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IMPROVING US AND EU IMMIGRATION SYSTEMS

Emerging Transatlantic Security Dilemmas in Border Management

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By Elizabeth Collett

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I. Introduction

The sheer volume of global travel puts border management systems under constant pressure. The total number of international tourist arrivals worldwide surged from 69.3 million in 1960 to 687 million in 2000 (in the intervening decades reaching 165.8 million in 1970, 278.1 million in 1980, and 439.5 million in 1990).¹ Even as international travel has increased exponentially, border management systems have had to contend with additional risks associated with these movements. Mass-casualty terrorist attacks, rising illegal immigration, and human trafficking have exposed weaknesses in states' ability to manage their borders effectively. As a result, the last decade has seen huge government investments to implement new border management frameworks and collaborate across borders to accomplish several competing aims: the facilitation of legitimate travel and trade, the prevention of terrorism and transnational criminality, and reductions in illegal migration flows.

Building infrastructure and coordinating policy to cope with huge numbers of people entering and exiting through a multitude of ports of entry is no small challenge in itself. US Customs and Border Protection (CBP), a division of the Department of Homeland Security (DHS), manages 342 air, sea, and land ports of entry, and is responsible for ensuring the integrity of the 5,525-mile US-Canadian border and the 1,989-mile US-Mexican border. Meanwhile, the European Union (EU) has 6,835 miles of external land borders, 26,719 miles of sea borders, and 286 international ports, managed by 27 different national borders agencies with coordination from the European Union's own border agency, Frontex.

The last decade has seen huge government investments to implement new border management frameworks.

In addition, irregular migration flows have become more diverse. While public attention tends to focus on unauthorized border crossing, unauthorized migrants may also use false documents, provide false information in genuine documents, misappropriate genuine documents, overstay the terms of their visa/residence permit, or fail to return following a negative asylum decision.² This means that collecting information on travelers passing through borders can be as important as apprehending unauthorized immigrants at or near the borders, so that visitors can be found at a later stage, if necessary. Finally, terrorist attacks on both sides of the Atlantic have changed the nature and focus of border controls; in the post-9/11 era, there is an increasing need for Western governments to think preemptively about potential threats and to identify and assess individual travelers before they reach the border.

While these policy challenges strongly resonate on both sides of the Atlantic, their nature and prioritization differ. For the United States, the preoccupation with preventing another terrorist attack has led to a seemingly all-consuming pursuit of securing its borders by all means available. Broadly speaking, in the United States, a new border management architecture has developed more quickly than in the majority of European countries (exceptions here include the United Kingdom and the Netherlands), and with more sophisticated use of data systems and technology combined with 20th century tools such as border fences and vehicle barriers. Perceptions of risk and expectations about privacy also differ across the Atlantic.

1 See Rey Koslowski, *The Evolution of Border Controls as a Mechanism to Prevent Illegal Immigration* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/bordercontrols-koslowski.pdf.

2 For a full typology, see Christal Morehouse, *Irregular Migration in Europe* (Washington, DC: Migration Policy Institute, forthcoming 2011).



For European governments, ensuring the integrity of external EU borders to prevent irregular migration and promote intra-EU mobility adds an additional complexity, and multilateral collaboration has been a major innovative feature of border management. This process has not been tension-free: in some cases, EU Member States on the front line of border management (particularly to the South and East) have become increasingly resentful of those with fewer direct responsibilities, which in turn affects the integrity of the European Union's internal area of free movement.³

II. Policies Adopted

As governments have sought to develop more effective border management over the past decade, three main strands of policy development can be identified:

- Strengthening external borders and incorporating technology
- Collecting and sharing information, and verifying identity
- Building partnerships within regions and across continents.

A. Borders and Technology

The integrity of physical borders remains critical to effective border management. Governments on both sides of the Atlantic have made increasing use of technology to monitor their borders, including tools such as seismic and infrared sensors, cameras, unmanned aerial vehicles, satellites, and radar coverage.

