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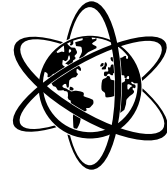
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The changing border: developments and risks in border control management of Western countries

Berry Tholen

Abstract

In recent decades we have witnessed the development of a new type of migration regulation and border control in Europe, North America and Australia. In this new system of controls, the focus is less on the physical crossing of territorial borders and more on the process as a whole; from airline reservations, ticketing and visa applications to monitoring individuals after arriving in the country of destination. The developing mode of border control encompasses a multiplication of borders, a multiplication of actors and a multiplication of data and technology. The question arises: Does the new form of border management in Western countries bring forward the aims of border control more effectively and does it entail new risks (for visitors/migrants)? In this article I will first outline a normative framework for evaluating current developments in border control, building on studies in political theory and the philosophy of law. I then substantiate my claim that a new type of border control is developing and present an overview of three interconnected multiplications. Next, using findings from empirical and legal studies, (likely) consequences of the multiplications will be presented. Linking these consequences to the normative framework allows us, finally, to point out risks of the currently developing system of border control.

Points for practitioners

In recent decades Western countries have introduced new measures of border control, including new technologies and new types of agents in new roles. Together, these new measures make for a new type of global border control management. Our evaluation of this development shows that it entails new types of risks, and that these risks are likely to increase if this type of management develops further

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along the same lines. This analysis calls for a reorientation on instruments of border control leading to a more encompassing type of risk management in this field.

Keywords: e-government, evaluation, implementation, international administration, networks

1. Introduction¹

In recent years, governments in Europe, North America and Australia have introduced new instruments for border control. Newspaper readers in Europe learned, for example, about the establishment of Frontex, a European Agency created for operational coordination at the external borders of the EU. In the USA the increases in budgets and staff of border control units on the Mexican border are regularly in the news. In Australia the agreements with island states like Nauru to take care of asylum seekers have gained attention. These measures appear to be quite different in nature. Each, moreover, seems to be related to typical regional circumstances: the ongoing integration of EU member states in Europe, and the typical geographical challenges in North America and Oceania.

Frequent travellers, however, might have witnessed similar developments across regions as well, primarily in the use of new technologies for identification. In the UK the program using these new devices is called *e-Border*; in Australia one encounters *SmartGate*, *ePassports* and *eVisitor*; and the US Department of Homeland Security invites one to use *US-VISIT*. The names are different, but they are all essentially the same in form and function.

The first claim this article wants to make is that the seemingly differing measures mentioned first are as much examples of similar developments as are the latter. In all three regions new instruments of border control have been introduced over the last two decades, and together these developments intensify border control. The focus in this new type of control is less on the actual crossing of territorial borders and more on the entire process as a whole, from airline reservations and ticketing and visa applications to monitoring after arrival. The shift towards the new border management seems to entail a number of multiplications. As controlling at territorial borders is increasingly combined with a system of checks before and during travel and after arrival, the appropriate model no longer seems to be that of a single border-post. The image of concentric circles is much more accurate. In the new system, furthermore, existing agencies are given new tasks, new agencies are established and new types of actors are involved in the implementation (national and international agencies, private actors and third countries). In this developing mode of border control the demand for (smart) information has increased and led to the introduction of new technology and information systems. In sum, the developing mode of border control has resulted in a multiplication of borders, a multiplication of actors and a multiplication of data and technology.

An important motive that is given by the authorities for these developments is the large and ever increasing number of travellers they have to handle. The total number of overseas arrivals to and departures from Australia are well over 20 million annually.² Air transport in the EU alone amounted to 800 million passengers in 2004, increasing

from 200 million in the mid-1970s. EU border-crossing travel amounts to one-third of this number and has increased by 8 percent annually over recent years.³ The United States registered 300 million border crossings in 2008, and 60 percent of this number involved travel by automobile or boat.⁴ Like the EU, the United States apprehends several hundreds of thousands of individuals illegally crossing the border each year.⁵

Given the substantive shifts in the instruments of border control, how do we evaluate this new form of border management in Western countries? The brief overview of multiplications suggests that more sophisticated and comprehensive arrangements have been introduced. These new instruments might indeed result in increased effectiveness in dealing with the enormous number of travellers, but are they also smart enough to avoid undesirable consequences? Over recent decades critical voices speaking of A Wall around the West, The West as a Gated Community, Fortress Europe, or the Pacific Solution can be heard (Andreas and Snyders, 2000; Pijpers and Van Houtum, 2005; Stratton and McCann, 2002). Does the new instrument of border control have negative consequences as critics claim? What, in fact, are the risks of the newly developing type of border control?

In this article, I will first outline a normative framework for evaluating current developments in border control by building on studies in political theory and the philosophy of law. In section 3 I substantiate my claim that a new type of border control is developing and an overview will be given of three interconnected multiplications. Then, in section 4, the (likely) consequences of the multiplications will be presented using findings from empirical and legal studies. Linking these consequences to the normative framework allows me, finally, to point out risks of the currently developing system of border control.

