Border Management Systems

Section 3.3

Topics:

*The International Legal Framework*
*National Policy and Border Management*
*The Operational Framework*
*Balancing Facilitation and Control: Other Approaches*
This section describes current approaches to migration-related management at border entry points. Topic One reviews the legal framework for border management and the limits on State sovereignty, Topic Two discusses factors that influence national policy on border management, Topic Three describes the operational framework that is needed for an effective border management system, and Topic Four describes a possible border management system and examines the issues involved in achieving a balance between facilitation and control objectives in a border management system.

**Learning Objectives**

- identify the main components of a border management system
- understand the importance of an appropriate balance between facilitation and control
- increase your ability to identify the requirements for the best possible State-managed border inspection process in your setting

**Background**

An effective border management system has two objectives:
- to facilitate *bona fide* travellers, providing a welcoming and efficient gateway to the State
- to provide a barrier and disincentive to entry for those seeking to circumvent migration laws
These objectives enable the State to maximize the benefits of managed temporary and permanent migration, while at the same time protecting the State from the unauthorized entry of those considered not to be of benefit under visa policy rules or whose entry would not be in the national interest.

The key operational components of an effective border management system are interconnected (and preferably automated) sub-systems that will include trained personnel, an audit capability, inter-agency and international cooperation, and strategic partnerships with carriers and industry.

The design of controls for entry and exit at borders will be based on a number of factors, including:

- the physical characteristics of the border
- the border’s permeability
- the relationship with immediate State neighbours
- the commitment and capacity of neighbouring States to control their own borders and manage irregular migration
- whether interception of undocumented travellers is planned and feasible at airport hubs or on the high seas
- how much checking on identity and intentions is done at the border or at points remote from the border
- where the visa decision is made
- the volume, and variability of volume, of passengers at the border.

**Guiding Questions**

1. What are the important factors that govern the type of border management regime appropriate to your setting?

2. Are there inconsistencies or gaps in the range of measures and options that border management requires in your setting?

3. What are the requirements for technological support to the border management processes in your setting?

4. Would your setting benefit from the development of a comprehensive operational and business plan for enhancement of your border management system?
Who is responsible in your setting for operational management of migration-related matters at the border points and in the territory between the entry points?

Is there sufficient flow and exchange of information between the various authorities involved in border management?

**Key Message**

The border management system is the key control mechanism for overall migration management. Effective border management systems will recognize that facilitation and control are two equally important objectives that must be addressed at the same time.

This has highlighted the need for training, resources, and focused collaboration between States to develop the technological capacity required to benefit all.

**Terms and Concepts**

**Evidencing**
Physical evidence that a visa has been granted. This can take the form of a simple stamp or notation in the passport or other travel document. Preferably it will incorporate a unique identifier, linked with visa decision documentation and systems, and be protected against fraud or alteration by security features and by the method of affixing physical evidence to the passport or travel document.

**Refoulement**
The removal of a person to a territory where he or she would be at risk of being persecuted, or of being moved to another territory where he or she would face persecution.

**Validation**
The process of checking for a match between the identity of the traveller in front of the officer at the point of embarkation or at the border, the information recorded in the traveller’s travel documents and any visas or permissions, and the information regarding that traveller’s identity and status.
Topic One

The International Legal Framework

Every State has the sovereign right to determine who can enter, who can stay, and under what conditions, and to control their borders by denying entry and by expelling or deporting from the State a person with no authorization to enter and remain.

The only limitations on these State rights are the prohibitions on refoulement of a refugee. There are explicit limitations for those States that signed the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. There are also explicit limitations when a person is likely to be subjected to torture, for those States that signed the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Furthermore, it is generally held that the prohibition against refoulement is implied under customary international law for all States, irrespective of whether they are a signatory to the relevant instruments or not.

Issues relating to the authority and responsibility of States are discussed in Section 1.4. Authority and Responsibility of States.

The implications of international migration law are dealt with in greater detail in Section 1.6. International Migration Law.

Important Points

1. Each State can set migration rules reflecting the policy settings chosen with regard to entry and stay. These rules constitute the permission or visa framework, and are set out either in legislation or other regulatory frameworks.