In the United States, the introduction of sophisticated border-monitoring technology dates back to the 1970s and has been accompanied by ever-increasing numbers of border agents: from 9,000 in 2001 to 20,000 in 2010.⁴ Not all the technologies have been successful, however. The *SBI_{net}* program — designed to create an integrated electronic border surveillance system knitting together information collected by ground sensors, camera towers, and unmanned aerial drones — was terminated in January 2011, amid concerns over high cost and low effectiveness.⁵ Troubles were experienced with earlier border surveillance technology systems as well, such as the Integrated Surveillance Intelligence System (ISIS) developed during the late 1990s and 2000s.⁶

In Europe, technology is not just deployed at the external borders, but also supplied to non-EU countries, such as Croatia and Moldova, to detect migrants before they reach the European Union.⁷ In order to strengthen external borders, the European Commission is now designing an EU-wide Surveillance System (EUROSUR), utilizing many of the technological advances of the last decade. However, external border management remains uneven, with dilapidated fencing along many stretches of the European Union's Eastern border. Other initiatives have responded to changes in flow: in 2002, the Spanish government introduced an Integrated External Policing System (SIVE) in response to a rise in the number of migrants crossing the Strait of Gibraltar.

3 This is further exacerbated by sudden influxes — such as the numbers crossing the Greek border in late 2010, and the flows of migrants and refugees crossing this year, in the wake of unrest in North Africa. A conceptually similar challenge has also been witnessed, albeit to a lesser extent, in state-level policies proposed along the US-Mexico border.

4 US Customs and Border Protection (CBP), "Snapshot" (fact sheet, July 2010), www.cbp.gov/linkhandler/cgov/about/accomplish/snapshot.ctt/snapshot.pdf.

5 Koslowski, *The Evolution of Border Controls*.

6 John Mintz, "Probe Faults System for Monitoring U.S. Borders," *Washington Post*, April 11, 2005, www.washingtonpost.com/ac2/wp-dyn/A42516-2005Apr10?language=printer.

7 Franck Düvell and Bastian Vollmer, *European Security Challenges* (Florence: European University Institute, 2011), www.eui.eu/Projects/TransatlanticProject/Documents/BackgroundPapers/EU-USImmigrationSystems-Security-bp.pdf.



B. Information and Identity

Governments are beginning to place greater emphasis on collecting data on international travelers before they arrive at the border. This ranges from biographical information already found in passports (Advance Passenger Information, or API), collected by airlines (Passenger Name Records, known as PNR), and gathered through visa applications, to new forms of data such as the biometric information collected through US-VISIT⁸ and EURODAC.⁹ In the United States the main rationale behind traveler data collection is to verify identity at the earliest moment, while in the European Union it has been used primarily to collect and exchange information between Member States to ensure that visa and asylum rules are not broken.

One of the biggest EU investments of the last decade has been the effort to develop integrated systems — the Schengen Information System (second generation) and Visa Information System — designed to provide all countries with information about who has been admitted to the Schengen area¹⁰ at any given moment.

But developments in other areas continue: on both sides of the Atlantic, there is interest in building fully operational entry-exit systems to better monitor not just admission but overstay. Finally, some registered-traveler programs have been piloted with the goal of exempting the least risky travelers from scrutiny.

The use of data raises several policy questions. First, the terms of data collection (how long it will be stored for), sharing (who will have access to it), and use (for what purpose it is accessed) are all concerns for those interested in protecting the rights of individuals, particularly as governments invest time and energy into data mining and profiling.¹¹ In Europe, these concerns have led to the development of stand-alone systems for each set of information, and clearly defined rules of access and privacy protection. By contrast, US policymakers are more comfortable with broader access to databases and are willing to develop additional functionality to address new goals. These differences have been once more thrown into relief by current efforts to renegotiate the EU-US PNR agreement.

Second, with so much data collection and transfer, it is inevitable that mistakes will be made, with innocent individuals wrongly identified as threats. This makes access to redress for such individuals crucial, regardless of their nationality.¹²

Finally, the new focus on verifying individual identity through biometrics and e-passports has thrown the issue of breeder documents (birth certificates and social security cards through which passports and identity cards are issued) into relief. The number of offices authorized to issue such documents in the United States, and the lack of consistency between them, mean the system is highly susceptible to fraud, yet once obtained the veracity of the identity is confirmed and reconfirmed through biometric identification. This challenge resonates also in the European Union, where ID cards can be used in lieu of a passport within the Schengen area, yet the processes for issuing the cards vary widely.

