economist,* August 23, 2003.
[21] "Germany's Intelligence Failure," *AICGS Papers,* October 2001.

highly protected in Germany; the government would have had no right to infiltrate, investigate or force closure of the group led by Mohamed Atta before September 11th, which may have added to the lure of Germany for such a group.[22]

As in the United States, the German government passed sets of legal changes – two Anti-Terror Packages – to address the multiple security needs brought on by September 11th. The German governmental policy reactions to the September 11th attacks did not limit the entry of foreign students specifically; instead, the German federal government made plans to allow law enforcement and customs officials to obtain more information about visa recipients and all entrants to the country that would be available to multiple police and security offices, and to prevent misrepresentations of identity. For instance, the German government made plans to include fingerprint and facial characteristics on new visas of any sort, with iris recognition considered for the future; furthermore, these changes were to be added to German passports and identification cards and could include biometric information on hands and fingers as well. For foreigners entering the country, the German federal government would keep their fingerprints on file for 10 years, and it would retain the religion of those entrants in a central database.[23] Furthermore, in a reaction to Mounir El Motassadeq's false asylum application claiming to be fleeing Sudan when he actually came from Saudi Arabia, applicants would take a mandatory language identity test that would determine country of origin.

Thus, the German federal government issued student visas in the way they had been previously; students applied to German schools, which then sent acceptance letters to the residence address of the applicant abroad. This verification of student status would

[22] Jane Kramer, "Germany's Troubled War on Terrorism," *The New Yorker,* February 11, 2002.
[23] "Second Anti-Terror Package Presented to German Parliament," *Deutsche Welle,* December 14, 2001.

then be used to obtain a student visa from the German embassy in the applicants' country. Americans and citizens of other EU states, however, are exempt from this process. While the student visa process remained, the entrance process was characterized by greater information gathering and sharing among German police and security agencies.

The Anti-Terror Packages also gave governmental agencies greater ability to investigate and pursue possible members of terrorist groups. Religious groups could now be disbanded if they have ties to extremist or terrorist organizations, which had previously been protected from government closure; several have already been forced to cease activities in Germany as a result of this new law.[24] One of the most significant departures from earlier laws regarding foreigners is that now those suspected of supporting international terrorist organizations can be legally detained and extradited, thus granting these suspects fewer rights or ways to defend themselves in the event they are falsely associated with such activities.[25] Previously taboo, the German government has given police and intelligence agencies greater access to telephone and mobile conversations, e-mails, fax lines and mail, although it must be noted that instances in which authorities can listen in is fewer than in the United States. Also, the Anti-Terror Packages now allow asylum seekers who violate asylum application procedures to be excluded from consideration for status.[26]

The German approach to visas and border control after September 11th was not as restrictive as that in the United States. Rather, new immigration law proposals, in the works since mid-2001, were little affected by the attacks. These proposals envisioned

[24] Ibid.
[25] Ibid.
[26] European Council on Refugees and Exiles (ECRE) Country Report 2001: Germany, www.ecre.org/country01/Germany.pdf (Accessed April 2004).

immigration regulations in Germany that would supplant the current loose entrance system in which the government has little control over who was let in relation to their language ability, educational or professional background. The new proposals will give government greater control in giving priority for work visas and eventually citizenship to younger immigrants with high-technology and advanced degrees, which would fill demand for such employees in Germany as well as help to counteract some of the problems related to the country's aging population.

Due to Germany's generous pension programs, the dwindling young German workforce is no longer able to finance the growing numbers of its retired elder fellow countrymen; these new immigrants would inject new income into the welfare state system.[27] This new set of laws, however, did not pass through German parliament on a technicality, and has been mired in controversy largely as a result of conservative Christian Democratic Union (CDU) party complaints concerning how the law would affect Germany's high domestic unemployment rate.

Comparison of German and American Policy Responses

Germany and the United States both agree that countries need to expend greater effort to identify and keep track of those who enter and leave their respective borders. In the fall of 2003, Otto Schily and the Director of Homeland Security, Tom Ridge, agreed on the requirements for future traveler identification.[28] These would include facial characteristics and fingerprints, and could be extended to iris recognition as well, all of which would serve to prevent the counterfeiting or misuse of passports and identification.