2. The prohibition against refoulement may qualify, but does not completely remove, the prerogative of the State to intercept, exclude, expel, or deport persons considered by its law to be illegal entrants, even if they are refugees. In other words, the non-refoulement obligation does not require entry to the territory of the intended State of destination, and does not prohibit removal of an illegal
migrant from that State, provided the person is not removed to a State where their life or freedom is threatened or they will be subjected to torture, or to a State which would subsequently remove the person to such a State.

Issues relating to the establishment of policies for entry and stay are discussed in Section 1.8, Developing Migration Legislation.

Issues relating to the establishment of visa policy are discussed in Section 1.8, Developing Migration Legislation, and Section 3.1, Passport and Visa Systems.

3 Carriers have an obligation to abide by the immigration laws and regulations of States. These obligations are set out in the Convention on International Civil Aviation. Penalties are envisaged under the Convention and are imposed by many destination States on airlines, and on other carriers such as road transport, which carry irregular migrants.

The responsibilities of carriers and the relationship between governments and carriers are discussed in Section 3.4, International Carrier Responsibilities.

4 The anti-smuggling and trafficking protocols of the United Nations Convention Against Transnational Organized Crime provide further support for actions States may take in their efforts to counter migrant smuggling and trafficking in persons at and beyond their national borders.

Issues relating to this Convention and its protocols are discussed in Section 3.12, Irregular Migration.

What You Need To Know About...

Exit Controls

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights protect the individual’s right to leave a country, including one’s own. This right is not explicitly dependent on whether the person has the right to enter another country.

The right to leave is subject to restrictions provided by individual State law as deemed necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.

For States with a sea boundary, the decision on the physical extent to which migration rules will be applied is central to the operation of the border management system.
The State can choose the boundary of the territorial sea or the low water mark, and can extend aspects of border management to a declared contiguous zone. The Convention Relating to the Status of Refugees applies to refugees within the boundaries of the territorial sea.

Apply What You Have Learned

1. What are the land and sea boundaries that your State is responsible for?

2. Identify one international convention affecting border management that your State has signed.

3. What elements of national interest determine the policy settings chosen with regard to entry and stay in your setting?
Facilitation and control are two equally important objectives that must be achieved simultaneously by national policy. Tourism, business, investment, and the import and export of labour can be high on the list of national priorities. These priorities can motivate the design of a border management system that will have minimal barriers to the regular movement of people.

National security, anti-terrorism, crime prevention, and public health, on the other hand, require maximum vigilance to prevent the entry of those who constitute a threat to national security. The policy “settings” for migration, designed to manage entry of certain numbers or categories of migrants, are also implemented through border control.

National policy framework needs to set out migration rules in a clear, coherent, and predictable way so that travellers understand what they are expected to do. Information on these requirements should be available and understandable. Information campaigns advising of the benefits of compliance and any penalties for non-compliance can be useful. These also serve to reassure the community at large that the need to enforce compliance is being taken seriously.

Section 1.10, Managing Perception, provides more detail on information campaigns and government communications about migration.

Decisions about border management will be affected largely by the nature of the border and relations with neighbouring States. If borders are relatively impermeable or there are no land borders, the locus of border control can shift to points of embarkation, with a focus on interception strategies.

If the land or sea border is highly permeable, or if border control resources are inadequate, systems and resources within the State become critical in order to locate and remove those without authorization to enter and remain, and those in breach of visa conditions. Approaches that include registration, national identity cards, compliance checking on status and illegal working, and data sharing between agencies are important elements of internal migration management systems.

The effectiveness of the border management system is also significantly affected by the rules and
processes chosen to enforce the conditions under which entry is permitted, including commitment to locating and removing those who breach the conditions of their stay.

Issues related to locating and removing persons for whom involuntary return is the appropriate measure are dealt with in greater detail in Section 3.9, Return Migration.

Policy decisions related to border management involve a number of factors:

- location of the visa application and decision process
- location of border entry control points
- the extent to which interception is practiced
- the use of detention
- protection arrangements for minors and others requiring protection
- measures to counter smuggling of migrants and trafficking in persons

The important points that follow examine each of these factors by posing questions that require national policy decisions.

