Migration and Security
Section 2.8

Topics:
Security and States
Laws and Policies
Internal Security
“National security” is the protection and promotion of the well-being of the citizens and legal residents of the State and its territory. Security is an important component of a State’s effort to balance facilitation and control of migration. This Section will examine international and national law concerning security issues. It will include a discussion of States’ attempts to block the entry or escape of common criminals, particularly those engaged in migrant smuggling and human trafficking. Topic One reviews the implications and impact of security concerns relating to terrorism on the development of migration policies and operational procedures. Topic Two discusses international law and inter-state cooperation to reduce security risks, as well as national laws and policies that improve security. Topic Three discusses the special challenges of internal security and civil liberties.

Learning Objectives

- improve your ability to address current security concerns through migration policy and legislation in your setting
- understand how the operational impact of security measures can affect migration policy options
- identify areas where security concerns impact on migration policies and procedures
- understand the importance of security for developing migration policy options
Background

Security in the traditional sense relates to individual State protection of its territory. Events surrounding September 11 have redefined State security and the importance of global information sharing and collection. New security measures and agreements have an impact on migration. While the flow of persons across borders has always been monitored with respect to State security, the current focus is on pre-checking personal profiles and making more rigorous efforts to prevent persons identified as possible security threats from crossing borders. Preventive measures include the use of biometrics such as facial recognition, iris scans, finger imaging, and hand geometry. To protect the State against potential health risks, some States have instituted a system of health checks and quarantine at the border.

Beyond an increase in technology, there exists an increase in dialogue on security and information sharing across borders resulting in agreements and changes in legislation. Although prevention is the preferable policy approach, interior enforcement also plays an essential role in ensuring that persons who pose security threats are unable to do harm to the country.

Guiding Questions

1. To what extent does migration policy in your State take into account the need for international consistency in identifying and responding to the mobility of a variety of threats to national security?

2. To what extent are the operational procedures used for inspection and interior enforcement informed by appropriate intelligence and sensitive to the detrimental effects of crude profiling?

3. Are the migration policies of your State designed to address current security concerns?
Key Message

An essential part of any State’s migration policy is to ensure that migration policies and procedures do not negatively affect national security in any way, whether politically, economically, with respect to health, or otherwise. Changes in immigration policies can help address security concerns without doing great harm to the legitimate movement of people by:

• improving pre-entry and entry controls
• curbing unauthorized movements of people, especially those migrating with the aid of human smugglers
• increasing the capacity to apprehend and prosecute or remove those who pose security risks.

Prevention, prosecution, and protection are the cornerstones of immigration policies designed to increase security.

Terms and Concepts

Derogation
The partial revocation of a law, as opposed to abrogation or the total abolition of a law

National Security
Individual State protection of its territory

Non-refoulement
A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle is usually considered a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention Relating to the Status of Refugees.
Topic One

Security and States

International terrorism is, because of its cross-border dimensions, a migration issue. It touches on a range of matters directly affecting migration policy, including: border integrity (entry and/or residence with illicit intent), national security, integration, ethnic/multicultural affairs, and citizenship. While international terrorism is not the only threat to State security that affects these areas, it is currently an important focus for policy development.

International terrorism is an extreme test of the degree to which national immigration policies continue to be relevant in an increasingly borderless world. In the same way that goods, capital, and services are moving around the world with fewer restrictions and in complex globalized networks, terrorist activities now have a supra-national dynamic beyond the reach of many national law enforcement agencies. While the investigation and prosecution of those associated with any act of terrorism are principally law enforcement matters, the terrorist events reinforce the need for governments to constantly re-examine their laws and policies on migration.

While immigration policy may not be central to countering terrorism, it can be an important way to address it, particularly by facilitating better application of intelligence and law enforcement. Immigration authorities can contribute to national and international intelligence through direct encounters with migrants, both legal and illegal, and through partner networks with other law enforcement and immigration agencies. Broader migration policy can also help address aspects of social stability in diverse societies to reduce the potential for ethnic or other conflicts.

The provisions developed by international Conventions and Protocols, described in the important points below, recognize that no sovereign State can collect and analyze the intelligence information needed to prevent terrorism all on its own. Interested States need a system where governments share intelligence with each other and can access it to work cooperatively.