[27] "Germans Reject Sweeping Immigration Law," *Deutsche Welle,* June 20, 2003.
[28] "Schily und Ridge wollen mit sicheren Pässen und Visa Terror bekämpfen," *Die Welt,* October 30, 2003.

The United States, for instance, already begun fingerprinting most foreign visitors to American shores, with the exception of some countries having special arrangements with Homeland Security (France, Germany and Great Britain, for example).[29]

This greater attention to keeping track of entrants to Germany and the United States indicates that both countries' governments agree on the necessity to consider migration as a security issue, although the U.S. has implemented a policy that also treats student visas as a security issue specifically. Germany has focused on other aspects of anti-terrorist policy that treat students and other visa applicants alike such that officials will collect and assess data using the same protocols. Why does this difference exist? I contend that the most common explanation of why states deal with terrorist threats differently – that they have varying levels of threat perception – is not the case with Germany and the United States, and that instead, past experiences with terrorism (or lack thereof) and the cultural norms about the dilemma between security and freedom have influenced these differences to a greater degree.

Threat Perception and the Nature of New Security Threats

September 11th displayed changes in the nature of global security threats, which had not received enough attention prior to the event. The attacks confirm that globalization and international commerce, for all their benefits, can also facilitate new and dangerous types of crime and intimidation that take advantage of better global communications.[30] Terrorists are able to create vast networks and collect and channel funds throughout the world as never before. The vulnerability of the natural environment,

[29] Ibid.
[30] Joseph S. Nye, Jr., *The Paradox of American Power* (Oxford: Oxford University Press, 2002), 109.

and the cross-border effects an environmental disaster might cause show that internal and external security concerns are merging, and that events half a world away can have profound impacts on domestic life and vice versa. This has been echoed in speeches on both sides of the Atlantic: Chris Patten, EU Commissioner for External Affairs said that September 11th revealed "the dark side of globalization." President George W. Bush stated that the terrorists had taken advantage of America's openness.[31]

These statements echo the conclusions of security theorists Ole Waever and Barry Buzan, who contend that the liberal project of opening global markets has brought on changes that necessitate a corresponding shift in the way national and global security must be approached.[32] They explain that countries around the world have opened their borders to allow goods to flow, but they have done this to such an extent that the negative aspects caused by that openness have now become the primary concern of security practitioners. For instance, the ease with which a terrorist group can open bank accounts in several countries has led the United States and Europe to freeze groups' assets and to share information on bank accounts and financial transactions.[33]

This has led to a new, fluid and less distinguishable barrier between the concepts of internal and external security. What Buzan and Waever do not concentrate on, however, is the inequalities that globalization and greater global openness can perpetuate in some places of the world, which then serve to create enemies of the purveyors of this inequality – loosely, "the West." These malcontents have effectively used the tools of

[31] Chris Patten quoted in Jonathon Freedland, "Breaking the Silence," *The Guardian,* February 9, 2002, and President Bush, Speech in Little Rock, Arkansas, June 3, 2002.
[32] Barry Buzan and Ole Waever, "Liberalism and Security: Contradicting the Liberal Leviathon" (Copenhagen: Copenhagen Peace Research Institute, 1998), 4.
[33] "EU to freeze terror assets," *BBC News,* October 4, 2001.

globalization - the increased speed and reach of technology for communications and mobility - against its beneficiaries.[34]

The German government's willingness to initiate new security measures on a national and supranational level indicates a change in perceptions about security threats today that mirrors the American ones. EU initiatives, led in many instances by Germany, such as the Common Arrest Warrant and the European common definition of terrorism indicate similar if not identical levels of threat perception in the respective states. Prior to September 11th, EU member states lacked the political will to overcome differences regarding many of the proposals for increasing internal security cooperation in Europe. For instance, European governments tried to agree on a common definition of terrorism since the 1980s, to no avail. The genuine and widespread perception of threat among European governments provided the requisite amount of political will necessary to achieve compromises on these cooperative measures.