**Important Points**

1. Will applications for a visa be made and processed in the country of embarkation, and/or will visas be made available at the border?

Issues relating to the Visa process are discussed in greater detail in Section 3.1, Passport and Visa Systems.

2. Where will border entry and control points be located and what will be the level and duration of staffing? This decision needs to take into account possible points of entry and resource availability. It also needs to clarify which governmental agencies will play the primary role in the inspection process.

3. Will irregular migrants be intercepted by preventing them from boarding by cooperating with embarkation and transit States, with carriers, and through interdiction at sea where relevant?

4. Will penalties be imposed on carriers who bring unauthorized passengers to the State? If it is decided to impose penalties, decisions need to be made on the circumstances where penalties will
apply and the form such penalties will take.

Issues relating to carrier penalties are examined in Section 3.4, International Carrier Responsibilities.

5 Will detention be used for irregular migrants to ensure their availability for processing applications to remain, or for removal if no authorization to remain is granted?

6 Will any protection needs of persons intercepted or not admitted be identified and met in order to ensure that refugees are not refouled and victims of human trafficking are protected?

Section 3.5, Refugee Protection, discusses the protection needs of refugees.

Section 3.12, Irregular Migration, discusses protection needs of trafficked persons.

7 How will border management be influenced by strategies to counter migrant smuggling and human trafficking, including criminalization of human trafficking and migrant smuggling? Will penalties be applied to users as well as organizers? Especially important is the issue of how information on migrant smuggling operations will be collected, and how evidence will be obtained to support locating, arresting, and successfully prosecuting migrant smugglers and human traffickers.

What Do You Think?

If neighbouring States, or States that contain a major transit point for travellers to your State, are experiencing strong push factors for irregular migration (poverty, unemployment, natural disasters, human rights abuses), or are States with limited willingness or capacity to manage irregular migration of their nationals, border control faces major challenges. The building of cooperation with these neighbouring States is particularly important, and can include technical cooperation and assistance with costs.

Neighbouring and transit States without strong push factors for irregular migration (strong economy, good human rights record) may be prepared to cooperate by agreeing to readmit third country nationals who have transited their country, and to deal with protection claims and removal of the illegal migrant to their country of origin.
Apply What You Have Learned

1. Identify a policy decision related to border management in your State that responds to one of the questions raised in this topic.

2. How is border management influenced by strategies to counter migrant smuggling and human trafficking in your setting?

3. How permeable is the border in your State? How does this affect the approaches to border management?

4. What does your government do to set out migration rules in a clear, coherent, and predictable way?
An effective and efficient border management system is one that processes *bona fide* passengers with minimal delay and ensures that passengers without authorization are denied entry. There are a number of key tasks that need to be carried out at the border. These include:

- establishing the validity of the travel document by ensuring that it is not expired, counterfeit, or altered (for example by photo-substitution or insertion of pages)
- establishing the validity of the visa and ensuring that it is not counterfeit or altered
- establishing that the identity of the person presenting for clearance is the same as the person holding the travel document and the visa
- ascertaining *bona fide* intentions to abide by the conditions of the visa or the authorization to enter
- checking that there has been no change since the granting of the visa such that entry is no longer in the national interest
- considering and granting visas at the border
- referring to the appropriate authority those persons requiring consideration of protection claims
- referring for removal those persons who are denied admission
- collecting data on the movement of people through the border point
- collecting information on irregular movements and on migrant smuggling and trafficking of persons.

The key components of this ideal operational framework for border management are data, technology, trained personnel, anti-fraud and audit capability, and strategic partnerships. The important points that follow look at each of these in more detail.

Clearly, this level of technological support will not be financially feasible or sustainable by many States, especially those that are facing serious policy choices within their expenditure framework. This has highlighted the need for focused collaboration between States to develop the technological capacity required to benefit all.

It is also important to note that technology can improve effective border management processes, but it is not a substitute for appropriate legislation, well designed procedures, and trained and experienced staff who can perform the key functions.
Important Points

1. A fundamental responsibility of the officer undertaking inspection at the border is to ensure that the person in front of him or her is the same person who holds a valid travel document, and is the same person who made application for and was granted a valid visa. In order to do this, border inspection points ideally would need access to a system interface that records and tracks the unique identifier of the visa and any visa extension or work permit, and links this information with information on the travel document—preferably linked to biometric data.