2. Aims and values in border control

The central issue in the normative philosophical literature on migration is the question of whether migration regulation can be justified. Studies in this field discuss whether from a liberal point of view — be it libertarian, liberal-egalitarian or liberal-nationalist — borders should be open, or that convincing arguments can be given for closure at some level (Barry and Goodin, 1992; Cole, 2000; Tholen, 1997). As Brian Barry has pointed out, even when they seem to be defending open borders initially, these philosophical arguments end up defending some level of closure. As to the specific degree of closure, however, the philosophical stances are not very specific. They would not be able to disqualify any of the current policies in Western countries (Barry, 1992). This being the case, the real issues are selection between different kinds of potential migrants and the proper policy instruments of control (Tholen, 2004).

If we try to discern which values should guide the selection of policy instruments in the field of migration regulation, two domains become evident. The first concerns the effective realization of the policies' aims, and the second concerns undesirable side effects. In this section I will explore these two domains in order to formulate the aims and values that have to be taken into account in designing instruments for migration regulation.

2.a. Effectively realizing the aims

Effective migration regulation instruments should essentially exclude those individuals that should not come in and guarantee access for those who should. Such a formulation, of course, needs further elaboration. Who are those who should be granted access and those who should be kept out according to liberal political theories?⁶

Guaranteeing access Liberal theories of migration differ on the proper criteria of selection. Some argue for a privileged access of people, now abroad, that are in some sense near and dear, while others maintain that such an argument cannot be upheld from a liberal point of view (Carens, 1988; Tholen, 2009; Walzer, 1983). To give another example, some maintain that the economically useful should be granted entrance, while others do not (Risse, 2008). Yet all liberal positions agree on one category: the right to access should include the group of vulnerable people that can only be helped by letting them in.

Classical arguments for access for the vulnerable are found in Immanuel Kant's *Perpetual Peace*. Kant qualified any right to migration regulation, pointing out the special importance of place. He argued for a visitors' right for all individuals to any national territory. Since the surface of our globe is limited, no individual or community has a more basic right to a specific place than any other. No one who arrives in a territory should be treated with hostility. A person can only be expelled if there is no danger to him in doing so. This visitors' right is not a guest right; becoming a participant or member of this society would involve a further mutual agreement (Kant, 1795/1991: 3rd final article). Another cue was given by John Locke in his *Second Treatise*. The right of property (or better: the right to dispose of one's property) is limited by a proviso: it is only legitimate if 'enough and as good is left in common for others' (Locke, 1690/1982: 2nd Treatise par. 27).⁷ The duty or virtue to help the needy, if necessary by providing access to territory (and society), has been developed more recently by different authors in differing ways. All seem to agree, however, that it is unjustifiable to deny access and safe haven to those whose need can only be relieved by entrance to a country that can offer security (Carens, 1992; Singer and Singer, 1988; Walzer, 1983: 44–5). In international law, and in national law in Western countries, this common idea has found a somewhat more limited expression in the rule of *non-refoulement*. This rule forbids countries to deny access to their territory to those who have a well-founded fear of persecution.

Guaranteeing exclusion On the issue of who can justifiably be excluded a similar diversity of arguments and positions can be distinguished in normative theory. In liberal nationalist arguments threats to a shared culture or religion are pointed out, leading to arguments for excluding specific groups (Gans, 1998; Tamir, 1993). Liberal egalitarian advocates are worried about threats to social security arrangements and social cohesion (Walzer, 1983; Woodward, 1992). The worries of libertarian authors, however, are shared by all: migration and free movement can be limited if public order and security is at stake. This argument is even accepted by Carens in his much-cited article 'Aliens and Citizens: The Case for Open Borders' (Carens, 1987).

These considerations of order and security have a parallel in articles concerning public order and national security in international law. Regulating migration for

reasons of security and public order seems to have increased since 9/11. Students of international migration often point to anti-terrorism policies as explanation for the changes in border control we outlined in section 1.

2.b. Avoiding harmful consequences

In legal discourse, specific norms and rules are expressed that limit and guide a government in using its powers. These rules for good government attempt to avoid negative effects in the realization of legitimate ends. In liberal theories negative effects for individuals are often presented in terms of harm and different types of harm are distinguished: strict material harm or costs, physical harm (injuries, health risks, death) and intangible harm (influencing self-respect and the like) (Feinberg, 1986).

Harm in each of these categories may arise in the implementation of migration regulation. The instruments employed may damage individuals' property or cause them to pay large sums of money. Instruments might be even put individuals' lives in danger. The latter would be the case, for instance, if land mines or automatic guns were used in border control. A final type involves brutal or discriminatory acts that lead to harm of an intangible nature. A strong case for considering this type of harm is made by Margalit. He argues that good governance is not only about justice, but also about decency. Brutal and discriminating bureaucratic behaviour conflicts with the rule of decency and causes harm to individuals (Margalit, 1996).

An immediate issue is: to what extent should harm be avoided? More specifically: what if migrants knowingly take risks in their efforts to cross borders and get hurt or die? If migrants, for instance, try to cross a desert without proper equipment or try to cross the sea in small boats, are the countries controlling the border to blame? Normally, we would say that someone who takes action that might cause harm to others should at a minimum warn them about the consequences and risks of their plans. That applies to individuals as well as governments.

The relation between governments and individuals, furthermore, is far less symmetrical than that among individuals. The responsibility of governments to ensure that individuals are not harmed seems greater than the responsibility of individuals. The more power one has, the greater one's responsibility (Mellema, 1997). This means that governments not only have a duty to inform individuals about the consequences of their actions, but they should also consider that in spite of these warnings, people might still decide to put themselves in danger, and should take additional measures to prevent them from harm.

