



UK Border Security:

Issues, systems and recent reforms

A submission to the ippr Commission on National Security for the 21st Century

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Introduction

Issues of border security feature frequently in contemporary British politics as major public policy problems. Among the areas of concern are terrorism, drug trafficking, human trafficking and people smuggling, the need to exercise controls for human, plant and animal health protection and the illicit trade in weapons. Border security is essentially a risk management process and involves a mix of individual, public sector and private sector responsibilities. There are push/pull factors to consider in terms of the illicit movements of people and demand/supply factors to consider in relation to illicit goods.

In this paper the use of the term 'borders' will cover both the commonly understood meanings of land frontiers between sovereign states, international airports and major seaports and the contemporary usages of new technology¹ and international cooperation that can provide for off-shore border control (for example, juxtaposed controls) and pre-arrival screening (via e-borders) (UKBA 2008b, Cabinet Office 2007). The UK's first 'National Security Strategy' (NSS) regards 'strong borders' (which the document fails to explicitly define) as 'essential to protect against terrorism, crime and illegal immigration' and states its aspiration to create a 'modern, intelligence-led border control and security framework' (Cabinet Office 2008: 56-57).

This paper will, in part, evaluate the NSS approach and aspirations regarding border security, although it is a problematic time to assess UK border security, as 2008 saw the transition from the old fragmented border controls system with roles divided between immigration, customs and police authorities to the more integrated approach represented by the creation of the new UK Border Agency (UKBA), whose personnel possess 'customs, immigration and police-like powers' (UKBA 2008b: 16). It is still too early to judge the effectiveness of this body. Therefore the analysis looks at broad issues, past outcome measures for border controls and expectations from the new systems.

In particular, this paper reviews current UK border strategy, examines trends in global movements with special regard to the UK's position and then considers three priority areas of UK border strategy: people movement controls, drug trafficking controls and anti-terrorism controls. The paper also considers after-entry controls or responses, recognising that there will continue to be illicit entries of people and controlled goods and the need to manage the asylum request process in order to effect the removal of those persons whose claims are not accepted or given leave to remain on other grounds.

The UK's general border strategy

UK politicians have long maintained that the country's geography gives it a particular opportunity to secure its borders independently because of its relative lack of land borders with another state. The UK-Republic of Ireland land border position is regulated by the Common Travel Area arrangements that also apply to the Crown dependencies (the Isle of Man and the Channel Islands) and the Channel Tunnel is governed by the UK-France treaty arrangements for juxtaposed controls.² However, the realities of the free movement principles of the European Union's Single Market programme – including the fact that under the EU Common Customs area policy there is a presumption against systematic checks on intra-EU goods traffic and the right of free movement for the citizens of the

1. It is important to recognise that apparent technological 'solutions' to border security are not without potential 'costs' in terms of individual liberties. For example, concern has been raised about the intrusive nature of new high-definition body-scanning X-ray (virtual 'strip-search') devices which were set to be deployed at airports and which have undergone some airport trials. In November 2008 the European Commission withdrew a draft regulation, which would have listed these as permitted screening methods at EU airports, in response to a European Parliament Resolution that found that the use of this technology could have a serious impact on the fundamental rights of citizens (see European Parliament 2008).

2. Proposals for UK-Ireland land border identity checks contained in Common Travel Area changes in the Borders, Citizenship and Immigration Bill (see UK Parliament 2009) have been criticised on human rights grounds (see Northern Ireland Human Rights Commission 2009).

enlarged EU (around 106 million people) and the European Economic Area states – mean that UK border controls are constrained by EU membership obligations. This is in spite of the fact that the UK has negotiated ‘opt-outs’ from parts of the EU border control regime and is not a Schengen Treaty signatory.³

Nevertheless, since negotiating its special border control arrangements within the EU, the UK has found it necessary and desirable to seek ‘opt-ins’ to the Schengen system in respect of the Schengen Information System (SIS) to allow UK access to Schengen cross-border data sharing. Reference to the Schengen concept of Integrated Border Management (IBM) provides a useful comparator checklist for evaluating UK practice. The Schengen IBM requires there to be border checks and surveillance, cross-border crime control capacity, multi-format access measures (including those in third countries), inter-border agency cooperation and coordination with the EU and other EU states (European Council 2008b). This paper will demonstrate that the UK practice broadly conforms to the dominant IBM concept in the EU.

UK border control strategy has only been organised in an integrated fashion since 2007. Previously it was more usual for there to be discussions of particular border controls by reference to the functional remits of what were then the three principal border control agencies: the Immigration and Nationality Directorate (IND), HM Customs & Excise (C&E) and police (ports Special Branch [SB] units and major airports policing). The problems of this fragmented approach have been highlighted by a number of studies by the National Audit Office (NAO) and the Commons Home Affairs Committee. In 2008 the UK Border Agency was therefore established to bring together staff from the Border and Immigration Agency, the Customs detection staff from HM Revenue & Customs and UKvisas from the Foreign and Commonwealth Office (UKBA 2008b).⁴

The UK Border Agency has 25,000 staff, 9,000 of which are in the actual Border Force (House of Commons Defence Committee 2009), and the new strategy is exemplified by the fact that many of these are based not only in the UK but also in 135 other countries. The emphasis in the new strategy on tackling manifestations of immigration crime within the UK is also demonstrated by the fact that approximately 7,500 UKBA staff (about 30 per cent of the total) are being reorganised over the next three years into 70 to 80 Local Immigration Teams that will be deployed across the UK (UKBA 2008c).