There are challenges to cooperation. Intelligence services fear that shared intelligence will reach the wrong parties or compromise the sources of the information gathered. These concerns often restrict the sharing of data among the agencies of a given country, and they may preclude altogether the sharing of information across countries. Even where there is trust that the information will not be misused, sharing intelligence may be constrained by differences in privacy laws, as well as differing technological capacities for storing, analyzing, and using data.
In spite of these challenges, considerable progress has been made in improving cooperation and sharing information, for example among the countries of the European Union and between the United States and Canada.

**Example**

Mutual trust in controlling external borders is absolutely crucial to the Schengen system, which abolished internal borders within much of the European Union. As a result, the EU has committed resources to development of the Schengen Information System, which collects data from all Schengen member States and is used to determine whether to issue visas to foreign nationals.

The Smart Border Declaration signed by Canada and the United States does not go as far as Schengen, but the United States and Canada are committed to developing common standards for biometric identifiers, integrated border enforcement teams, visa policy coordination, sharing of advanced passenger information and passenger name records on high-risk travellers, joint passenger analysis units at key international airports, and integrated intelligence gathering and analysis.

**Important Points**

1. Migration policies aim to facilitate the entry of foreigners whose presence is desired and to identify, and deter the entry of, unwanted foreigners, particularly those who pose security risks. With the increase in international terrorism, many policy makers, as well as the general public, have questioned whether current policies and practices are capable of meeting these twin challenges. For instance, all of the terrorists suspected of attacking the World Trade Centre and the Pentagon entered the United States on valid visas. They resided and studied in the U.S. and several European countries with little danger of apprehension—even though several had overstayed their permission to remain.

2. Many States have agreed to establish effective domestic controls on travel and identity documents in a number of Conventions and Protocols:
   - The *Inter-American Convention Against Terrorism* (“Inter-American Convention”)
The “Bangkok Declaration” (1999) included pledges by a number of Asian States to coordinate on issues of “irregular migration” and to address human trafficking and smuggling.

While the Inter-American Convention is not yet in force, and the Bangkok Declaration is non-binding, the requirement that States improve their border controls has already entered international law by way of United Nations Security Council Resolution 1373. That resolution, passed in response to the September 11, 2001 attacks on the United States, requires States to “prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.”

The Protocols and the Inter-American Convention further require State parties to exchange information with each other for purposes of border control. Article 7 of the Inter-American Convention provides that “the states parties, consistent with their respective domestic legal and administrative regimes, shall promote cooperation and the exchange of information in order to improve border and customs measures.”

What You Need To Know About...

Human Rights, Mobility, and Security

No international or regional human rights instruments expressly grant aliens the right to enter a foreign State. Nevertheless, several of these instruments have been interpreted to require States to allow entry under certain circumstances, particularly for purposes of family reunion and protection from persecution. State security arguably outweighs these rights.

States’ needs for security-related information about aliens applying for admission generally outweigh aliens’ rights to privacy with regard to trans-border sharing of such information.

Article 33(2) of the 1951 UN Convention Relating to the Status of Refugees provides that the right to non-refoulement does not apply to any refugee “whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted of a final judgment of a particularly serious crime, constitutes a danger to the community of that country.” Further, Article 1(F) of the Refugee Convention excludes from the definition of “refugee” any person about whom there are serious reasons for considering that (a) he or she has committed a war crime, crime against humanity, or genocide, (b) he or she has committed a serious non-political crime outside the receiving country, or (c) he or she has been “guilty of acts contrary to the purposes and principles
of the United Nations.” Although this exclusion clause does not specifically mention terrorism as a basis for exclusion, there is ample support for the argument that terrorist acts should be considered “contrary to the purposes and principles of the United Nations.” However, the exclusion clause was not designed to provide security to States but rather to withhold aid from undeserving persons, and it can offer only imperfect protection because it only applies to persons who have already committed the prohibited acts.

Where an alien would be subject to torture in another State, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) expressly prohibits member States from returning him to that State. There is no security limitation on the right of non-refoulement in the text of the CAT, and the treaty expressly disavows any possibility of derogation. The Committee Against Torture (the monitoring body for the CAT) has chastised several States whose national legislation provides for such an exception. The Committee has also made clear that the bases for exclusion from refugee status enumerated in article 1(F) of the Convention Relating to the Status of Refugees are inapplicable to the CAT, insisting that the “test of article 3 of the CAT is absolute.”