2. The border inspector should be supported by automated data capture and analysis capability for all entries and exits and by high-speed dedicated data channels between headquarters and points of entry. Many States use a system of “landing cards” to collect information on incoming travellers. These cards, the design of which is subject to standards developed by the International Civil Aviation Organization (ICAO), sometimes serve a number of purposes. Unless landing cards are used solely for standalone data for tourism and statistics, systems are also needed to support landing card processing.

3. A system that correlates entry and exit data is also required. Data checking and data integrity processes are critical for information to be reliable and useful.

4. Border inspectors should have access to a real-time, regularly updated electronic “alert list” in order to ensure that the entry of the passenger is in the national interest. This “alert list” needs to include lists of persons, for example, war criminals, wanted criminals, suspected terrorists, or those who breached immigration conditions on a previous stay. It also should identify travel documents of concern, for example, stolen passports. System interfaces between border authorities and domestic and international law enforcement are also required. Since the content of such a list is derived from law enforcement or national security agencies, protocols need to be developed to govern the creation, maintenance, and use of such a list.

5. Personnel need training in order to detect document fraud, make administrative decisions, and understand policies and legislative requirements. Ideally this training should be supplemented and supported by automated and audited operational policies for entry and exit processing.

6. The border management system needs to be designed and operated in a way that protects it against fraud and corruption. The optimal system requires the following features:

   - ICAO-compliant, machine-readable, national travel documents (e.g., passports) with adequate and regularly updated security features and biometric data to avoid issue of visas
to unauthorized individuals

- a visa system that registers a unique identifier, linked to the travel document, and available to border control points
- ICAO-compliant, machine-readable visas with adequate security features to avoid transfer or alteration of visas or counterfeiting of visas
- a passport and visa system that checks and establishes identity at all points:
  - at the point of application for a visa
  - at the point of grant and evidencing of the visa
  - at the point of presentation of travel documents for granting of permission at both the points of embarkation (and reboarding in transit if relevant) and the point of entry
- passport and visa labels that are treated as accountable forms to be kept secure and issued to individual immigration officers subject to audit
- an audit and investigation trail of decisions on visa grants and on entry that will hold individual officers accountable for their decisions

Issues related to passport and visa production and issuance, including machine readability and ICAO compliance, are dealt with in greater detail in Section 3.1, Passport and Visa Systems.

The border inspection function will benefit from cooperation with other border agencies such as Health (quarantine) and Customs. Cost efficiencies can be obtained from integration of these functions on the front-line. This has further implications for training of front-line staff.

Effective border management will include strategic partnerships with airlines and other carriers to facilitate document examination and advanced passenger processing.

Issues related to the relationship with transportation carriers are discussed in Section 3.4, International Carrier Responsibilities.

What You Need To Know About...

Refugees and Trafficked Persons

Where a traveller is to be denied admission, there are two additional matters that require attention. These relate to the special circumstances of refugees and trafficked persons.

If the person to be removed is raising claims, or providing information, that *prima facie* may engage
the State’s international protection obligations, then provision must be made for those claims to either be fully considered by the United Nations High Commissioner for Refugees, or by the State’s own asylum determination system. The person can only be removed to a safe country where such provisions exist, the person’s life or freedom will not be at risk, and they will not be refouled to the alleged country of persecution.

If the person is a victim of human traffickers, consideration may need to be given to welfare assistance or to special arrangements on return to their country of origin, particularly if the person trafficked is a child. When contemplating a decision to remove in cases involving smuggling or trafficking, the gathering of evidence and statements from the person smuggled or trafficked, and any need for the physical presence of the person to give evidence in any court proceedings, need to be taken into account.

Special training in interviewing techniques is required for persons gathering information from victims of trafficking.

Section 3.1.2, Irregular Migration, provides greater detail on issues related to the treatment of trafficked persons.

Apply What You Have Learned

1. Are there any tasks that should be carried out at a border that are unfamiliar or inadequate in your setting?

2. Identify a form of cooperation that supports the border inspection function in your State.

3. How are border inspectors/staff trained in your setting?

4. How close to the optimal system does your State’s border management system come?
5 What system interfaces are available to border personnel in your setting?