The other recently established agency with border-security-related tasks is the Serious and Organised Crime Agency (SOCA) which has incorporated some border-related duties staff from IND and HM Revenue & Customs (HMRC). Discussions are ongoing about integration issues related to the police presence at borders.

The police forces now deploy about 1,500 Special Branch officers on ports and airports policing (an increase on the 1,200 SB presence reported in 2003; see House of Commons 2003), additional uniformed police, paid for by the airport operators, are deployed by police forces at the ‘designated’ airports, and eight seaports have dedicated non-Home Office port police. In addition, 280 police officers are seconded to the UKBA to work on national and local harm reduction priorities (UKBA 2008c). There has been an issue for a number of years about the adequacy of SB ports policing in terms of status, numbers and facilities although Lord Carlile, the Government’s independent reviewer

3. The UK–Schengen relationship has not been an easy one and the UK has recently brought a case before the EU Court of Justice about UK police access to the Visa Information System (VIS) as the EU Council had adopted VIS as a Schengen *acquis* development measure. The UK’s argument is that VIS was a police cooperation measure, not a Schengen matter. In non-Schengen related aspects of EU border controls the UK can seek to maximise the impact of EU regulatory initiatives. For example, in the case of the proposed EU PNR (Passenger Name Record) Framework Directive the UK would like to enlarge its scope in terms of modes of transport and coverage of intra-EU flights and to extend the use of the PNR data beyond terrorism and organised crime to other forms of serious crime and for immigration controls (see European Council 2008a and House of Lords 2008b).

4. Clarifications of the functions of the UKBA are contained in Part 1 of the Borders, Citizenship and Immigration Bill: see UK Parliament 2009.

of terrorism legislation, has noted some improvements since 2001. In 2003 the HM Inspectorate of Constabulary (HMIC) Report on the Special Branch, *A Need to Know*, did raise the suggestion, not accepted by the Association of Chief Police Officers (ACPO), that there should be a national Special Branch structure (HMIC 2003).

After the 2005 London bombings, then-Prime Minister Tony Blair made suggestions for establishing some form of border police. Discussions around this idea have been ongoing for nearly three years and the 2003 HMIC national option, as far as ports policing is concerned, has been revisited. However, once again it is likely that the outcome of an internal review will still leave ports policing in a mainly decentralised mode. The issue of a national border police was raised during the Lords' Second Reading of the Borders, Citizenship and Immigration Bill but Lord West, Parliamentary Under-Secretary for Security and Counter-terrorism, has drawn attention to the major difficulties of such a proposal, which the Government feels outweigh any potential advantages. However, Lord West did highlight the fact that the UKBA has a new memorandum of understanding with ACPO and that a Chief Constable is on the UKBA board (House of Lords 2009).

The private sector plays a major role in border controls, both in the UK and overseas, under various security frameworks. Within the UK, the frameworks for private sector engagement are provided by the National Aviation Security Programme (NASP), the National Maritime Security Programme (NMSP) and the Channel Tunnel Security Programme. The frameworks are developed via a voluntary Multi-Agency Threat and Risk Assessment (MATRA) process. Currently the only form of MATRA requirements that are legally enforceable on the private sector via the Civil Aviation Act 2006 are those relating to the nine airports so designated under the Aviation Security Act 1982 (Cabinet Office 2007)⁵.

In broad terms the security obligations relating to air and sea traffic which may be laid upon the private sector relate to procedures, staffing and facilities at depots and terminals (ports and airports) and during transit. This role is carried out through the provision of trained staff and technical aids for airline and airport passenger identity and baggage checking. The training programmes for these staff must meet the Department of Transport Security and Contingencies Directorate (TRANSEC) requirements. This role is also carried out by carriers or operators for various forms of seaborne and road-transported freight. The private sector fulfils this variable but often significant role partly for sound commercial reasons such as due diligence requirements which, when properly fulfilled, can enhance reputation as a 'safe' carrier of people and/or goods. The private sector also fulfils this role because it is a requirement under various international transportation regulatory frameworks.⁶

The development of these obligations has sought to balance the potentially conflicting demands of rapid transit systems with the need for risk minimising measures. A good example of this is provided by the adoption, in 2005, of the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) by the World Customs Organisation. In essence the SAFE Framework allows for the recognition by customs authorities that Authorized Economic Operators (AEOs) possess satisfactory

5. Current airports falling under these regulations are: London Heathrow, London Gatwick, London Stansted, Birmingham, Manchester, Prestwick, Edinburgh, Glasgow and Aberdeen. However, this arrangement is set to change as a result of Part 6 of the Policing and Crime Bill (Bill 7 of 2008-09). Under the proposals the current nine designated airports would be de-designated. The new system, if passed, will lead to all 63 UK airports covered by the National Aviation Security Programme being required to develop an Aerodrome Security Plan (ASP). If the ASP specifies a requirement for policing measures then the airport operators must develop a Police Service Agreement (PSA) as specified in the Civil Aviation Act 2006. The policing costs of the PSA will then have to be met by the airport operators (Almandras *et al* 2009).

