# Challenges for Integrated Border Management in the European Union

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## Abstract

The expansion of the European Union has required a rethinking of how the external borders of the EU can best be protected against transnational crime, illegal immigration, trafficking in goods and people, non-legitimate asylum seekers and terrorist-related threats. The history, strategic logic, issues faced and current policies for securing the expanding external borders of the EU through the integrated border management (IBM) vision and strategy will be described and critically analysed. The paper is based on information in publicly available documents from EU institutions, scholarly writings on borders and the management of border controls, my own prior writings on border controls and police reforms, and a few interviews with participants involved in creating a new EU integrated border management system.

## List of Abbreviations and Acronyms

| | |
|---|---|
| AFSJ | Area of Freedom, Security and Justice |
| BG | Border Guard |
| CARDS | Community Assistance for Reconstruction, Development and Stabilisation |
| CCC | Common Core Curriculum (for border guards) |
| CEPOL | European Police College |
| CEPS | Centre for European Policy Studies |
| CEU | Council of the European Union (formerly the Council of Ministers); ministers represent the member states of the EU |
| CIRAM | Common Integrated Risk Analysis Model |
| CoE | Council of Europe (Not an EU institution, has 47 member states, focuses on promoting human rights) |
| CRATE | Centralised Record of Available Technical Equipment (FRONTEX) |
| DCAF | Geneva Centre for the Democratic Control of Armed Forces |
| EBF | External Border Fund |
| EC | European Commission |
| EMCDDA | European Monitoring Centre for Drugs and Drug Addiction |
| EPN | European Patrols Network |
| EPNI | European Neighbourhood and Partnership Instrument |
| ESTA | Electronic Travel Authorisation System |
| EU | European Union |
| Europol | European Police Office |
| EUROSUR | European border surveillance system |
| FJSTs | FRONTEX joint support teams |
| FRONTEX | European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union |
| IBM | Integrated Border Management |
| IGO | Inter-Governmental Organisation |
| IOM | International Organization for Migration |
| JHA | Justice and Home Affairs |
| JO | Joint Operation |
| MoU | Memorandum of Understanding |
| MS | Member State of the EU |
| MSs | Member States of the EU |
| NATO | North Atlantic Treaty Organization |
| NGO | Non-Governmental Organisation |
| OSCE | Organization for Security and Co-operation in Europe |
| PNR | Passenger Name Record |
| RABIT | Rapid Border Intervention Team |
| RAU | Risk Analysis Unit (FRONTEX) |
| SaR | Search and Rescue |
| SBC | Schengen Borders Code |
| SIS | Schengen Information System |
| SMB | Swedish Migration Board |
| SSG | Security Sector Governance |
| SSR | Security Sector Reform |
| UNCHR | UN Commission on Human Rights |
| UNHCR | Office of the UN High Commissioner for Refugees |
| WB | Western Balkans |

# Challenges for Integrated Border Management in the European Union[1]

*Otwin Marenin*

## 1. Introduction

### 1.1 The Borders Policy Problems

The integrated management of borders is a messy, 'wicked' policy problem (Harmon and Mayer, 1986). Wicked problems have no neat, routine, technical, bureaucratic, managerialist solutions. 'The metaphor of the wicked problem stands in contrast to traditional bureaucratic policymaking and implementation. For wicked problems, agreement is forged by jointly steering courses of action and delivering policy outputs that are consistent with the multiplicity of societal interests' (Agranoff and McGuire, 2003: 24). Agreements require extensive negotiation, political compromises, a willingness by individual stakeholders to balance individual gains and losses against the larger goals of a policy and the sustained ability by all to work together, to collaborate and cooperate with other groups and organisations.

The obstacles faced when seeking to manage control of the borders of the European Union are characteristic of a wicked problem: problems and goals have to be agreed on and defined; appropriate conceptualisations of borders and their problems have to be developed; the idea of integrated border management (IBM) requires a clear policy statement naming the institutions and practices which will have to be integrated; plans on how the integration process will be implemented, by whom and in what sequence have to be written; and success criteria for evaluating progress towards IBM have to be designed and validated. Most importantly, the solution sought – IBM – has to accommodate the multiple interests of 27 member states and the European Community as a whole. IBM in the EU has to be placed, as well, within political, legal and institutional developments in the EU, as these constrain

and guide the notion of IBM as a necessary goal for the protection of all members of the EU.

Yet most of the thinking and planning for IBM in the EU has been conducted as if IBM were a clean problem susceptible to bureaucratic, managerialist solutions. As a consequence, the institutionalisation of IBM as an organisational and operational reality has been somewhat limited and further progress towards IBM will always be complicated, if not stymied, by the reluctance of all parties involved – member states, EU institutions and national publics – to work together without tensions and conflicts over how IBM should be achieved.