This brief articulation of justified aims of migration regulation and types of harm to be avoided has brought us to a set of criteria for evaluating border control measures: guaranteeing exclusion of those threatening order and security; guaranteeing access of refugees; avoiding brutal and discriminating treatment; avoiding high costs for potential immigrants; and avoiding death or injury. We can now turn to the question: What are the likely consequences of the new border control and how should we evaluate them?

3. Developments in border control

3.a. *From municipalities, to states to regional cooperation*

Until the second half of the nineteenth century dealing with unwanted aliens in Europe basically was a local affair. Following the national and international unrest from 1870 on, national governments were triggered to get involved in drafting aliens' laws. The practice of control over movement, however, remained at the local level well into the twentieth century. After the First World War, the implementation of border control was increasingly centralized into national agencies (Leenders, 1993).

Historians argue that the increasing involvement of national government in border control must be understood as an element of the invention and evolution of the nation state (Zolberg, 2003). Control over the movement of people is part of the *state-ness* of modern states, Torpey maintains: '(I)n the course of the past few centuries states have successfully usurped from rival claimants such as churches and private enterprises the "monopoly of legitimate means of movement"' (Torpey, 2000: 1, 3). This process brought about national agencies for border control, and also passports and visas, in Europe, the US, Australia and elsewhere.

It is sometimes suggested that European integration, and the development of a post-national regional community — or more generally, the shift from modern states towards postmodern forms of governance — will bring us beyond territorial control. And in Europe, in fact, integration led to free movement within the common territory of EU member states.⁸ Yet, the Europeanization of migration regulation has not brought a decrease in border control at the external borders. In many respects the EU seems to act like a modern state: there is a common agency for border control, there are common rules for identification documents and visa regulations, etc. If the Europeanization of migration regulation has brought something new, it is an intensification or multiplication of control over movement. These multiplications, moreover, are not typical for Europe, and that is the claim I want to make in this section.

3.b. *Three multiplications in border control in Western countries*

Within the discipline of Public Administration many have witnessed a broadening of the ways governments have tried to steer in recent decades. It has become commonplace to label this broadening as *governance*. What this term mostly refers to is the involvement of many agents, public and private alike, in the realization of governmental aims. This shift in implementation can also be found in the field of migration regulation. In this field, however, the broadening of means to realize aims has two additional aspects: an increase in place and time of intervention and an increase in (data-)technology used. These three developments are connected in several ways, as we shall see. I will start here, however, with giving a short overview of each of them.

Places (and manifestations) of borders Border control in Europe, and also North America and Australia, increasingly means the control of borders. A shift can be witnessed from a single borderline model to one of concentric circles.⁹ In other words, travellers and potential migrants have to cross many borders before they reach their destination, or at least they can encounter the border at several different places.

- The first encounter with the border travellers might already have is within their country of departure. The EU, US and Australia use lists of countries whose nationals have to apply for a visa before travel.
- The second encounter can occur when travellers try to leave their country or a neighbouring country by boat or aeroplane. Before leaving, they will once again encounter the European or American or Australian border. Countries of destination have deployed liaison officers, especially in 'refugee-producing countries', to assist in document control at pre-boarding checks in order to reduce the number of undocumented travellers.
- When travelling through third countries in order to reach their final destination travellers might find that those intermediate countries block their access to Europe, North America or Australia. These transit countries, in fact, function as a buffer zone, denying access to those who will probably be denied access to the countries of destination (Edwards, 2003; Guild, 2001; Guiraudon, 2003; Kesby, 2007; Lahav and Guiraudon, 2000; Lavenex, 1998).

The multiplication of borders encompasses the development of new forms of control outside the classical borders and also within the national territory. Within Europe the abolition of controls on persons crossing the internal borders has not completely disappeared. In several countries, furthermore, mobile border controls behind the borders have been established combined with a general obligation to carry ID cards (Groenendijk, 2003; Lahav, 2004).

Agents and agencies involved In the field of border control, as in many others, a shift from government to governance can be discerned. New actors, and also new types of actors, have become involved in border control in recent decades.

(New) Governmental agencies: Within Europe the abolition of internal borders did not seem to result in a decrease of controlling agencies and staff. In fact internal control remained and increased, especially at airports and harbours, in mobile control and at external borders (Groenendijk, 2003). In the US, funds and staff for border control increased. The US border control's budget grew steadily from 281 billion US\$ in 1985 to 1660 billion US\$ in 2002. Border control staffing increased from 3638 in 1986 to 11,633 in 2002. In this period funding increased by 519 percent, and staffing increased by 221 percent.¹⁰ At the start of the millennium the INS included more armed forces than any other federal law enforcement force (Andreas, 2000: 4; Cornelius, 2001: 662). In the EU, expenditure for Freedom, Security and Justice (including fundamental rights and justice, security and liberties, migration flows) in absolute numbers are not the largest item on budget (0.7 billion Euro in 2008 of a total of 129.1 billion), but it is one of fastest growing areas. Between 2007 and 2008 expenditure grew at a pace of 16.7 percent, while the total budget growth of the EU in this period was only 2.2 percent.¹¹ In Australia the budget of the Department of Immigration and Citizenship grew from 0.4 billion Australian dollars in 1999/2000, to 1.3 billion in 2004/05 and then to 2.0 billion in 2009/10.¹²