6. These include, in the maritime environment, the 1974 Safety of Life at Sea Convention (SOLAS), and the International Ship and Port Security Code (ISPS – introduced in the UK via EU Directive 725/2004). For aviation there are the provisions of the 1944 Convention on International Civil Aviation linked to the ongoing work of the International Civil Aviation Organisation (ICAO) to develop SARPs (Standards and Recommended Practices) and the more specific CASPs (Cooperative Aviation Security Programmes) and also various EU Regulations. For further information see chapter 6 of UNCTAD 2007 and ICAO 2008.

standards of facilities and operating processes and in return offers AEOs privileged, rapid entry clearances and enhanced, mutually beneficial relations with customs authorities (UNCTAD 2007).

Under the developing UK airline passengers e-Borders programme, individuals are able to contribute to border security via the IRIS programme and thus gain recognition as 'legitimate travellers' in order to enjoy swifter passage through border controls (Cabinet Office 2007). It is anticipated that 95 per cent of passenger movements into and out of the UK will be covered by e-Borders by December 2010 with 100 per cent coverage by about March 2014 (House of Lords 2008b). The e-Borders programme relies upon carriers to provide Advanced Passenger Information (API) and can also use Other Passenger Information (OPI) to carry out 'watchlist' checks while passengers are still in transit. Under a trial scheme API was received for 27 million passengers which resulted in 16,000 alerts and around 1,300 arrests (House of Lords 2008b). For all carriers the Carriers Liability Regulations impose a £2,000 per person charge on carriers who bring people to the UK without proper documentation. However, there are two key problems with the e-Borders programme. First, it will not reveal if the person matching the identity documents has created a false identity and, second, 'watchlist' scrutiny only works if a suspect person continues to use a 'flagged' name.

UK border strategy since 2007

The new strategy seeks to 'export' the border, that is, to carry out as many border controls as possible in other countries, enhance the 'integrity' of border controls documents (for example, by using biometrics) and make better use of data as a border management tool via the 'e-Borders' programme. The strategy outlines five principles of effective border control:

- Act early
- Target effort
- Manage bottlenecks
- Maximise depth and breadth of border protection
- Reassure and deter. (Cabinet Office 2007)

Essentially, the strategy is based on a risk management process, because 100 per cent effective border controls are impractical both physically and legally (due to EU requirements) and because the UK economy benefits from and depends on the freest possible movement of people and goods. For example, in 2006 32 million tourists visited the UK and it has been estimated that a 10 minute rise in UK passport clearance times could represent an opportunity cost of £400 million a year (Cabinet Office 2007).

The strategy also identifies five major risks that need to be addressed. These are:

- Weaknesses in immigration controls
- Losses from tax evasion at the borders (border revenue accounts for about 5 per cent of UK tax take)
- Organised international crime such as drug trafficking (the total 'costs' [from law enforcement, to health and so on] to the UK from the illicit drugs traffic is estimated at £15.4 billion a year [Cabinet Office 2007])
- Terrorism
- The need to exclude prohibited goods and maintain controls on restricted goods.

Global cross-border movements: implications for the UK

The average annual flows of people and freight across UK borders are of the order of 218 million passenger journeys and 440 million tonnes of freight. In 1970, trade represented 25 per cent of the UK's GDP, but by 2006 this had risen to 60 per cent of GDP. The number of passenger journeys is estimated to be likely to rise to about 450 million by 2030 (Cabinet Office 2007). With regard to border entry points there is a concentration of 98 per cent of freight movements and 99.5 per cent of passenger movements between the UK's 48 largest ports, 30 major airports and through the Channel Tunnel. Gatwick and Heathrow airports account for 50 per cent of the movements of international air passengers.

In terms of global freight movements, 90 per cent are seaborne, and the United Nations Conference on Trade and Development (UNCTAD)'s latest report (2007) estimated that a total of 7.4 billion tonnes were transported by sea in 2006 (UNCTAD 2007, ICSO 2006). Of this total 36.1 per cent of the seaborne trade is represented by the tanker trade in crude oil and petroleum products, and LNG (liquefied natural gas) shipments are also rising quite fast.

There has been a long-term marked growth in containerised trade, which is a particular area of focus for maritime border security measures, from 7.4 per cent of total dry cargo in 1985 to 24 per cent in 2005 and this represents, by value, about 70 per cent of the total value of international seaborne trade (UNCTAD 2007). However, while international seaborne trade grew to over 8 billion tonnes in 2007, the onset of the global recession began to have an impact in 2008. In terms of border security this will not affect the maintenance or implementation of necessary security measures, but may lead to a lowering of the volumes of seaborne traffic that require to be screened.