The European Court of Human Rights has expressly rejected the argument that the security of the host State limits an alien’s right not to be sent to a State where he will be subject to torture. On the other hand, the Court has also made clear that the right of non-refoulement does not prohibit the State from taking other actions otherwise permissible under human rights law, such as detention or other restrictions on movement under appropriate circumstances, to protect itself from security threats posed by persons who cannot be sent home.

Apply What You Have Learned

1. Are the migration policies of your State realistically sensitive to the need for enhanced control measures in the area of counter-terrorism?

2. How have security concerns influenced the interpretation of the non-refoulement principle in your setting?
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<td>How has your State changed laws and policies on migration in response to the threat of terrorism?</td>
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<td>4</td>
<td>What Conventions and Protocols has your State ratified that ensure effective domestic controls on travel and identity documents?</td>
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<td>5</td>
<td>What challenges to cooperation in the use of intelligence does your State face?</td>
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Topic Two

Laws and Policies

There are no comprehensive instruments or sets of rules specifically devoted to migration and security at the international level. For the most part, security policies and procedures serve simply as a check on rules governing migration.

In addition to outlining situations in which security concerns may override other considerations, international law facilitates migration-related security measures to a limited extent by criminalizing some acts, for example, the trafficking and smuggling of aliens. International law also provides requirements for information sharing for purposes of border control, extradition rules, and regulation of extraterritorial enforcement of immigration controls, for example, carrier sanctions agreements and interdiction at sea.

At the national level, migration policies cannot guarantee increased security, but they can make important contributions to security by addressing the international mobility of those posing security risks. Security threats can be prevented when possible, and contained when preventive actions fail, by:

- improving pre-entry and entry controls
- curbing unauthorized movements of people, especially those migrating with the aid of human smugglers
- increasing the capacity to apprehend and prosecute or remove those who pose security risks.

Technology generally facilitates these processes, but the extent to which States should invest individually in computerized, biometric, and other systems will generally be determined by the number of foreign nationals arriving in each State and the financial and human resources available for implementing such approaches. Often, cooperation among States will make these systems more viable. The following important points and need to know items discuss prevention policies initiated at the national level.
Important Points

1. Currently global data on international migration and security is limited and is developed primarily at the national and regional levels.

Example

Bilateral agreements that include data exchange are common and can be illustrated by those between the US and Canada and Russia and CIS States. Regional dialogues such as the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC); the Central American Commission for Security held in October 2001 in Honduras; and the Regional Conference on Migration (RCM) include a significant focus on security and information sharing. Meetings of the latter two dialogues resulted in guidelines and a plan of action for control and security of migration, including the RCM’s Declaration against Terrorism of May, 2002.

2. States increasingly seek to prevent persons presenting security risks from reaching their territory, prevention being easier and less costly than identifying those who present security risks after entry.

3. Developing responses to terrorist abuse of legal migration systems must balance the important interest in maintaining robust lawful migration with that in preventing the free movement of terrorists.

4. States are challenged by the sheer scale of international movements of people. Five hundred million legal crossings occur every year into the United States. One hundred million passengers enter the United Kingdom annually. States are increasingly seeking to enforce their domestic migration laws beyond their own borders. The issue is one of risk management.

5. The best opportunity for States to manage risk is to do so as far away from the border as possible. The further away, the more time government officials have to examine the individual and his travel documents. Once travellers reach the border, inspection officers are pressed to make quick decisions so as not to unduly inconvenience bonafide travellers.

6. States prevent unauthorized entry onto their territories by passing laws combating professional human smuggling and trafficking operations that may facilitate the arrival of persons who pose secu-
Visa issuance is generally considered to be the first line of defence against the international movements of persons posing security risks. Visas generally give foreign nationals permission to travel to a destination country, although the visa holders may well be subject to further inspection on arrival.

The issues related to visa production and visa issuance are discussed in Section 3.1, Passport and Visa Systems.

Many States have explicit laws that bar persons who pose security risks from receiving visas and entering their territories.

Example

The U.S. Immigration and Nationality Act (INA) specifies that an alien who has engaged in a terrorist activity, or for whom there are reasonable grounds to believe is engaged or likely to engage in such activity, is inadmissible to the United States. The section also applies to a person who, indicating an intention to cause death or serious bodily harm, incited terrorism.