In Europe, moreover, a new common agency was founded: Frontex. Its task is to coordinate and support national agencies, assist in joint operations and training and organize concerted action.¹³ Joint actions of member states, furthermore, have a

place in the European Patrols network (EPN) and can be carried out by Rapid Border Intervention Teams (RABITs). Frontex is also involved in optimizing data systems and their use by member states.¹⁴

Third countries: Over the years candidates for future EU membership have implemented European migration policy to some extent. To fulfil membership criteria, countries such as Poland and Hungary copied European migration regulation and thereby in fact became EU agents in border control. These and other countries also became part of the European system of migration regulation through its 'safe third country' policy. This policy, that is a part of regulations in the other regions, implies that the EU return asylum seekers to 'safe' transit countries. Countries around the EU, in turn, also copy this policy (Lavenex, 2006). Similar effects can be witnessed in the relations between the US and Mexico (Andreas and Snyders, 2000). Third countries also have become involved through specific treaties between the EU and third countries — for instance Afghanistan, the Western Balkans, the Russian Federation and the US — that deal with travellers and migrants (Guild, 2006). Parallel to these policy transfers, financial transfers sometimes take place. Poland, for instance, was funded by Germany to establish its border control system. A similar example is Australia's payment to two Pacific island states, to take in asylum seekers — a practice that was ended in 2008 (NRC-Handelsblad, 2008).

Private parties: In the late 1980s and early 1990s the European countries,¹⁵ Australia, New Zealand and others started imposing fines on carriers who transport passengers without the required travel documents. As a result, airlines and shipping corporations became involved in the implementation of border control. The sanctions motivate them to check documents, and in order to avoid fines, they refuse to transport undocumented or inadequately documented travellers. By involving private parties these states followed a practice that has existed in the US since the nineteenth century (Zolberg, 2006). In 2004 the EU agreed on a directive to gather advanced passenger information data and forward it to immigration authorities of the destination country before departure. Europe herein also followed similar regulations established earlier in the US. Through this legislation, private carriers became involved in border control once again: this time to gather and forward data. The obligation to gather and forward data ('advanced passenger data') also includes other private agents, such as travel agents, in the practice of control (Guiraudon, 2001; Scholten and Minderhoud, 2008).

Technologies and information systems The third multiplication is in the technologies used in border control. These include technologies for surveillance, for identification, and for data storage and analysis.

- *New surveillance technologies:* Over the last 15 years Western countries have introduced new instruments to monitor illegal border crossing. Examples are X-ray instruments, body heat measuring devices and air analysis systems to detect people that might be hidden in trucks or sea containers (Broeders, 2007; Cornelius, 2001: 663).
- *Technologies for identification:* In the US, Australia and in Europe new instruments for biometrics have been developed and introduced. They involve

automated methods for identifying individuals based on physical or behavioural characteristics. These techniques include fingerprinting, retinal and iris scanning, hand and finger geometry, voice patterns and facial recognition (Broeders, 2007; Cornelius, 2001: 663).

Databases, search engines and data analysis devices: In Europe in the last 15 years several data systems have been introduced and regularly enhanced: (1) *The Schengen Information System*: a database of millions of data on persons that are wanted for arrest, refused entry, missing or placed under police protection, are witnesses or summoned to appear before the courts, wanted for discrete surveillance or specific checks. The system serves multiple purposes for different authorities. (2) *Eurodac*: a database that includes fingerprints of asylum seekers and illegal immigrants seeking access to one of the EU member states. Its purpose is to establish which country is responsible for asylum application. (3) *The Visa Information System*: includes information from member states on every visa issued, on every decision to assess an application for a visa, each visa which is refused, annulled or revoked, and each extension of a visa (Brouwer, 2008). Similar systems were introduced in the US and Australia.¹⁶

Parallel to the introduction of new technologies is the gathering of new types of data:

- advanced passenger information on booking characteristics, travel plans, etc.
- entry and exit movements of individuals; history of travel and also of application for documents and visas.

The motivations provided for introducing these measures include eliminating potential threats and, at the same time, making border crossing easier for bona fide travellers. Examples of such programs are *SmartGate* (in Australia) and *Previum* and *No-Q* (in the Netherlands).

Together, these technological innovations have led some observers to introduce terms like e-borders or digital borders (Broeders, 2007; Brouwer, 2008; Engbersen, 2001).

3.c. *Interrelated multiplications*

In the previous sections, I sketched the introduction and development of three types of new measures. Strategy papers in all Western countries strongly suggest that in all three areas, more is yet to come.¹⁷ We can conclude that in recent decades, border control has been intensified: larger budgets, more staff, more actors involved, more data gathered and more technologies. These changes, moreover, took place simultaneously in North America, Europe and Australia (Andreas and Snyders, 2000; Cornelius, 2004; Torpey, 2000). To be sure, not all elements were new in every region – in the US, for instance, private actors have been involved since the nineteenth century and in Europe special technologies for identification were tested and used in the late 1930s. Yet, the simultaneous increase on a large scale on a global level classifies it as a new phenomenon. This observation invites interesting questions: How can this intensification of border control be explained? Are the measures taken in the different regions really similar, or do they differ in pace, design or outcome? What effects

Table 1 Two types of border control

	Classical border control	New border control
Enforcing actors	Single	Multiple
Place and moment of control	Single	Multiple and flexible
Use of technology	Limited	Multiple
Action type	Reactive	Proactive
Process orientation	Case based	Risk based
Focus of control	Controlling individuals	Controlling flows

do geographical, political and administrative differences between these regions have for the actual form and effectiveness of the intensified border control? However interesting these explanatory questions may be, I will not try to answer them in the rest of this article. Instead, I will focus on the consequences of these multiplications.