In 2007, UK ports handled 582 million tonnes of freight, with the leading ports (by tonnage handled) being Grimsby & Immingham, London, Tees and Hartlepool, Southampton, and Forth.⁷ The UK also has a considerable number of smaller ports (about 600) and airports or airstrips. Flights from 'non-designated' airfields must receive permission to fly from police ports units, by giving a minimum of 12 hours notice and completing a 'General Aviation Report' under the provisions of the Terrorism Act 2000. Lord Carlile in his TA 2000 reviews has noted the need for adequate and appropriate security arrangements to be in place at these smaller locations.

Illicit migrants: fraudulent entry, people smuggling and human trafficking

Data problems

With respect to border security and illegal immigration, whether this is in the form of fraudulent entry, people smuggling or human trafficking, there is a general problem of data unreliability across all states. Border agencies know the numbers that they stop, but not, of course, the numbers that enter illegally. Examples of a 'known' figure are the 18,000 people stopped from entering the UK illegally in 2007 via cross-Channel routes, the 9,000 illegal immigrants detected leaving the UK through exit checks and the 210,000 passengers with suspect documentation who were prevented by overseas controls from travelling to the UK in the period 2002-07 (UKBA 2008b). The degree of statistical uncertainty at the European level was also evident in European Commission evidence to the Commons Home Affairs Committee in October 2008. For the Commission, Ms. Giammarinaro said that the general estimate for human trafficking in Europe was 100,000 a year but that it could also be within a 300,000 to 800,000 a year range (House of Commons 2008b).

A study of the situation for the Home Office in 2001 estimated that there might be 430,000 people illegally in the UK, but noted that the error range could be of the order of 310,000 (lower estimate) to 570,000 (higher estimate). This estimate of 430,000 illegal migrants in the UK in 2001 represents only

7. The 2007 UK freight movements were made up as follows: liquid bulk traffic (oil and so on) 43 per cent; dry bulks 23 per cent and container and roll on-roll off (ro-ro) traffic 29 per cent. Dover is the leading ro-ro port, handling 2.4 million road goods vehicles and unaccompanied trailer units in 2007 and Felixstowe is the leading container port, handling 2.1 million containers in 2007. See Department for Transport 2007.

0.7 per cent of the total population. However, this aspect of border security is very politically sensitive as the Commons Home Affairs Committee noted in the comment that ‘there is little doubt that public perception of illegal immigration is overwhelmingly negative’ (House of Commons 2006a: para. 67; see also Woodbridge 2006 and Pinkerton *et al* 2004).

People smuggling and human trafficking⁸

People smuggling is the generic term for the criminal facilitation, for money, of illegal entry into a country and it usually involves some kind of organised crime activity. People smugglers may frequently also be involved in human trafficking activities. Some idea of the nature and scale of the activity can be gleaned from case reports. In 2005, for example, nineteen people were arrested, as part of an EU-wide operation, in London and Lincolnshire for smuggling people from the Kurdish area of Turkey into the UK in groups of about 20 a time for payments of £3000 to £5000 per person. In 2008, arrests were made in various parts of England in another people smuggling gang case where Chinese people were paying about £21,000 to be smuggled into the UK.

When discussing human trafficking, there is a familiar problem of quantification. The Lords and Commons Joint Committee on Human Rights noted that ‘The vast majority of the evidence submitted to this inquiry referred to the lack of reliable statistics on the scale of trafficking activity’ (Joint Committee on Human Rights 2006: para. 78).

Human trafficking is generally seen to be directed at either labour exploitation or exploitation for sexual purposes. A study for the Home Office in 2003 estimated that around 4,000 women had been trafficked into the UK for sexual exploitation (Joint Committee on Human Rights 2006, Home Office 2008c). This represents about 5 per cent of the approximately 80,000 women who are thought to be working in the UK ‘sex industry’.⁹

A problem in this area is that some of the victims may be helped to enter the country legally but subsequently coerced into prostitution. This was shown by the outcomes of the national Operation Pentameter, launched in February 2006, where 88 trafficking victims were identified but of these, 40 per cent had actually entered the country legally (Joint Committee on Human Rights 2006, Avenall 2008). Operation Pentameter also highlighted the need for inter-agency joint working. For example, in one case, a Border and Immigration Agency Port Intelligence Unit working alongside police identified a 16-year-old girl who had been sold into trafficking without her knowledge; the swift intervention that followed meant that she did not reach her trafficker (Avenall 2008). While a very positive outcome is indicated by that case, it is a matter of serious concern that Home Secretary, Jacqui Smith, had to admit in January 2009 that, ‘there is no central record of the number of victims of child trafficking who have gone missing from Social Services in the last five years’ (House of Commons 2009).

With regard to human trafficking for labour (but non-sexual) exploitation, a rough estimate of the overall size of the employment of illegal immigrants in the UK was put at 200,000 by the European Commission in 2007 (European Commission [UK] 2007, European Council 2009). Information from raids and other sources indicate that illegal immigrants have been found working in agriculture, care homes, the hotels and catering sector and even employed as licensed security personnel and in government departments. Information about illegal immigrants working in the security industry caused a major political row in 2007 and the Home Office then said it was taking urgent action to address the problem (Winnett 2007).

One of the most tragic cases ended in the death of 21 illegally working Chinese who were searching for cockles in Morcombe Bay, in February 2004. At the subsequent trial at Preston Crown Court in

8. The details of cases mentioned in this section are taken from news reports and SOCA 2007: p. 17, 23 and 27

9. The 80,000 figure is based upon 10-year-old research but has the status of an ‘accepted’ figure and has been used by Home Secretary Jacqui Smith in 2009 (BBC 2009).