Terrorist activity is defined to include hijacking or sabotage of conveyances, violently attacking protected persons, assassinations, the use of biological, chemical or nuclear weapons or devices, and other similar activities. Engaging in such activities includes planning, providing material support, soliciting funds, and soliciting individuals to conduct such activities. Perhaps the most controversial provision also allows the removal of an alien who is a member of a foreign terrorist organization, as designated by the Secretary of State, which the alien knows or should have known, is a terrorist organization.

The USA Patriot Act, passed after 11 September 2001, expanded the definition of terrorist activity to include persons who have used positions “of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities.”
Visa processes are most effective for security when government officials responsible for issuing visas are able to check applicants against computerized databases that contain information about potential security threats.

**Example**

The Schengen Information System provides participating European countries with an “alert list” of those who have committed offences and are ineligible for admission to member countries. The Australian Migration Alert List is an electronic lookout or early warning system that enables immigration authorities to check if there is any known problem that might affect the grant of a valid visa. The United States maintains an automated consular lookout and support system that contains information on known criminals and terrorists. By law, consular officers must check the database prior to issuing a visa.

Many countries exempt certain foreign citizens from visa requirements, generally based on reciprocal arrangements or an assessment of the risk for immigration abuse that citizens from a specific country would pose to the destination country. Travellers exempt from visa requirements may nevertheless be subject to pre-clearance procedures and to pre-inspection or inspection at ports of arrival.

**What Do You Think?**

Lookout systems are only as effective as the information contained in them. The events of September 2001 demonstrated the difficulty of collecting, processing, and sharing the intelligence needed to identify terrorists requesting visas. Although the intelligence services in the United States and other countries had information about suspected terrorist activities undertaken by several of the hijackers, this information was not turned over to immigration authorities until after visas had been issued.
What You Need To Know About...

*Intelligence and Control Strategies*

A number of traditional immigration countries recognize that “intelligence” is the key to addressing the challenges of ever-increasing passenger numbers, while maintaining the integrity of border control. The acknowledged way forward is to shift focus from the traditional “universal challenge” approach, where every passenger is examined, no matter how briefly, by an immigration officer on arrival, and progress toward a targeted intelligence-led approach.

A targeted intelligence-led approach requires that the right balance be struck between expediting clearance of genuine passengers and targeting those passengers who present an immigration or security threat. One of the key strategies underpinning this approach is the collection of passenger information in advance of travel.

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**Example**

A great deal of entry control efficiency is dependent on advance information and trend analysis, often only possible where immigrant processing abroad is closely linked with border and in-country processing facilities. One such recent move took place on 12 February 2002, when the US State Department introduced 18 new questions for visa applicants. Most questions are directed at males aged between 16 and 45 and include questions about military experience and knowledge of firearms, explosives and nuclear/biological materials.

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What You Need To Know About...

*“Offshore” Control Strategies*

Passenger Pre-inspection: Under this arrangement, established through bi-lateral agreement, immigration and customs officers who do full clearance for entry to the country of destination are stationed abroad at airports, inspecting passengers departing for the officers’ country. Their authority is implied since in essence the inspector is letting the carrier know that the individual would not be admitted at a destination port of entry. Local carriers, immigration, and law enforcement benefit from training and the sharing of tactical information and intelligence.
Immigration Liaison Officers (ILOs): These are liaison officers posted close to the centres of criminal activity, or in source countries of irregular migrants, to work with local law enforcement agencies and international agencies such as Europol to prevent irregular migration and help close down related illegal and criminal operations.

Airline Liaison Officers (ALOs): Many countries deploy immigration officials to work with foreign governments and airline personnel to identify persons travelling with fraudulent documents and to combat smuggling and trafficking operations. It clearly becomes untenable for the host country if each country of migrant destination seeks to post its own ALO at the same airports. The EU has brokered such cooperative arrangements through CIREFI, and some joint ALO initiatives have been launched. Similar forms of cooperation exist in other regions, e.g. under the Puebla Process.

Advanced Passenger Information (API): involves agreement between countries, and between airlines and Governments, permitting passenger manifests to be sent by the airlines ahead of flights to the Immigration authorities of the country of destination, for pre-checking before arrival. These systems allow for security checks to be performed on citizens, persons with visas, and those arriving through

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**Example**

Pre-clearance processes are already employed in Australia, New Zealand, and the USA. The UK Immigration Service is currently considering the introduction of an Authority to Carry (ATC) scheme, whereby the personal details of passengers checking in for journeys to the UK would be checked against Home Office records.