8 The United States Visitor and Immigrant Status Indicator Technology program (US-VISIT) is an automated entry tracking system that collects biographical and biometric information from international travelers when they enter the United States. For more, see Rey Koslowski, *Real Challenges for Virtual Borders* (Washington, DC: Migration Policy Institute, 2005), www.migrationpolicy.org/pubs/Koslowski_Report.pdf.

9 EURODAC is the EU database that contains the fingerprints of asylum seekers and unauthorized immigrants found within the European Union. See European Data Protection Supervisor, "Eurodac," accessed May 3, 2011, www.edps.europa.eu/EDPSWEB/edps/Supervision/Eurodac.

10 The Schengen area includes 22 Member States of the European Union (all Member States except the United Kingdom, Ireland, Romania, Bulgaria, and Cyprus) as well as European Economic Area (EEA) partners Norway, Iceland, Switzerland, and Lichtenstein. After entering the Schengen area, all travelers are free to move within this space, regardless of their citizenship.

11 The European Data Protection Supervisor has repeatedly raised his concerns over the terms of Passenger Name Record (PNR) agreements, most recently on March 28, 2011, www.edps.europa.eu:80/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-03-25_PNR_EN.pdf.

12 Susan Ginsburg, *Securing Human Mobility in the Age of Risk: New Challenges for Travel, Migration, and Borders* (Washington, DC: Migration Policy Institute, 2010): 252.



C. *Building Partnerships*

Partnerships between countries have developed in response to two concerns: first, the recognition that common external borders are only as strong as their weakest point; second, that early identification and apprehension of travelers requires collaboration with sending and transit countries.

Collaboration on common external borders within the European Union has been the central preoccupation of the past 15 years and various EU initiatives reinforce its importance, from the Schengen Border Code,¹³ to the creation and deployment of Rapid Border Intervention Teams (RABIT), which are dispatched to deal with sudden migration flows. The United States cooperates closely with Canada on border control, and cooperation is slowly deepening with Mexico.¹⁴

The efficacy of these relationships is predicated upon trust, equity, and high levels of mutual interest. In the EU context, recent events in the Mediterranean highlight that, for those countries facing greater pressure, the failure to satisfactorily ensure that the costs of managing external borders are shared is slowly eroding trust between Member States (exemplified by the French decision to reintroduce border controls). In the short term, while efforts to bolster Frontex, combined with additional financial support for the most affected states, have halted the internal EU Schengen crisis, a long-term and more equitable solution still will be needed.

It is thus unsurprising that cooperation between countries on roughly equal levels of development is most advanced, particularly across the Atlantic and within the Five Country Conference involving the United States, Canada, the United Kingdom, Australia, and New Zealand. While transatlantic cooperation, in particular, has been mostly limited to agreements to share data, there are moves to deepen the exchanges between officials at the technical level to share experience.

External cooperation — that is to say, partnerships with less-industrialized countries — has also become a feature of modern border management, from soft agreements such as mobility partnerships (e.g. with Cape Verde and Moldova) to legally binding readmission treaties (as with Pakistan and Turkey). In addition, the European Union has several budget lines devoted to building capacity for border management in key transit countries. Finally, individual countries have invested in bilateral relations with third countries from which illegal migration flows are significant. Examples include pacts between France and Morocco, or the more controversial (and now defunct) agreement between Italy and Libya.

Immigration control remains the primary objective of cooperation with less-industrialized sending countries, providing modest financial assistance and occasionally very limited legal migration opportunities in return for support in preventing irregular migration to Europe. However, the recent experience in North Africa, specifically Libya, highlights that EU countries need to move beyond shallow bilateral relationships based on financial considerations (that are inherently unstable), to a more balanced, multifaceted set of relationships based on deep political trust and broad development objectives.

III. *Lessons Learned*

With such proactive innovation in border management, what lessons have been learned on either side of the Atlantic? And what new challenges might emerge?

13 The Schengen Border Code outlines all the rules and procedures to be followed by Member State border guards at external borders of the European Union.