March 2006 the Chinese gangmaster Lin Liang Ren was convicted of manslaughter. Lord Carlile QC, appearing for one of the defendants, criticised the then UK Immigration Service and the Department for Work and Pensions for ineffective actions to tackle the illegal immigrant workers problem. The case did raise one of the in-country after-entry control problems, namely that if an illegal immigrant has lost his/her documents or had them taken by a trafficker then the presumed country of origin may refuse to take them back.

Since 2000, the UK has been working towards complementing its border control measures on human trafficking through both in-country measures and attempts to enhance its inter-agency cooperation. In 2000, the Reflex multi-agency task force on organised immigration crime was set up (it is currently under the chairmanship of SOCA) and in 2006 the UK Human Trafficking Centre was established in Sheffield under ACPO's oversight. In March 2007 the Home Office introduced the strategic response dimension of the UK's first Action Plan on Tackling Human Trafficking (Joint Committee on Human Rights 2007a). To some extent law enforcement actions against those employing illegal migrants have to be seen not as problem-solving measures but more as disruption tactics.

Acknowledging that its supply control measures were insufficient by themselves, the Government moved in 2005-06 to introduce controls on the demand aspects of the problem by passing the Gangmasters (Licensing) Act 2006 (which set up the Gangmasters Licensing Authority) and by inserting civil penalties in the Immigration and Nationality Act 2006 for those found to be employing illegal immigrants as workers (Joint Committee on Human Rights 2006).¹⁰

Asylum pressures

A persistent theme of discussions of border security in the UK and the rest of the EU has been the pressures created by asylum seekers coupled with concerns about the conscious use of unfounded asylum claims to circumvent immigration controls on non-EEA nationals. It is now possible to look at the UK and EU's situation with a greater perspective on the issue as longer-term trends are more evident.

Over the last few decades, around 60 per cent of the global total for refugees (9.2 million in 2005) – from which group come most of the asylum claims – have been located in countries in Africa, Asia and the Middle East. Unsurprisingly, due to its relatively higher levels of personal security and economic opportunities, the EU region has been one of the more attractive destinations for asylum seekers.

However, while asylum application pressures on the EU area did increase sharply from around 160,000 in 1985 to nearly 800,000 in 1992, the numbers of new asylum applications to the EU states then fell steadily to 208,000 in 1996. The numbers rose again more slowly, reaching 400,000 in 2002, but have declined since then to about 192,300 in 2006. Thus compared with the peak in 1992 the EU has seen a fall in asylum applications of at least 70 per cent (Eurostat 2007). A perspective on 'pressures', as with illegal immigration, can be gained by relating numbers or estimates of asylum seekers to total population sizes. For the EU overall, asylum applications have fallen from 0.7/1000 population in 2003 to 0.4/1000 population in 2006.

The UK position with respect to numbers of asylum seekers has followed the EU trend discussed above. Thus asylum applications in the UK rose steeply from 32,505 in 1997 to 93,253 in 2002 but then fell to 25,710 in 2005 and then further to 23,430 in 2007 (Home Office 2006, 2008a).¹¹ A consistent feature of applications for asylum in the UK is that a significant proportion (over 80 per cent per year in the period 2005-2007) are made in-country, rather than at the airports or ports of

10. Under Section 8 of the Asylum and Immigration Act 1996 there were only 67 prosecutions between 1997 and 2006 for employing a person over age sixteen subject to immigration control, resulting in 37 convictions (House of Commons 2008a). However, the UK authorities carried out 32 per cent more illegal working operations in 2007-08 compared with 2006-07 (Home Office 2008d) and since the introduction of the new civil penalties on employers in February 2008, 265 such penalties were issued up to mid-2008 (UKBA 2008c).

11. These figures relate to asylum applications excluding dependants.

entry. In the UK the political and public representations of asylum issues have tended to centre on perceptions of pressures of numbers, concerns at attempts to misuse the asylum process and the problem of removing failed asylum seekers from the UK. Levels of asylum applications may, of course, vary year on year, depending on conditions in other areas of the world.

After-entry controls on people movements

While ministers may at times strike tough poses when issues relating to foreign nationals in the UK come to light, it must always be remembered that considerations of both due process and UK and European human rights law obligations will have an impact on any removals process, as exemplified by the long running Abu Qatada case. However, there do seem to have been systemic border security problems in after-entry controls in what was then the Home Office's Immigration and Nationality Directorate in terms of problem knowledge, case management and staffing levels. In recent years three particular issues have received publicity: attempts to send terrorist suspects to their home countries by getting their governments to sign Memoranda of Understanding about non-use of torture or degrading punishments; returning failed asylum seekers; and deporting foreign prisoners at the end of their sentence.

There also seems to be an ongoing problem of lack of adequate issue management data. In March 2008, Lord West was asked about the number of illegal immigrants detained in raids in the previous six months and he responded that the 'information requested could be obtained only by the detailed examination of individual records at disproportionate cost' (House of Lords 2008a). It could be suggested that an integrated approach to border security requires just such information to be readily available.