A Pew Research Center report from 2002 found that the terrorist threat is felt similarly among American and European citizens, and that two-thirds of Europeans do not think that the U.S. government is exaggerating the threat terrorism poses.[35] Rather, the survey suggests that disagreements over how to react to global terrorism are the divisive factor, rather than differences over whether the threat exists. Moreover, a recent survey by the German Marshall Fund of the United States shows that 70% of both Europeans and Americans rated international terrorism as the most important

[34] See Joseph Stiglitz' critique of IMF neo-liberal policies in developing world in Joseph Stiglitz, *Globalization and Its Discontents* (New York: Norton, 2002), Joseph Nye's advice that the United States counteract the inequalities which globalization can cause, in Joseph S. Nye, Jr., *The Paradox of American Power* (Oxford: Oxford University Press, 2002), 110.

[35] The Pew Research Center, "Americans and Europeans Differ Widely on Foreign Policy Issues," April 17, 2002, http://people-press.org/reports/display.php3?ReportID=153 (Accessed April 2004). See also

international threat facing their respective countries today.[36] In a videotape in November 2002, Osama bin Laden confirmed that European countries and Western values in general were targets for his attacks just as much as the United States, which might have contributed to a rise in the level of vigilance in European governments' that some scholars have recently noted.[37]

Despite the results of the aforementioned surveys, threat perception remains a difficult area to weigh between Germany and the US. First, there is the complication that in both blocks there is great diversity in the perception of threat based on geography and population density; Paris is a hotter target than Prades, and the same for New York versus Kalamazoo, Michigan. Secondly, we cannot rule out the existence of similar threat perceptions that find expression in differing proposals on how to deal with terrorism. The institutional and cultural differences described above ensure that reactions will frequently be at variance.

Institutions and Blame

In the United States, in contrast to Germany, the INS issued the visas that enabled terrorists to fly the planes used in the attacks, and which subsequently made the mistake of sending mail regarding the status of visa applications to hijackers who had already completed their suicide missions. Thus, in the United States, the INS became a natural target for blame because it had a direct connection with the events of September 11th, and

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Frauke N. Bielka and Christian Tuschhoff, "Common Threats – Diverging Reponses," AICGS Seminar Paper, 2002.

[36] German Marshall Fund of the United States, "Transatlantic Trends 2003," www.transatlantictrends.org (Accessed April, 2004), 12.

[37] Jonathon Stevenson, "How Europe and America Defend Themselves," *Foreign Affairs* 82, no. 2 (2002): 80.

thus the INS suffered greatly from the reorganization and new procedures introduced in U.S. government thereafter.

Although there was some remorse among Germans about the way their government had failed to keep these terrorists out of German universities and the country in general, it is entirely conceivable that the group would have found another haven if it had been denied or if requirements for such documents had been more stringent. While Germany is criticized for its border and visa loopholes, some argue that it might have been inevitable. Furthermore, the kinds of investigation that would have been necessary to penetrate what exactly Atta's group had been planning would have violated Germany's privacy laws and civil rights principles.[38]

However disorganized and ineffective the INS was before September 2001 (which it certainly was), these critiques – that the INS "allowed" terrorists to enter the country – act to obscure more basic questions about the inherent vulnerability of open societies to infiltration and abuse by those seeking to disrupt their stability. In Germany, the blame for enabling the terrorists in their activities is harder to place; few criticized their country's immigration agencies for failure to uphold their mandate because Hamburg was a staging ground rather than a direct facilitator of the attacks.

Acceptable levels of security

Acceptable levels of security vary between the United States and Germany – and Europe in general. This is illustrated quite well by the Patriot Act, which sacrifices more civil liberties for the purpose of greater security than German government and society would find appropriate. Although there are practical policy responses on both sides of the

Atlantic on the issue of student visas, policymakers on either side use different cultural and conceptual lenses when they look at similar problems. This difference in perception plays a role in their respective determinations on the appropriate nature and extent of their policy responses.