6 How are the special circumstances of trafficked persons and refugees managed at borders in your setting?
Topic Four

Balancing Facilitation and Control: Other Approaches

The balancing of facilitation and control is the basic requirement for a border management system. While this usually takes place at the physical point of entry, it is increasingly being extended and, in effect, relocating the “border” to points of embarkation.

In pursuit of a balanced approach, measures are being widely adopted to improve the integrity of security features in identification and travel documents, and to develop new ways of recording and verifying travellers’ and migrants’ identities. A number of countries are planning to introduce, or have already introduced, replacement residence cards and other means of identification that incorporate special electronically readable codes and that are more resistant to forgery. This can assure greater certainty when identifying an individual and confirming that he or she is the genuine holder of the card. Part of this process involves the use of technology allowing identification through biometrics—unique personal data such as facial structure, hand geometry, fingerprints or the patterns of the human eye—to authenticate the identity of individuals. These approaches will serve to both facilitate and control entry.

An important way to facilitate migration before the traveller approaches the border is through systems for issuing visas prior to travel. Visas are recommendations on the bona fides of the traveller. If issued overseas, this process provides representatives of the country of destination with the opportunity to make an assessment of bona fides prior to travel, thus facilitating the travel and entry of bona fide travellers.

Section 3.1, Passport and Visa Systems, discusses the design and operation of visa systems.

Four other types of pre-frontier strategies are practiced by some States:

- Passenger Pre-Inspection, where immigration and customs officers are stationed abroad at airports and have responsibility for inspecting passengers departing for the officers’ country.
- Increased use of Immigration Liaison Officers and immigration inspection officers abroad to work with, train, and advise airline staff in the identification of fraudulent documents. This
What You Need To Know About...

Advanced Passenger Processing

The key to reducing processing delays at the border is to perform the registration and processing of travellers as much as possible before the traveller arrives at the border.

Remote processing has the following elements:
- application, processing, and evidencing (where relevant) of the visa in the country of citizenship or embarkation
- validation at the point of embarkation of documents, permission to enter, and identity
- advance processing of the entry function as much as possible during the period of transit
- adequately trained personnel undertaking primary inspections at the border to quickly separate bona fide travellers from those needing secondary inspection and further investigation

Advance passenger processing requires a strategic partnership with airlines, whereby information on pending entrants is gathered at check-in and transmitted by electronic manifests to border authorities. Pre-processing enables border authorities to pre-clear those with valid permission to enter, allowing the use of express lanes and fast inspection. Unless there is evidence of an intention contrary to the purposes of the visa (e.g., the contents of a traveller’s luggage indicate an intention to stay permanently or to work), this inspection can be limited largely to a final identity check, a check of the validity of the travel documents and visa, and a check against the electronic alert list.

Advanced passenger processing systems allow passengers with questionable or no documentation to
be targeted at the front-line. This allows properly documented passengers to be processed quickly. This approach is feasible only with advanced technology and sufficient travelling time, but it can deliver substantial savings on border resources.

Advanced passenger processing has additional advantages, for example, a traveller’s identity is confirmed before arrival, some referrals can be finalized in advance, it is easier to refer data to other agencies such as law enforcement, and suitable and adequate resources can be put in place at the point of inspection.

What You Need To Know About...

Interception

Border management controls are sometimes carried out at the point of embarkation. These controls seek to identify and deny entry to persons without a valid travel document or a valid visa, and those who have a valid visa but it is judged to be a *mala fide* visa because the passenger is assessed as not willing to abide by the visa conditions. These controls require the cooperation of carriers and of the State where embarkation takes place. The International Air Transport Association/Control Authorities Working Group (IATA/CAWG) brings together airlines and immigration control authorities from 19 countries to develop and pursue a cooperative programme for the facilitation and processing of air passengers, while ensuring effective action against illegitimate traffic.

Some States place Immigration Liaison Officers (ILOs) with airlines to assist with the identification of fraudulent documents and to provide airlines with training and advice on entry requirements. This assists them in complying with obligations under the *International Convention on Civil Aviation* (Chicago Convention) and thus avoid carrier sanctions.