The National Audit Office noted that the problem of returning failed asylum seekers had assumed quite large proportions, as between 1994 and May of 2004 there had been about 360,000 unsuccessful asylum applications but that the then-IND had only succeeded in removing 79,500 failed applicants (NAO 2006). Home Office official Sir John Gieve admitted to the Commons Home Affairs Committee in 2006 that there was 'a near disaster at the end of the 1990s when we did lose control of the asylum intake' (House of Commons 2006b). The NAO raised the general IND system problems of inadequate tracking and case management and the under-funding and staffing of the removals enforcement process. On the latter point the NAO noted that the IND had to spend 60 per cent more on removals enforcement in 2003-04 than it did in 2001-02 and commented that the 'integrity of the asylum system depends in part on returning failed asylum applicants to their home country in a timely fashion' (NAO 2006). By 2008 the Home Office was expressing the hope that tackling all the backlogs in the asylum application cases (granting, closing or removals) would be completed by mid 2011 (House of Lords 2008a).

Compared with the scale of the failed asylum applicant removals problem, the issue of IND failures to deport foreign prisoners at the end of sentence is on a smaller scale numerically speaking, although the foreign national prisoner population rose from 4,259 to 10,265 between June 1996 and February 2006. However, the issue raised the same problem of inadequacies in the systems for managing these cases. This issue seems to be one where the provision and use of the appropriate case management systems does now seem to be delivering the desired results. In July 2008 the UK Border Agency informed the Chair of the Commons Home Affairs Select Committee that it had exceeded its target for foreign prisoners deportation or removals for 2007 (representing a 140 per cent improvement over the outcome in 2006) (UKBA 2008a, NAO 2009b).

Drug trafficking

According to the UK Drug Policy Commission (UKDPC), 'drug trafficking is considered to be the most profitable sector of transnational criminality and to pose the single greatest threat to the UK' (McSweeney *et al* 2008: 7), while the Matrix Knowledge Group's 2007 study for the Home Office found that the demand for illicit drugs in the UK is high and stable (Matrix Knowledge Group 2007, Hay *et al* 2008). It was estimated that in 2003-2004 the illicit drug market in the UK had a value of £5.3 billion but as with estimates for illegal immigration there could be a large margin of error, in the case of drugs' value, of around £1 billion in either direction (Pudney *et al* 2006).

With respect to border control efforts aimed at drug trafficking, it was estimated that in 2005-2006 the UK Government had allocated £380 million to supply reduction activities and that seizures of Class A drugs more than doubled between 1996 and 2005. However, it was also estimated that the market shares represented by the seizures of cocaine and heroin only represent 12 per cent for heroin and 9 per cent for cocaine (McSweeney *et al* 2008). SOCA has estimated that, in total, about 25-35 tonnes of heroin and 35-45 tonnes of cocaine enter the UK each year (Cabinet Office 2007). Furthermore, for the popular drug cannabis (recently re-classed from C to B), it is now thought that about 50 per cent is grown hydroponically (without soil) within the UK.

It is difficult to give a complete picture of drug seizures, as some SOCA seizures are listed separately from those of the police and Customs but may also be included with police seizures (Home Office 2008b). However, it is clear that if HMRC seizures are taken as more indicative of border security work, although HMRC only accounted for 4 per cent of seizures in 2006-07, these represented by volume by far the largest quantities seized by law enforcement action: 70 per cent of the cocaine seized, 53 per cent of the heroin, 73 per cent of the ecstasy and 89 per cent of the herbal cannabis.

Here we have a situation where border security activities have to be seen as essentially reflecting attempts to create 'risks' for traffickers. This is necessary both legally, because of drug trafficking control obligations under international, EU and UK law, and politically, since organised crime has been identified as a major border and domestic threat. Yet, as the UKDPC study found, the illicit drug market remains resilient and 'additional enforcement measures have had little adverse effect on the availability of illicit drugs in the UK' (McSweeney *et al* 2008: 10).

Since 2006, there has been a shift in the mode of outcomes measurement away from 'traditional output measures of seizures and weights towards the outcome of reducing harm caused by illegal drugs' (HMRC 2005: 66), and the assessment of law enforcement activities such as border controls contribution to harm reduction is being developed through the Concerted Inter-agency Drugs Action (CIDA) group that was established in 1999. It has also become more difficult to assess Customs drug trafficking border control work, as in setting its 2007-08 targets for heroin and cocaine Customs used its 2005-06 seizures results (heroin – 1,057kg and cocaine – 5,798kg) but 'stripped out those seizures that were generated by the area of the Department' that transferred to SOCA (House of Commons 2007).

Terrorism

There are three main border security measures relating to counter-terrorism: checking people, checking goods and freight and providing appropriate related physical and human security measures at ports and airports (discussed above). This section considers the first two measures.

Passenger screening

The purpose of checking passengers or passenger movements is to identify suspect persons who might be the subject of arrest warrants, already subject to entry bans, or be on terrorist 'watchlists' (with names drawn from many sources), or whose movements might be related to terrorist training, for example.