Carriers would be denied authority to carry any individual presenting a known immigration or security threat. This ability to screen passengers in advance of arrival would allow the Immigration Service to make more effective and efficient use of resources and may facilitate expedited clearance of low-risk passengers.

In 1996, the European Union adopted a policy allowing States to post “Airline Liaison Officers” (“ALOs”) abroad for purposes of advising air carriers about the authenticity of specific travel documents. The United Kingdom, Netherlands, Germany, and Denmark have all posted such officers in their embassies in selected countries. Canada has had a similar programme in place for some years.
visa waiver programmes. Australia issues an Electronic Travel Authority (ETA) after checking traveller’s information collected at the time passage is booked. The electronic system enables the first security check to be done well in advance of international movement. Then, when a person arrives at airport check-in, the airline can check electronically to find out if the individual is cleared to board. An API system allows passenger information to be checked while the flight is en route. Inspectors can then speed the arrival of most travellers and spend their time on passengers whose names are flagged by API systems.

**Example**

In the UK, the Immigration (Passenger Information) Order 2000 extended immigration officers’ powers to require carriers to provide data on passengers arriving in and departing from the UK. The Order is divided into two parts, with Part I detailing information contained in the passenger’s passport or travel document, and Part II specifying certain information relating to a passenger, which a carrier may hold in its Passenger Name Record (PNR). In the development of any system based on API, the UK Immigration Service aims to work in partnership with carriers toward a process that is automated and keeps to a minimum any addition to passenger check-in times, complies with data protection and other relevant legislation, increases security, and takes into account the needs of stakeholders, including other relevant control authorities.

**Example**

Australia’s Advanced passenger processing (APP) enables passengers listed on passenger manifests to go through a pre-clearance process in which personal data is cross-matched with visa data. Information encoded in the passports’ machine-readable zone is again checked at point of entry to Australia, and cross checked against Australia’s alert lists.

In the United States, an Advanced Passenger Information System (APIS) allows a process similar to that used in Australia to check previous criminal record, security, and immigration factors relating to passengers listed on passenger manifests.

Canada and the USA have agreed to share Advanced Passenger Information and Passenger Name Records (API/PNR) on high-risk travellers destined to either country.
Pre-enrolment of frequent travellers: This is a way to pre-clear certain foreign citizens, allowing greater time and attention to be paid to visitors about whom the authorities have less information.

**Example**

The United States operates the Passenger Accelerated Service System (INSPASS), under which enrolled passengers, after clearance through the lookout system, receive a card encoded with identifying biometric information (using hand geometry). When the traveller arrives at an INSPASS kiosk at the airport, the previously captured biometric data establishes identity, and the passenger can enter.

Similar systems are also used on the land borders with Canada and Mexico to pre-clear and then facilitate the admission of cross-border commuters. The Secure Electronic Network For Travelers Rapid Inspection (SENTRI) identifies border crossers who pose little risk to border security, verifies their low-risk status through extensive record checks, and screens approved participants and their vehicles each and every time they enter the United States. Frequent commuters apply and pay a fee for this special privilege. Names, digitized photographs, and vehicle information come up on an Inspector’s screen just before the vehicle arrives at the Inspection site. Upon reaching the booth, the driver stops, reaches out the window and swipes an electronically coded “PortPass” card through a magnetic stripe card reader. Participants in the programme generally wait no longer than three minutes to enter the US at the busiest time of day. Technically, the system combines security pre-screening with biometrics and fast crossing/inspection.

For other countries, including those with limited resources overseas, inter-State cooperation is the only way to continue or to expand this activity – for example by doing each other’s work, sharing resources or premises, or sharing information. In the development of such processes, it is essential to ensure that they are managed in a way that ensures continuous cooperation between countries of migrant origin, transit, and destination.

Although originally conceived simply as a means of controlling illegal immigration, carrier sanctions are also employed as national security measures. National migration law in a number of States requires common carriers servicing their territories internationally to verify travel documents of all boarding passengers. Sanctions are imposed upon carriers that fail to comply.