Experiences with past German governments have shown the dangers of expanded police and intelligence agency powers. This cultural memory prevents German policymakers from considering policies that would involve the vast amounts of data collection and sharing that is inherent in the SEVIS program. The Nazi government in the 1930s and 1940s violated the civil liberties and human rights of its victims; as part of his implementation of state emergency in 1933, Hitler no longer assured the privacy of postal, telegraphic, and telephone communications, warrants for house-searches were no longer necessary, and property could be confiscated without the requisite procedures. Similarly, the Stasi police service in the former East Germany had an astounding number of spies on its payroll who freely invaded the privacy of those who were suspected of working against the state apparatus.[39] Today Germany is much warier about how state institutions protect rather than violate privacy, even if the reasons for the latter are pressing.

These citizen protections have also been institutionalized in legal regimes to a great extent in Europe. As a member of the EU, Germany has implemented legislation in line with the EU Directive on Data Protection, which bars state or international institutions from gathering or sharing certain types of personal information. Specifically,

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[38] Kramer, 3.
[39] For more on the Stasi and its spying methods, see Timothy Garton Ash, *The File* (New York: Random House, 1997).

sharing among intelligence agencies and countries may not include information on race, ethnic origin, political beliefs, sexual life or criminal convictions.[40]

In addition to the cultural norms on privacy protection that would preclude the introduction of anything similar to SEVIS in Germany, I would contend that the United States has embarked on a quixotic quest for "the chimera of absolute security" because of the lack of American experience with attacks within its borders, and which Germany's experience with terrorism has already dispelled.[41] U.S. geophysical isolation has contributed to this lack of experience with terrorism and armed attack on American soil. American reactions to such a major attack are thus more extreme, and the U.S. has attempted to attain a very high level of domestic security against terrorism. This contrasts with the period before September 11th, when terrorism against the United States had been carried out primarily against American targets abroad and was thus largely the domain of foreign policymakers.[42]

In contrast, Germany has dealt with terrorist attacks on its soil – most notably by the Red Army Faction (RAF), which carried out several assassinations and kidnappings in the 1970s. Internal threats are not a new phenomenon in the country, and the geophysical location of the country in the middle of the European continent has made the territory that is now the German state accessible to security threats throughout its history.

Furthermore, September 11th did not create an impetus to reorganize national security systems in Germany, as it did for the U.S. In fact, the necessary changes to

[40] Report of the Article 29 Working Party on Data Protection, June 2003.
[41] Chris Brown, "Self Defense in an Imperfect World," *Ethics and International Affairs* (2003): 5. Brown discusses this chimera of absolute security as it relates to the undesirable situation of states using even the slightest feeling of insecurity to justify actions of "self-defense."
[42] Raphael Perl, "Terrorism, the Future, and U.S. Foreign Policy," (Washington: Congressional Research Service, 2001), 4.

German security policy had already become evident in the early 1990s when refugees flooded the country from the former Yugoslavia and other post-communist states. In 1992, for instance, Germany received 80% of all refugees received that year by all European states, and which amounted to 438,000 people;[43] this placed a strain on the German bureaucracy, created financial burdens, and tested the capacity of local communities to deal with the care of these new residents.[44] In effect, migration was endangering the stability of German towns and states, and this instability later resulted in the subsequent xenophobic attacks on many of these foreigners. Furthermore, the securitization of migration was reinforced by the perception in Germany that the fall of the Iron Curtain had brought many members of international organized crime groups to the country in the mid-1990s.[45]

German and American Student Visa Policies and National Security

It is always difficult to come to conclusions about how effective anti-terrorism policies are because the data about how many terrorist missions have been thwarted is either not available from the relevant government agencies, or it is simply not known because roughly conceived terrorist attacks have not come to fruition, with no one the wiser. However, neither the United States nor Germany has experienced a terrorist attack of significant size on its own soil since September 11th, 2001. Just as scholars remarked

[43] Sandra Lavenex, *The Securitisation of European Asylum Policy* (Burlington: Ashgate, 2001), 44.
[44] Barbara Marshall, *The New Germany and Migration in Europe* (New York: St. Martin's Press, 2000), 49.