By sketching the three multiplications, I drew a picture of an intensifying border control – a quantitative change. That picture is not complete, however, if we exclude how these developments are interrelated. Each of them depends upon and presupposes the existence of the others. The multiplication of borders demands the involvement of numerous agents and the exchange of mass quantities of data. The introduction of new technologies implies a need for data that have to be gathered by additional agents.

Linking these various multiplications together, moreover, helps us understand that they are part of a shift towards a different kind of border control. This new approach is not simply aimed at guarding borders, but is aimed at managing the movement of people. It is no longer simply reactive, but proactive and regulating. It is focused not only on excluding specific individuals from state territory, but also on blocking the movement of potentially dangerous groups as early as possible. The changes in border control, in sum, make for a qualitative shift towards a new type of instrument for regulating travel and migration (see Table 1).

It is beyond the scope of this article to explain this shift towards a new type of border management; yet, one development seems to be closely related to this shift: over recent decades an enormous amount – and an ever-increasing number – of international travellers have to be dealt with. The number of air passengers increased by about 5 percent annually, with a worldwide total of 4.8 billion in 2007. The major part of international flights involves the US, Europe and Asian countries such as Japan.¹⁸ The annual growth rate of international travel by air to Western countries in the 1990s and early 2000s was more than 8 percent.¹⁹ In this article, however, the focus is not on the reasons for the multiplications, but on their consequences.

4. Values, multiplications and risks

In this section the (likely) consequences of the multiplications of and the shifts in border control in recent decades will be presented. I will refer to results of recent studies in the field on border control and comments on policy developments by NGOs. To systemize the overview, the categories of aims and values of section 2 will

be taken as a guide. In doing so, we will be able to identify risks of the new border control. To be sure, a thorough evaluation is neither possible nor intended here, given these sources.

4.a. Excluding threats to security and order

To a considerable degree the multiplications mentioned above were introduced after 9/11, and security and anti-terrorism were frequently mentioned as motivations. What effect do the new forms of border control have in terms of guaranteeing order and security? Answering that question proves to be rather difficult. Several times in the past few years, governments have claimed that the new measures, including those of border control, were instrumental in preventing specific terrorist attacks. Yet, as further data on such actions are classified, we are unable to verify these claims and use them for further analysis. In police and security studies more generally, there is a problem of linking changes in registered crimes and apprehensions to specific measures.

Although serious and comprehensive studies are unavailable, researchers in the field of migration and police studies are sceptical about the effectiveness of new forms of border control for fighting crime. They invoke the judgement of senior police officials, who have serious doubts about the effectiveness of, for example, mobile border control (Groenendijk, 2003: 146; Saux, 2007).

There are studies on specific aspects of border control. Governmental agencies and scholars have conducted substantial research into the effects of new measures to prevent illegal crossing at the Mexican–US border. Since the early 1990s, the US has taken stronger enforcement measures. Evaluative studies have focused on the changes in the number of people apprehended and on data from surveys among Mexican communities. In 2001, based on an analyses of apprehensions, the US General Accounting Office, for instance, concluded in that, 'Although illegal alien apprehensions have shifted, there is no clear indication that overall illegal entry into the United States along the Southwest border has declined' (cited in Cornelius, 2001: 667). In 2007, an analysis of an extensive survey among migrants led researchers to conclude, '... that tougher border controls have had remarkably little influence on the propensity to migrate illegally to the USA. Political restrictions on immigration are far outweighed by economic and family-related incentives to migrate' (Cornelius and Salehyan, 2007). A recent meta-evaluation of studies using different methodologies concluded that result are mixed, but the overall line seems to be that intensifying border control has little or no deterrent and exclusive effect. One clear effect of strengthened enforcement of border control, however, is that it reduces the propensity of migrants to leave the new country again (for a short time); intensifying border control probably does not keep more people out, but motivates those already in to stay (Muhlhausen, 2006).

The findings of studies concentrating on specific measures at specific borders, like those just mentioned, cannot simply be generalized to effects of multiplications in border control as a whole. It is far from evident, moreover, that those individuals who intend to undertake terrorist and criminal acts rely on illegal border crossing. Yet, it seems reasonable to expect that if border control measures are effective to some degree in excluding individuals and groups that pose threats to order and security,

these individuals and groups will then seek alternative routes and countries that are more accessible. The logical consequence then is that governments of all countries and regions are constantly driven to keep 'their fence' at least as high as that of the others. (I will return to this 'arms race' under 4.d. below.) The resulting risk is that of ever-increasing costs in border control even though effectiveness might, in fact, remain quite low. The costs of border control in the EU (excluding the costs calculated in the budgets of member states) rise annually by more than 15 percent. In the US the costs over a 17-year period increased by more than 500 percent (Cornelius, 2001).²⁰

4.b. Non-refoulement

Analysts have pointed out consequences of the multiplication of actors in border control, and these have a familiar ring for those acquainted with the PA literature on the shift from government to governance: undesirable consequences of agencies' autonomy: carriers are motivated, through the threat of sanctions, to keep out people without proper papers, even when they might be refugees. Third countries, following agreements with for instance the EU (or implementing the EU *acquis* for future membership) tend to be less inclined to secure refugee protection than are the closely monitored EU member states. Agencies within the EU and the US themselves are more inclined to focus on the exclusion of potential dangerous aliens than on the inclusion of needy ones. Missing one terrorist might have severe consequences for the agency involved; accidentally excluding a number of refugees probably will not.²¹ In sum, the increase of new agencies, private parties and third countries results in a new border control system that tends to prioritize the exclusion of those who should be kept out while neglecting the inclusion of those who should be granted access.