Section 3.4, *International Carrier Responsibilities*, has more information about the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO).

ILOs are specialist document examiners. Although airlines decide whether to allow passengers to board their intended flight, these decisions are often made following advice from the ILO regarding the authenticity of passengers’ travel documents and visas. By maintaining a visible presence at international airports, ILOs also act as a deterrent to migrant smugglers and improperly documented passengers.
What You Need To Know About...

**Control at the Border Barrier**

The focus shifts to the border of the destination State when the passenger is allowed to board by a carrier. At this stage, the major consideration is the nature of the border itself. Entry to the State may be primarily by air, by sea, or by a long and potentially more porous land border (sometimes called the "green border") that requires control activity between the formal inspection points.

Analysis of the physical characteristics of the border and of traffic coming to the State enables a decision about location of border control infrastructure and levels of resources required. If circumvention of migration controls is to be avoided, particular attention needs to be paid to possible avenues for smuggled entry, e.g., as stowaways on trains, in trucks, or in shipping containers.

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**Example**

The holistic approach used by Australia appears to serve it well. Australia has determined that it is in its best interests to closely monitor movements in and out of the country. Aside from the comparatively small numbers involved in irregular migration, Australia has maintained a fair control over the annual influx of immigrants through its universal visa arrangements.

Other countries, such as the USA, European Union Member States, most African States, Canada, and others, have to contend with land borders, which clearly change the dynamics of immigration in ways that demand somewhat different administrative arrangements from Australia.

European Union countries in particular are addressing issues relating to the need to patrol along the "green borders". The move by the European Community is toward establishment of a common border guard force, joint operations by Member States at external borders, establishment of a core curriculum for border guard training, and consolidation of all European provisions concerning border control.

In situations where this form of integration is not feasible, there are still opportunities for close cooperation and collaboration between States that share a common land border. The Canada/US Smart Border Accord addresses a number of issues in this regard, and there are numerous examples of inter-State collaboration in exchange of information and operational coordination of border monitoring and detection activity.
The physical design of airline and shipping terminals should isolate incoming and outgoing passengers and ensure passengers must pass through immigration inspection points. Closed-circuit TV in terminals can ensure that unauthorized border arrivals are unable to delay presenting themselves for inspection in an attempt to avoid identification of their incoming flight or vessel. This approach supports availability of information on identity and nationality, and ensures that the relevant carrier can be made responsible for removal. Prompt liaison with carriers that are liable for the cost of unauthorized passengers is important to the effectiveness of this approach.

Profiling entrants, by analyzing data on past movements and subsequent visa compliance, enables efficient targeting of particular flights or vessels, and of particular individuals in the inspection queue.

Arrangements need to be put in place to screen crews of cruise ships and cargo vessels, as well as air crews.

Apply What You Have Learned

1. How would you adapt the schematic border management model to work in your setting?

2. How is control balanced with facilitation at the border barrier in your State?

3. How could facilitation of border security through advanced passenger processing be implemented in your setting?

4. How can control of irregular migration through interception be implemented in your setting?
Concluding Remarks

This Section reviewed policy and operational issues related to establishing a modern border management system. It identified the decisions that need to be made, and the choices that need to be addressed, in maintaining an approach that emphasizes both facilitation and control.

The ideal system of border management is one that employs a wide variety of technological measures. These range from the core technologies required for examination of documents and compilation of data, through to more specialized technologies that can be used to detect persons hiding in cargo containers or to monitor large segments of unpatrolled land border.

Resources

Material on refugees:

Material on the Convention against Torture:
http://www.hrweb.org/legal/cat.html


Material on the migration/asylum nexus, Fact Sheets:

Endnotes

1 The 1982 United Nations Convention on the Law of the Sea [UNCLOS] allows a State to claim a territorial sea of up to twelve nautical miles from baselines [Article 3].

2 Article 33[2] of UNCLOS grants the coastal State jurisdiction over the waters that lie immediately beyond the limits of the territorial sea up to 24 miles from the baselines.

3 Bearing in mind that Article 31 of the Convention Relating to the Status of Refugees prohibits the imposition of penalties for illegal entry or presence on refugees who have come directly from a country where their life or freedom was threatened.