[45] Ernesto U. Savona and Silvio Goglio, "Migration and Crime," Transcrime Working Paper No. 3, March 1996.

about the strategy of deterrence during the Cold War, we cannot tell with any certainty whether the war on terrorism is successful; we can only know when it is ineffective.[46]

An initial observation of the differences between the German and American policies towards student visas would indicate that the U.S. approach is more thorough, providing yet another line of defense, surveillance and information sharing that could serve to root out terrorists posing as foreign students. Multiple U.S. government agencies scrutinize foreign students especially in comparison to other entrants under other means (tourist visas, for instance). However, if the first line of defense (i.e., entrance procedures for foreigners) is efficient, then an additional layer would not be necessary to add greater security. In addition, the Departments of Justice and Homeland Security conceded that the ICE's list of delinquent foreign student visa holders cannot yet be the basis for much enforcement action due to a lack of resources; thus, resources are spent up front to create the list, yet it is not used to its full potential.[47] Moreover, the inefficiency of this second line of defense – the SEVIS system in the United States– may even *increase* American insecurity if it acts to diminish American soft power.

The practical deficiencies of the current SEVIS system and the other types of U.S. immigration policy (that also apply to students) that use profiling to investigate applicants may cause erosion of America's soft power in the world. Soft power must be contrasted with hard or military power. The former has no coercive element, and is defined as the ability to obtain outcomes because others want to follow it, "admiring [a country's] values, emulating its example, and aspiring to its level of prosperity and openness."[48]

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[46] Schuyler Foerster and E. Wright, eds., *American Defense Policy*, 6th ed. (Baltimore: Johns Hopkins University, 1990), 42.
[47] Aleinikoff.
[48] Nye, 8.

American economic strength, cultural vibrancy, and democratic principles endow the United States with much soft power in the past, but without cultivation or attention, this soft power can be eroded. The U.S. needs this soft power more than ever, as the sources of its traditional strength – military superiority – are becoming less and less useful against new threats, namely, terrorist cells that infiltrate American society until they are ready to strike. Maintained U.S. soft power, however, could even act to diminish abhorrence many Moslems feel towards the United States and which motivates some to attack.

This erosion of American soft power might occur as a result of two changes which the advent of the SEVIS system may effect: (1) the United States may lose its reputation as a country which meritocratically (rather than on the basis of ethnic, religious, or national identity) welcomes students to study at its high-quality research institutions; and (2) the falling numbers of foreign students from Moslem countries will limit the amount of intercultural interaction and understanding achieved on college campuses, which if allowed to occur would encourage sympathetic impressions among the foreign students as well as among fellow host institution students. On the other hand, "repressive security policies may serve to alienate alien communities to the point of increasing the possibility of successful…recruitment by terrorist groups."[49]

As Josef Joffe explained in a *Washington Post* opinion piece, U.S. barriers to legal entry reduce America's brainpower, which is culled from the world's best, and contributes to America's "economic dynamism, cultural pizzazz and intellectual output," which is the primary basis for U.S. soft power.[50] The shifts in where foreign students are looking for study abroad – now Australia, Canada, New Zealand rather than the United

[49] Ronald D. Crelinston and Iffet Özkut, "Counterterrorism Policy in Fortress Europe," in Fernando Reinares, ed. *European Democracies Against Terrorism* (Burlington: Ashgate, 2000), 261.

States – indicates a waning conception of the United States as the optimal place to do research. The relocation of international conferences to other countries because of difficulties with U.S. visa regulations also bears evidence of the steady breakdown of this reputation.[51] As U.S. policies lock out those exceptional students who submit legitimate applications yet are denied because of inefficiency or delays due to profiling, the image of American educational institutions as truly representative of the world's best minds is diminished.