14 For a full list of collaborative initiatives, see Demetrios G. Papademetriou and Elizabeth Collett, *A New Architecture for Border Management* Appendix (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/borderarchitecture.pdf.



Effective investment. Spending on border control has increased in both Europe and the United States.¹⁵ But it is clear that some policies have offered more return on investment than others, which may prove harder to justify some border spending in a more constrained fiscal environment.

Changing technical parameters and unanticipated complications can make the costs of implementing new infrastructure soar. For example, upgrading the Schengen Information System (SIS) over the last eight years has so far cost the European Union more than six times the original estimate, and will be implemented six years late. However, it will also incorporate five times the amount of data originally envisaged, across almost double the number of countries. Some of this overspending is inevitable, as governments are often designing completely new systems, but a more strategic approach to border management investments will be important in future policymaking, especially as officials become more aware of how quickly technology becomes obsolete and how costly some innovations are to maintain.

Accountability and transparency. While addressing new security risks will continue to be a priority for governments on both sides of the Atlantic, it is also clear that many of the rules of the game have yet to be resolved, including how data should be collected, stored, and used, and what the appropriate role is for private-sector actors. Uncertainty about these standards is thrown into relief when actors attempt to cooperate on a transatlantic basis.

A number of government organizations — from the US Government Accountability Office to the European Parliament — as well as a myriad of nongovernmental observers from lawyers to rights campaigners have called for stronger parameters and oversight. There is now ample experience for policymakers to take stock of the impact of border policies on its citizens, travelers, third-country partners, and organizations involved in the movement of people. Independent forms of monitoring and evaluation are crucial, as are a clear set of international guidelines on privacy and data use (which could be seeded through current transatlantic efforts).

IV. Conclusions

Looking forward, the challenge of securing diffuse borders in an era of mobility is likely to become more, rather than less, complex as cooperation and partnerships deepen and extend to a wider range of countries, as systems become more technologically complex, and as the flow of data increases, creating the risk of a “tsunami” of information. The following recommendations highlight key considerations for policymakers in the search for improved border management systems:

Develop policy systematically and strategically. Policymakers should take a whole-system approach rather than relying on incremental and ad hoc policy changes, in order to ensure that different aspects of the system are coordinated and complement each other. At the same time, governments must keep in mind existing infrastructure, continuously evolving goals and challenges, and that limitations on resources make some projects more feasible than others, especially in the long term. When adopting successful policies from other countries, policymakers must take care that their policy choices are fully consistent with their own national circumstances and context.¹⁶

Use information intelligently. Collecting information is not enough: it must be analyzed judiciously.

15 For example, appropriations for US border control over the last decade have increased by 235 percent, from \$1.06 billion in fiscal year (FY) 2000 to \$3.56 billion in FY 2011. See Chad C. Haddal, *Border Security: The Role of the US Border Patrol* (Washington, DC: Congressional Research Service, 2010), www.fas.org/sgp/crs/homesecc/RL32562.pdf.

16 For example, Australia’s entry-exit system is seen as the ultimate border management tool and has proved highly attractive to governments on both sides of the Atlantic. However, Australia’s geography (notably, its absence of land borders) is critical to that system’s success, and cannot necessarily be replicated piece-by-piece in countries with very different geography, migration flows, and relations with neighboring countries.



Governments should avoid blind reliance on data mining and profiling without understanding the limitations of statistical risk management. Equally, they must continually update their understanding of traveler flows and practices in order to respond to changing threats.

Develop monitoring and feedback mechanisms. Independent technical and policy evaluation can help to ensure that policymakers understand and are able to address problems as they arise. This oversight can help to ensure that policymaking is transparent (for example, monitoring the opaque relationships between government and private contractors) and that citizens' interests remain at the forefront.

Broaden and deepen partnerships. Cooperation between wealthy countries is well established, but these governments should find ways to include other countries (especially those in their neighborhood as well as emerging economies whose nationals are joining the ranks of global travelers in increasing numbers). At the same time, the twin goals of ensuring security and mobility will require persistent efforts to ensure that countries' systems are compatible and rely on a transparent set of rules. International guidelines could be crucial to reaching these goals.



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