Another familiar problem of governance has also been pointed out in the field of border control. Critics observe that the mandated powers of Frontex are rapidly expanding while the control over this agency remains fairly limited. They are especially worried that the agency fails to give sufficient attention to human rights.²²

The multiplication of agents spurred governments to develop new arrangements to overcome coordination problems. Examples on the national level are: the Dutch Border Management Program, the UK E-border program, on the EU-level EUROSUR,²³ the Secure Border Initiative in the US and the Border Protection Command in Australia. Such cooperative schemes include multiple private and public parties. At the European level, Frontex tries to coordinate transnational activities. Also third countries can take part in Frontex joint operations. Some opt for 'the widest possible involvement of third countries in these EU operations'.²⁴ In these networks of organizations the aim of excluding those that should be excluded again seems to prevail. The organizations involved in these networks and especially the leading ones have a primary focus on order and security. In the Dutch Border Management Program, for instance, the National Antiterrorism Authority plays a central role. Furthermore, the programmes developed typically involve joint enforcement actions and the delivery of data that can be used in risk analysis. As their central aim, new cooperative programmes explicitly mention preventing people from entering the EU irregularly; guaranteeing the human right to asylum receives little or no mention.²⁵ That fact that some of the people who try to cross the border illegally need protection has been pointed out by the UNHCR: '[In 2008] more than 36,000 people arrived in Italy by sea from North Africa. Some

75 percent of them applied for asylum and about 50 percent of those received some form of international protection from the Italian authorities.²⁶

It is not only the multiplication of agents (governance) that makes it more likely that asylum seekers will be excluded. The multiplication of data can also block the access of those who are in need of a safe haven. Migration databases that are linked to criminal records and terrorists lists can contain inaccurate data that cannot be checked on the spot. In general, the gathering and combination of ever increasing amounts of data also increases the possibility of errors. Non-Western names in databases can easily be mixed up, for reasons of spelling or the occurrence of people with identical names (Brouwer, 2002).

The multiplication of agents, combined with new data, and the use of the data in multiple systems substantially increase the risk of unjustified exclusion under the new border control system.

4.c. No discrimination and brutality

In the simple form of border control, border patrol officers try to employ their time most effectively by scrutinizing the papers of some travellers better than those of others. Such operating routines have often been singled out as discriminatory. The multiplication of borders results in an increased likelihood of discrimination. Complaints in European countries have been reported concerning members of specific groups of legal residents or visitors who are repeatedly singled out for checks on railway stations, etc. Groenendijk points out similar findings in the US and concludes that 'generally, there is little or no systematic attention for the negative effects of these new controls' (Groenendijk, 2003: 142–3).

It is not only the multiplication of times and places of border control that make for an increase in the propensity for discrimination; the use of new technology contributes to this effect too. The presence of vast databases and technology invites the combination of data and the development and use of search profiles. Here again individuals might repeatedly find themselves being singled out for control.

In general the introduction of new technologies might be advantageous for travellers, for instance when it means eliminating queues. Yet, it also means that new risks can cause long delays and even more unpleasant experiences. The gathering of data over many agencies, the combination of different types of data by agencies that all have their own routines and aims, the possibility of mistakes at all levels, and the possibility of data manipulation (for identity theft) together create the risk of denied access. Individuals, in these instances, find themselves in the difficult position of having to prove that the official data are wrong.

Most individuals do not know whether their data are included in databases used by border control; and if they are included, they do not know why (Brouwer, 2008). They only discover they are in the database when they are denied a visa or prohibited from crossing a border.

4.d. Avoiding high costs for travellers and migrants

The growing use of electronic systems in border control makes it possible to process large numbers of passengers at airports and travellers at other points of border control.

Annually, billions of passengers pass through airport terminals, many of them passing border checks in doing so. For travellers the development of e-border systems probably means far shorter queues and waiting times than they would otherwise have to endure. It is precisely this advantage that is emphasized on the websites of border authorities and press releases for the introduction of new measures.

There are, however, other consequences as well. As previously mentioned, when border control was intensified on the Mexican–US border, border crossing attempts simply shifted to another location. It also meant an increase in ‘professional help’ for illegal border crossing. The fees of the *coyotes* (the professional people-smugglers on the US–Mexican border) have doubled or even quadrupled in the ten years from the early 1990s. The number of clients has also increased as a result of the increased difficulty of crossing the border illegally (Cornelius, 2001: 668; Guerette, 2005). In Europe, according to analysts, the tightening of visa rules has led to an increase in the number of migrants using smugglers (Guiraudon, 2003: 210).