Already, the unwieldy SEVIS system has kept out legitimate students in addition to those that are genuine security threats. There exist countless anecdotes from rejected students that illustrate individual difficulties, but which add up to general impressions that the U.S. now discriminates against Moslem men in particular for student visas – even those who have no history of religious fundamentalism or illegal activity.[52] For instance, a doctoral student from Indonesia close to earning his Ph.D. in social psychology in the United States was delayed entry by four months.[53] Moreover, a SAIS graduate from Saudi Arabia may be deported because of trivial errors in his application.[54] Indeed, we must interpret increases in U.S. deportations through this lens, that the unattainable goal of absolute security motivates U.S. immigration agencies to act "on the safe side," by saying "no" when student visa applications are even remotely questioned.[55]

On the contrary, the number of foreign students at American universities should be increased, not decreased, as a matter of national security. Foreign students who study

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[50] Josef Joffe, "Locking Out the Brainpower?" *Washington Post,* November 23, 2003.
[51] "Jeder ist verdächtig," *Der Spiegel*, October 3, 2003.
[52] "Visa Hassles," *Washington Post,* November 17, 2003.
[53] "Tighter U.S. Policy Leaves Foreign Students in Limbo," *Washington Post,* September 24, 2002.
[54] "Foreign Students Navigate Labyrinth of New Laws," *Washington Post,* June 9, 2003.

at elite universities in the United States sometimes do indeed fade into the woodwork, or continue to work in the United States after graduation. But others return to their native countries and use the knowledge they have gained to better contribute to the welfare of their fellow citizens. Even in the past several years, several leaders of foreign nations were students in the United States, which may have given them a certain affinity to the United States, and which now may even impact the relationship between their country and the United States. We could name Benjamin Netanyahu of Israel, Mikhail Saakashvili of Georgia, or Gloria Arroyo, president of the Philippines.[56] In a very practical sense, the experience these leaders' have had in the United States has provided them with – minimally – an understanding of American positions on issues, and at the most, a sense of a positive personal relationship with the United States and its people.

Inclusive policies for international students in the past have had "a significant impact on the United States' education system, economic growth, and image abroad, including the promotion of cultural, social, and political interests."[57] As Joseph Nye has written, "the fact that people want to come to the United States enhances our appeal."[58] The inefficiency of the SEVIS system as well as the delays caused by the national profiling in the new student visa procedures may limit these benefits.

Conclusion

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[55] The U.S. has deported three times more people at the end of 2002 than they did for a similar period in 2000, and among the 898 people deported during this latter period, 319 were from Pakistan. (*Washington Post,* June 9, 2003).
[56] See U.S. State Department Division of Educational and Cultural Affairs website on the subject: http://exchanges.state.gov/education/educationusa/leaders.htm (Accessed April 2004).
[57] Maia Jachimowicz, "Foreign Students and Exchange Visitors," Migration Policy Institute, September 2002.
[58] Nye, 119.

In contrast to Germany, the US reacted to the September 11th attacks by attempting to attain security levels very close to absolute safety. Sacrificing many of the principles that have been integral aspects of American identity – such as meritocratic higher education programs, civil liberties, and the inclusion of all types of people – U.S. government has reacted in the way it has because there has been no real precedent for the insecurity Americans felt after the attack. Without experiences like those of mid 20th century Germany –oppressive police states that violated the rights of citizens, terrorist attacks that attuned Germans to domestic insecurity, and migration as a long-term security issue – U.S. government has chosen an exclusive rather than an inclusive student visa policy for now.

The dangers of an ineffective SEVIS system and an exclusive visa screening policy can be reversed if they are recognized. The limited nature and discrimination of the current systems seem acceptable from a security standpoint only if we fail to recognize visa policy's meaning for U.S. soft power. If we see the uses of U.S. soft power, we must accept the fact that America will be more secure and more powerful in the world in its ability to set agendas, etc., if world leaders and citizens admire its educational system and its openness to the best foreigners in their fields, no matter where they come from.

This realization should motivate U.S. government to streamline the SEVIS process by restraining their kneejerk reactions with regard to Moslem males. Furthermore, the SEVIS system requires attention, and enforcement should not be based on information gathered only from this system. Technical problems with applications and within the system should not act as the basis for deportation; instead, the limitations of

the visa system should be recognized and information should be gathered to discern whether or not the applicant is a terrorist threat. Finally, responsible U.S. government agencies should recognize that alarm should not inform final decisions on individual applications. Agencies should recognize that sometimes the denial of a legitimate application can contribute to American insecurity, too.

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