The focus of police activity may vary depending on whether intelligence suggests there is a need to concentrate more on the movements of British nationals or on foreign nationals. Selectivity is also necessary on practical grounds, as it was reported, in connection with Rashid Rauf and terrorist training in Pakistan or on the Afghan borders, that there are around 400,000 passenger movements between the UK and Pakistan per year (Hussain *et al* 2008). Moreover, under the Anti-Terrorism Crime and Security Act 2001 (s.118) the Terrorism Act 2000 Schedule 7 powers (of long-standing under the old Prevention of Terrorism Acts [PTAs]) relating to stop, search and detention of those entering from outside the UK and suspected of terrorist offences were extended to air travellers within the UK (Home Office 2002). Lord Carlile's overall view has been that 'the terrorist traveller has at least as great a prospect of being caught at UK ports of entry as anywhere else' (Carlile 2006: 31).

Prime Minister Gordon Brown said in his 'Statement on Security' to the Commons on 25 July 2007 that 124 people have been refused entry to the UK on suspicion of being potential terrorists and a

further 52 refused entry for glorifying terrorism (Brown 2007). These figures of course refer to in-bound controls and they give no indication of usage of out-bound controls. Some indicators of small levels of lapses in border controls are also to be found within the overall statistics relating to terrorism-related arrests. Police terrorism arrest statistics for the period from 11 September 2001 to 31 March 2007 show that a total of 1,228 arrests were made, but of this total only a very small number, 76, (6.2 per cent) were handed over to immigration authorities (Home Office 2009).

Unfortunately, not all the relevant data is published. For example, in his 2005 report, Lord Carlile only refers to the large numbers of stops at ports of entry under Terrorism Act 2000 powers but he also suggests that 'the number of intuitive stops could be reduced without any measurable risk of increased danger' (Carlile 2006: 32). The figures for arrests under TA 2000 for 2005 indicate that out of a total of 266 arrests, 16 were made after examination and 10 were made by the immigration service, so only 10 per cent resulted directly from border security work (ibid). Of course, this measure gives no indication of the 'value added' from intelligence gleaned at the borders which might have been used in subsequent arrest processes.¹²

In his review of 2007, Lord Carlile remained concerned about the number of intuitive stops and considered that 'stops at ports can still be reduced in number without risk to national security' (Carlile 2008: 31). In that context he welcomed the efforts of the National Coordinator Special Branch (NCSB) and the National Coordinator Ports Policing (NCP) to examine the opportunities for more intelligence-led entry stops, together with utilising the possible 'profiling' help from behavioural analysis. Post 9/11, the attempt to use immigration controls for counter terrorism (CT) purposes on non-UK nationals under Part IV of ATCSA 2001 was controversial from the outset, and the detention without trial of non-UK nationals under special immigration procedures was eventually ruled unlawful by the Law Lords in December 2004 (House of Lords 2004).

With regard to entry controls, there has been an unfortunate public misperception that terrorist suspects in general have been misusing the asylum application process. A Home Office analysis did note that of 963 people arrested under anti-terrorism laws, from 2001 to 2005, some 232 people or 24 per cent of the arrest total had made earlier asylum applications (Leppard and Ungood-Thomas 2007). However, as only a small percentage of those arrested are eventually charged and convicted of terrorism-related offences the numbers of probable terrorism-related misuses of the asylum process would fall further.

Despite these relatively small numbers in terms of the overall numbers of asylum applications, the Government nevertheless went further than the existing exclusion regulations in the Refugee Convention by making provisions in the Asylum and Nationality Act 2006 for exclusion from asylum consideration if a person is 'thought to be associated in some form with an activity or organisation in their country of origin which is regarded as terrorist on the grounds of being linked to violence, serious damage to property or disruption of electronic systems' (Rudiger 2007: 38). In this context it is important to note that a 2007 Refugee Council report found that 'Refugees and asylum seekers felt that the construction of a link between them and terrorism has had a negative impact on their lives' (ibid: 6). This was felt to be especially true of media reporting, and the Parliamentary Joint Committee on Human Rights also stressed the need for the media to be as accurate as possible in its reporting and careful to use the correct terminology (Joint Committee on Human Rights 2007b).

In his 2008 Report Lord Carlile noted that he and previous terrorism legislation reviewers strongly feel that the 'presence of port (police) officers is a deterrent to terrorists' (Carlile 2008: 34). He also supported the e-Borders programme on the grounds that if 'all passports were read electronically on departure from the United Kingdom, the prevention and detection of terrorist plans and offences would be assisted greatly' (Carlile 2008: 33). However, in terms of border control personnel he has expressed continuing concerns about inadequacies in the ports' Special Branch presence and some

12. Unfortunately a later statistical comparison cannot be made, as the TA 2000 arrest statistics for 2007 are presented in a different format in that year's TA 2000 review (see Carlile 2008).

unease about the HMRC presence, because their intelligence-led 'brigading' system could leave some 'potentially vulnerable ports of entry without Customs officers at times'. Additionally, in terms of 'joined-up' border controls, Lord Carlile expressed concern that current 'Revenue and Customs performance indicators give full value to the discovery of [the] cigarettes, and almost none to the small but potentially significant sliver of counter terrorism observational intelligence' (Carlile 2008: 35-6).