The multiplications in border control, more generally, seem to lead to new (smuggling) routes and new methods.²⁷ The result is an arms race in the field of border crossing (Heckman, 2007). This, in turn, results in increased government costs (‘Faster, cheaper, more reliable screening technologies are needed’; Riley, 2006: 609; Sassen, 2006). Yet, the costs also increase for those who want to cross borders illegally. These costs, in fact, amount to situations of human trafficking and slavery. Because routes for travel and migration are closed, individuals might feel forced to take the risk of unwittingly trusting themselves to mediators who are involved in trafficking persons and forced prostitution (Twomey, 2000).

4.e. Avoiding death

Money and freedom are at not the only thing at stake; in some cases of border crossing, the migrants’ lives might be at stake. Between October 1997 and June 2001, 1013 migrants died trying to cross the Southwestern border of the US, and these figures are likely to be underreported. Figures show an increase in the number of individuals who die trying to gain illegally entry to the US. The explanatory factor seems to be that intensified border control forces migrants to try their luck in regions with a more hostile environment. The policy of deterrence does not seem to work since individuals have been known to try to cross the Mexican–US border as many as five or more times (Cornelius, 2001: 667–71; Guerette, 2007).

The same conclusions have been drawn in the European case. NGOs estimate the number of deaths, based on press clippings, at more than 7000 between 1993 and 2006. According to Spijkerboer, the available data do not suggest that the intensified border controls of recent years have led to decreased numbers of irregular migrants. Rather than abandoning their plans to travel to Europe, these migrants have simply chosen more dangerous migration routes, routes that expose them to even greater risks (Amnesty, 2005; see also Carling, 2007; Spijkerboer, 2007: 131). Similar observations are reported from the South Pacific Area where people try to travel from Indonesia, in particular, to Australia (Edwards, 2003; Stratton and McCann, 2002).

Table 2 Effects of multiplications for specific aims

Values	Multiplications		
	Places	Agents	Technologies
Guaranteeing security and order	Risk of increasing costly efforts, without increasing effectiveness	Risk of increasing the number of actors involved, without increasing effectiveness	Risk of introducing new technologies and gathering more data, without increasing effectiveness
Guaranteeing safe place for refugees	Exclusion because of extra barriers for the undocumented	Exclusion because of incentive structure of implementing agents	Exclusion because of unsound data
Non-discrimination and brutality	Repetition of being singled out	Agents involved who operate in less monitored environments	Discrimination through profiling techniques
No high costs for migrants and travellers	Increase in use of smugglers because of broader range of surveillance	Increase in use of smugglers because of more border patrols	Increase in use of smugglers because of new detection technology
Avoiding death	Casualties while trying to evade new places of control	Casualties while trying to evade intensified controls	Casualties while trying to evade new surveillance instruments

5. Conclusion

In Europe, North America and Australia, border control has changed in recent decades. This change is of a numerical kind: more money, more staff, more actors involved, more technology, etc. Yet, the change is also more fundamental in nature. Border control has shifted from reactive to proactive strategies, from checking on travellers at borders to risk management, from controlling identification to gathering all kinds of data which are used to manage mobility at many places around the globe. This new form of border control involves a multiplication of borders, leading to a concentric circle model of border control; it involves a multiplication of agencies involved, leading to a governance-like implementation of border control; and it involves a multiplication of technology, data gathering and data processing, leading to highly automated procedures (see Table 1).

While the new type border management allows for the relatively smooth flow of billions of travellers every year, it also presents certain risks. The way this new border

control is organized, the actors who are involved and the incentives they receive, the type of data that are gathered and the way data are used strongly emphasize the motive to keep individuals out that are potentially dangerous: terrorists, criminals. It is hard to say whether the new border control is truly effective in realizing this aim. What can be said with more certainty, however, is that the new border control is less oriented towards guaranteeing access for those who need it: asylum seekers. In fact, the multiplications make it more difficult for many who seek refuge to travel to the US, Europe or Australia. Moreover, the new border control seems to entail more discrimination, more reliance on smugglers and involvement of traffickers, and increased deaths of those trying to reach Europe, the US or Australia illegally.

The ethical and philosophical literature on migration fails to offer us very specific criteria for evaluating migration regulation and the instruments used therein. Much depends, moreover, on the specific type of liberal theory one takes as guiding principle. Yet, on some points the different theories converge. They all include duties to help the needy, specifically the asylum seekers. An elaboration of the basic values of liberal theories also led us to the issue of respect for individuals that is a guiding principle in the realization of any justifiable aim.

If we take these liberal aims and values seriously, there is good reason to question the new system of border control. Yet, what conclusion should be drawn given the negative consequences of new border control that we have we found?

There are two straightforward – and mutually exclusive – responses to this question. One answer is that the undesirable effects of the instrument imply that the aim itself has to be disqualified. If migration regulation demands this kind of border control, migration regulation must be improper. This is the reaction that seems to be implied in many recent commentaries on Western border control, using metaphors of fortresses, gated communities and walls (Fortress Europe, Wall around the West, etc.). The other answer takes the opposite view and maintains that in spite of the current shortcomings in the new border control system there is reason to develop it further. This is the reaction that is often given in political debates and in specialist policy papers: we should use more sophisticated methods, smarter technology, multi-level coordination, etc. The latter answer is hardly convincing, since it implies further multiplications, thereby only amplifying the risks. The first answer is based on an understanding of the link between aim and instrument that is too simplistic: too simple in empirical terms, i.e. the new border control does not seem to be the only possible form of migration regulation, and too simple in a more fundamental sense, i.e. if all aims and policies lose their legitimacy because of negative side effects, no justifiable aim or policy would likely remain.