Section 3.4, *International Carrier Responsibilities*, discusses the responsibilities of international carriers and the measures States have used to support these responsibilities.
Effective security requires that States have the capacity to recognize counterfeit documents that may be used by individuals posing security threats. One way to reduce counterfeiting is through the issuance of machine-readable visas, and the incorporation of biometric data in travel documents. Incorporating security features into passports, visas, and residence documents make them more expensive and more difficult to forge. Documents may also incorporate biometric features such as fingerprints or digital photographs, which will be nearly impossible to replicate. Costs can be recovered through fees. In order to have maximum effect, the documents should be linked to a database that allows for identification of bonafide recipients of the documents. Increases in document security need to be supplemented by staff training on identifying fraudulent documents.

Most countries subject arriving passengers (including those already granted visas) to some type of inspection at the border. Entry controls will only work effectively to reduce security threats if the officials inspecting applicants for admission have access to appropriate intelligence information. Technology allows for more effective processing of arriving travellers. Machine readable passport readers and computerized lookout systems with information about security threats, including individuals suspected of terrorist or criminal acts, make it easier to identify potential risks.

Section 3.3, *Border Management Systems*, discusses issues related to Inspection Systems and technological supports available for this function.
Example

States have different processes for removing individuals found inadmissible on security grounds at ports of entry. The United States, for example, has an expedited exclusion procedure that permits inspectors to issue an order for removal of all aliens who enter with no documents, or with counterfeits or legitimate documents fraudulently obtained. If removed under these provisions, the foreign national may not re-enter the United States for five years. The only exception to the expedited process is for those who request asylum. This process may be used when there is sufficient information to preclude admission, but there is not enough evidence to permit prosecution as a security threat.

Apply What You Have Learned

1. What “offshore” security measures does your State have? How effective are they?

2. How targeted is the intelligence approach taken by your State?

3. How does your State seek to recognize counterfeit travel documents?

4. How effective are carrier sanctions as part of a national security strategy?

5. How does your State use advanced passenger information to protect itself?
Internal Security

Although prevention is the preferable policy approach, interior enforcement plays an essential role in ensuring that persons who pose security threats are unable to do harm to the country. Tracking of foreign citizens is one element of an interior enforcement strategy.

Finding foreign citizens who may pose security threats can be difficult. Countries attempt to track the presence of foreign citizens within their territories through registration requirements, checks of identity documents, and systems for matching entry and exit from the country.

Example

One of the most ambitious tracking programs is the planned US-VISIT (United States Visitor and Immigrant Status Indicator Technology). The system will allow for automated capture of basic information about each arriving and departing passenger. It eventually will collect information on, among other pieces of data, date of arrival and departure; nationality; complete name; date of birth; citizenship; sex; passport number and country of issuance; country of residence; US visa number, date and place of issuance (where applicable); and complete address while in the United States. It will also allow for recording of biometric information, such as a photograph and fingerprint. The system is currently in place at air and sea ports of entry and will be extended to the land ports of entry, which have far more crossings each day.

Important Points

1. Tracking systems are costly mechanisms that, if inappropriately implemented, may infringe on privacy and civil liberties of citizens and foreign citizens alike without efficiently and effectively identifying actual security risks.

2. Tracking systems are particularly problematic when they appear to involve racial, ethnic or religious profiling. Profiling is not in and of itself problematic as a mechanism to identify potential security risks. If based on solid information encompassing a wide range of indicators correlated with
terrorism and security threats, and if used in conjunction with other law enforcement tools, profiling becomes one of many techniques that apply greater scrutiny to certain individuals where increased scrutiny is justified. However, when profiling is based exclusively on crude or overly general characteristics—for example, “Muslims” or “Arabs”—it can be a counterproductive and unjust tool for law enforcement because it places an excessive burden on innocent persons by applying defective or incomplete criteria for scrutiny. Also, to the extent that profiling makes cooperation with affected communities harder to achieve, it may harm national security and reduce the likelihood of apprehending terrorists. Finally, tracking systems remain subject to principles of procedural justice and basic human rights.

3 Ideally, foreign citizens who pose security threats to destination countries should be prosecuted for their offences. Often, however, States are unable or unwilling to take such action and rely instead on immigration laws for the removal of foreign security threats from their territory. The use of immigration law as the basis for apprehending, detaining, and prosecuting suspected terrorists has both advantages and disadvantages. At best, in the short term, the potentially dangerous persons are taken off the streets, because there is usually no question that the immigration laws have indeed been violated.