Baggage and freight screening

In addition to checking people and passenger movements, border security forces are responsible for screening people, luggage and freight for possible improvised explosive device (IEDs) or suspect components. That includes the provision of chemical, biological, radiological, and nuclear (CBRN) detection processes, which may be in the nature of a general IED detection capability or the more specific nuclear/radiological equipment deployed at some ports for freight scanning under Project Cyclamen. This equipment has been deployed, via static portals, at major ports, airports and the Channel Tunnel and mobile screening machines are used elsewhere. Six hundred and fifty HMRC staff have been trained to use this equipment (HM Revenue & Customs 2005). HMRC notes that most 'alarms are caused by naturally occurring radioactive materials' and thus it only actually intercepts vehicles where there are other grounds for concern (ibid). A general problem with many of the current generation of detection devices is that they can create a lot of 'false' positives because there are trace elements of many IED substances in a range of common products, such as hair-sprays, carried by travellers. Linked to this work, Customs also exercises border controls for weapons of mass destruction counter-proliferation objectives and in 2004-05 detected 42 attempts to export WMD-related goods (ibid).

Conclusions

The UK National Security Strategy, UK border security strategy and establishment of the UK Border Agency indicate governmental awareness of the need for a much more integrated risk and threat management system at both traditional and overseas 'borders'. However, the UKBA has only just been established and the new arrangements for the police Special Branch presence at borders have yet to be agreed (let alone implemented) so it is too early to assess the 'value added' contribution of these significant changes. Nevertheless, the inclusion of provision for an enhanced independent inspectorate for the Border Agency work is an important step in terms of creating more comprehensive public accountability systems by extending the remit of the office of what was the Chief Inspector of the Border and Immigration Agency (Cabinet Office 2007).

However, the new Chief Inspector of the UKBA, John Vine, has pointed out that for his inspectorate¹³, there is currently the problem that 'we do not have any baseline data [or] any baseline systems to begin with' (House of Commons Home Affairs Committee 2008: Ev.10, Q88). It will be essential for the assessment of the effectiveness of the Government's border security strategy that this inspectorate has adequate levels of staffing and funding.

With regard to people controls there are clearly major problems with data availability and reliability in terms of estimations of all forms of illegal immigration whether via people smuggling or human trafficking routes. However, there is a need for a constant effort to ensure that estimates of 'illegals', in various categories, are always put into perspective, for example, by being expressed in terms of percentages of the total UK population. A similar requirement exists in terms of the presentation of suspected attempts to abuse the asylum request process. It is also important to note that effective after-entry controls for the removal of those for whom either no case for leave to remain can be made or for whom it is in the public interest that they be removed require both adequate Border Authority resources and wider inter-agency cooperation, and a recognition that there are due legal processes under the Ministry of Justice, which in turn need adequate resources.

13. It should be noted that the UKBA Inspectorate will also be taking on the duties of five previously independent monitoring systems, for example, those of the Independent Monitor for Entry Clearance Refusals without Right of Appeal and the Advisory Panel on Country Information.

In the case of drug trafficking there seems to have been a somewhat belated recognition that border control measures must be evaluated as part of an inter-agency 'harm-reduction' strategy. However, as yet the reports of seizures, whether in Customs, Border Agency or SOCA reports, really only indicate tactical gains and provide little information on strategic impact. By contrast, tobacco smuggling controls have a simpler aim of just restricting the market share of smuggled cigarettes (though here there are disputes about the estimates of the market share of smuggled cigarettes; for more information see HM Customs & Excise and HM Treasury 2000 and HM Customs & Excise 2001).

Border control work in respect of counter-terrorism is as problematic to evaluate as internal counter-terrorism measures. Lord Carlile's long experience in reviewing the operation of TA 2000 does support a view that our border controls do provide a reasonable threshold of 'risk' to the terrorists or would-be terrorists moving into and out of the country. Physical controls and disruption operations, like Operation Overt, also appear to have contributed to a situation whereby the UK has experienced no actual IED incident at a UK port or airport or on an aircraft or ship in UK territorial space since 9/11, although there was of course the car bomb attempt at Glasgow airport on 30 June 2007.

However, it is not possible to relate in any way the rather sparse and general quantitative data on TA 2000 border-related arrests or the qualitative comment on border stops to the overall picture of the terrorist threat in terms of the numbers of suspects and plots as presented in various official sources by MI5.

Summary of issues requiring further consideration by policymakers

- The enhancement of data collection and data management systems relating to all aspects of people movements. As the Head of the National Audit Office has argued: 'The UK Border Agency has to be sharper in gathering all relevant information as early as possible, translating it into good decisions and then speedily enforcing those decisions' (NAO 2009a).
- Ensuring that the eventual outcomes of the discussions about the nature and scope of the police presence at the borders in the context of the integration of other services, represented by the UK Border Agency, do provide for a genuine capability enhancement in policing terms.
- Provision of more appropriate performance indicators backed up by comprehensive and robust data collection systems for a better understanding of the risk management/harm reduction work of the border agencies with respect to counter-terrorism and the disruption of cross-border organised crime (with particular emphasis on the drug trafficking problem).

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