The first answer, however, certainly has a point in claiming that instruments and aims should be considered in combination. Choosing a specific policy instrument might imply that policy ends should be reconsidered. Maintaining the new border control system has resulted in unintended and undesirable consequences that could be remedied by making changes in migration policy. Introducing a policy of regulated labour immigration – through a system of Green Cards, etc. – could diminish attempts to cross borders illegally. And policies of establishing safe havens for refugees in other parts of the world would also be part of this remedy. Initiatives in both these directions already exist; however, their scope still seems to be rather small

— there is no multiplication in these fields that is comparable to what has occurred in border control as outlined above (Boswell, 2003; Spijkerboer, 2007).²⁸

The second answer, the one that remains within the managerial logic of governance and technological solutions, might also be expanded: the literature on governance and on technology design suggests complementary measures of control to diminish risks. In the field of border control this would mean:

- More governmental control over actors involved and different types of incentives; more control over the development and use of technology.
- Individuals should have more knowledge of and a say over data gathered, stored, processed and used.
- Other types of actors should be involved as well in networks of agencies, such as migrants' and travellers' organizations.

Together these reformist elaborations of the two straightforward answers might be able to diminish the risks of the new border control system. More specific research is necessary before we can know whether this is, in fact, the case, and what form these elaborations would take. It is clear, however, that attractively worded terminology and proudly presented new tools do not tell the complete story of the new border control system.

Notes

- 1 I am grateful for the helpful comments from the editor and reviewers of this Journal and the participants in the workshops on the Changing Nation at the IIAS 2009 Conference in Helsinki.
- 2 Data from the Department of Immigration and Citizenship of the Australian Government <http://www.immi.gov.au/media/statistics/statistical-info/oad/totalmovs/totmov.htm>
- 3 EuroStat statistics (http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-001/EN/KS-SF-09-001-EN.PDF)
- 4 Statistics of RITA, US Bureau of Transportation Statistics (<http://www.transtats.bts.gov/>)
- 5 www.csis.ucsd.org/news/july%2022-06%20border%deaths.pdf
- 6 In this article I will not turn to international law for criteria to assess the risks of new border control, but to the ideals and values that seem to underlie it.
- 7 See also Nozick (1974: 176–80).
- 8 In fact European cooperation in the field of migration regulation and border control is not completely congruent with the EU. In this article we will not go into the complications that result from this incongruity.
- 9 The idea of a concentric circles model of borders and border control is explicitly formulated in several strategy papers, for instance those of the Austrian presidency of the EU (Doc 9809/98, CK4, Brussels July 1998), the UK Home Office (*Our Vision and Strategy for the Future*, March 2007), and the Dutch Advisory Committee on Aliens Affairs (*Vreemdelingenbeleid en terrorismebestrijding*, 2003). I thank Sophie Scholten for these references.
- 10 <http://www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf>
- 11 http://ec.europa.eu/budget/library/publications/budget_in_fig/dep_eu_budg_2008_en.pdf
- 12 <http://www.immi.gov.au/about/reports/budget/>
- 13 <http://www.frontex.europa.eu/>
- 14 EC Memo 08/94 dated 12 February 2008.
- 15 Carrier sanctions were introduced into the Schengen Implementation Convention (1990) and in 2001 in an EU directive.
- 16 <http://www.immi.gov.au/media/fact-sheets/70border.htm>
- 17 For the EU, see for example, 'Preparing the Next Steps in Border Management in the European

- Union' (2008/2181(INI)) and other plans, mentioned in the EP rapport A6–0061/2009.
- 18 http://www.airports.org/cda/aci_common/display/main/aci_content07_cjsp?zn=aci&cp=1-5-54_666_2__
- 19 See references in notes 1 and 2.
- 20 <http://www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf>, http://ec.europa.eu/budget/library/publications/budget_in_fig/dep_eu_budg_2008_en.pdf
- 21 See studies and comments of the UNHCR (<http://www.unhcr.org/protect/PROTECTION/484ea4942.pdf>), Council of Europe, ECRE (<http://www.ecre.org/files/Access.pdf>), European Parliament.
- 22 UK House of Lords inquiry on Frontex dated 5 October 2007.
- 23 EC Memo 08/86 dated 13 February 2008.
- 24 Italian minister of Foreign affairs Frattini, press release 27 April 2009 http://www.esteri.it/MAE/EN/Sala_Stampa/ArchivioNotizie/Approfondimenti/2009/04/20090427_Frattini_CAGRE.htm?LANG=EN
- 25 The forms of international coordination in the field of migration regulation in Europe, North America and Oceania of course differ. Comparing the consequences of these differences is beyond the scope of this article.
- 26 UNHCR news item 31 March 2009 <http://www.unhcr.org/news/NEWS/49d229b72.html> (last consulted 17/5/09).
- 27 Jandl, for instance, points out shifts in ways of smuggling and methods of smugglers on the eastern borders of Europe (Jandl, 2007). For similar indications for the South Pacific see Schloenhardt (2001).
- 28 Another example: Expenditure in the EU for Freedom, Security and Justice (including regulating migration flows) in 2007–08 increased by 16.7 percent. In the same period, expenditure for development cooperation and humanitarian aid increased by only 3.3 percent. (http://ec.europa.eu/budget/library/publications/budget_in_fig/dep_eu_budg_2008_en.pdf)

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