4 Immigration law provides relatively few long-term benefits to law enforcement against terrorism. Law enforcement officials note the difficulty of proving criminal charges against terrorists. If someone accused of entering illegally, overstaying his or her visa, or even falling within one of the excludable or removable terrorism-related categories volunteers to be removed from the destination country, there may be no other ground to keep him or her in custody. If removed from the country, the person may be free to pursue terrorist activities abroad.

5 Some States have special policies and procedures related to the removal of persons suspected of terrorist activities or posing other security threats. These generally consist of special procedures to be used when the government case requires the use of classified information that a foreign citizen is a terrorist.

6 Detention plays an important role in securing persons prior to their removal. Detention can provide a solution if there is a significant risk of absconding.
Detention policies vary across the world. In some countries, such as Australia and the United States, detention is automatic and can be used for an extended period for certain categories of foreign nationals, particularly those arriving without proper documentation and those who have committed certain criminal offences.

In other countries, detention is used on a case by case basis and only for short periods. The European Convention on Human Rights, for example, does not permit long-term detention unless a member State has the real possibility of removing someone. Even in the European Union, however, there is variation in detention policies. The United Kingdom, for example, has the power to detain terrorist suspects whom it wants to deport for as long as the person presents a security risk.

What You Need To Know About...

Balancing Security With Migrant Rights

An essential part of any State's migration policies is protecting innocent immigrants from harmful over-reactions to security threats. In the aftermath of 11 September 2001, immigrants with no links to terrorism suffered acts of violence against them by citizens of countries targeted by terrorists.

Political leadership is extremely important in educating the public about the differences between foreigners and foreign terrorists. Governments can help prevent attacks against innocent immigrants in a number of ways.

In the final analysis, migration policy needs to ensure that any action taken by a Government impacting on human rights must be proportional to the threat to which it is seeking to respond. Government actions must stand in reasonable relation to what is necessary to, for example, address security concerns.

The principle of proportionality also requires that where measures are taken that could violate certain human rights (as permitted in certain circumstances under international human rights law, for example in times of national emergency), then these measures must be reviewed at regular intervals by independent national bodies.

Exceptional measures must remain exceptional, be of limited duration, and be enforced only when strictly necessary.
Apply What You Have Learned

1. To what extent are the operational procedures used for inspection and interior enforcement informed by appropriate intelligence, appropriate criteria for increased scrutiny, and sensitive to the detrimental effects of crude profiling?

2. What are the advantages and disadvantages of using immigration law in your setting as the basis for apprehending, detaining, and prosecuting suspected terrorists?

3. How are criteria for migrant profiling selected in your setting?

4. What is your State’s detention policy for foreign citizens?

5. What exceptional security measures are in place in your setting?
Concluding Remarks

This Section outlined how current concerns about terrorism are posing new challenges for migration policy. Migration policy cannot, in and of itself, prevent terrorism and other security threats. However, migration policy is a key part of any comprehensive approach to security. Prevention, prosecution, and protection are the cornerstones of immigration policies designed to increase security. Migration policies and procedures should seek to identify, deter the entry of, and, to the extent possible, apprehend security risks for criminal prosecution always in keeping with internationally recognized standards for the protection of civil liberties and civil rights.

Resources

http://www.unodc.org/unodc/terrorism_convention_aircraft.html

http://www.unodc.org/unodc/terrorism_convention_aircraft_seizure.html

http://www.unodc.org/unodc/terrorism_convention_airports.html

http://www1.umn.edu/humanrts/instree/inprotectedpersons.html

1979 Convention Against the Taking of Hostages.  
http://www.unodc.org/unodc/terrorism_convention_hostages.html

http://www.state.gov/t/ac/trt/5079.htm

http://www.unodc.org/unodc/terrorism_convention_airports.html

http://www.unodc.org/unodc/terrorism_convention_plastic_explosives.html

http://www.unodc.org/unodc/terrorism_convention_terrorist_bombing.html

1999 Convention for the Suppression of the Financing of Terrorism. 

And a summary of United Nations Treaties concerning Terrorism is at 
http://untreaty.un.org/English/Terrorism.asp

Endnotes

1 These were not yet in force at the time the Manual was assembled. Users are advised to confirm their current status.