The voluntary joining of sovereign member states into a larger economic and political union and community has ineluctably led to the need for a more coordinated system of controls at the external borders. The expansion of the 'area of freedom, security and justice' (AFSJ) in the vocabulary of EU politicians and bureaucrats (also referred to as the 'Schengenspace' or 'Schengenland'[2]) introduced four freedoms of movement (people, goods, services, capital) and has effectively eliminated internal border controls among EU member states which have met the standards of the Schengen Convention. The protection of the EU's 'borderless' interior space has shifted to the expanding EU external borders and the member states (MSs) which happen to be located at the external borders. The protection of Germany or Switzerland from transnational threats now depends on the work of border guards in Spain, Poland and Italy. As the interior space opened up to the four freedoms of movement, the importance of security at the external borders to protect that space and the need to develop cooperative mechanisms in the interior space for the ongoing control of criminal and illegal activities increased in tandem. The management of external borders has become a community interest in which all MSs have a stake (e.g., EurActiv, 2006). Community interests, in the language of the EU, reflect the solidarity of all MSs in support of a common goal, achieved through the voluntary sharing of sovereignty, yet without taking away the ultimate right of MSs to control their own territory and borders.

The protection of the now 'borderless'[3] interior space cannot be assured by the security agencies of one or a few MSs. The search for new institutions to

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[2] Schengen is a small town in Luxemburg where the first police and security cooperation agreement among five member states (the Benelux countries, France and Germany) was signed in 1985. The Schengen Agreement established policies for fast crossing of borders – e.g. a cursory visual inspection of slow-moving vehicles or an identification disc affixed to a car for fast lane entry – and created cooperative arrangements among the police forces of the signatories, such as in hot pursuits into the territory of other states. The agreement was drawn up in secrecy by security agencies along the borders and not made known to the governments of all member states. Only the government of the Netherlands debated the text of the agreement. In contrast, the agreement became known to the French government only after a newspaper, *Le Figaro*, reported its existence (Hebenton and Thomas, 1995: 63).

[3] An anonymous reviewer did not agree that borders had been eliminated in the Schengen space. Technically, that is correct. There are still lines among the MSs of the EU. The problem is how to find them. One can cross

manage controls at the external borders and provide security in the interior space of the EU, the need for greater integration at the external borders and the compensating need for greater cooperation in the interior space have proceeded simultaneously, but at different paces. The focus of this paper, though, will be on the management of the external borders, with reference to interior cooperation agreements when such are included in or linked to various conceptions of IBM.

Authority and responsibility for decisions in the EU were divided, in the language of the EU, into three pillars, though the latest treaty (the Treaty of Lisbon), which was ratified by all member states after the last holdout – the Czech president – signed on in late 2009, has removed the pillar language but has not altered in any significant way the distribution of authority among three policy domains: policies which are in the common, community interest and are decided by EU institutions (the former first pillar domain); decisions in the foreign policy arena (the former second pillar); and decisions which remain under the sovereign control of member states (the former third pillar). This division of labour and competencies causes some problem for IBM, since border controls are a community decision, while police cooperation among security agencies of member states has been and remains a member state competency. Primary responsibility for proposing and enacting legislation within the three policy domains has been allocated to the four basic political institutions of the EU (Council of the European Union, European Parliament, European Commission[4] and the European Council), with the European Commission (EC: the 'executive' branch, the bureaucracy within the EU's organisational structure) having lead responsibility within the community domain, including IBM.

All decisions within the EU reflect the competing interests and values of participants in those institutions. Formally, the European Parliament speaks for the publics of MSs; the EC defends the common interests of all; and the Council of the European Union (CEU) upholds the interests of states and

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from Freiburg to Strasbourg, and the border is somewhere in the middle of the Rhine, but there is no control on driving between the two cities or walking across the bridge. I will argue that borders exist, in any practical sense, only when they are controlled. When controls are absent, borders cease to be effective dividing lines. One can still find the physical remnants of past control activities driving across borders, but the posts are empty shells and the barriers have been taken down. Are you driving across a line, a border? Yes. Is your mobility controlled? No. Do borders still exist? Yes and no. Or one should say, more accurately, national political systems exist on both sides of a border line, but mobility across that line if it exists in Schengenspace is basically unhindered.

[4]    One anonymous reviewer objected to calling the EC a political institution. That objection is based on a misunderstanding of the nature of bureaucracies in any political system. Bureaucracies do not just execute or administer decisions made by other political structures in the system. Bureaucrats, when they interpret and implement laws shape the impacts of those laws in ways which often could not have been predicted by the general language and phrases of the establishing law. Bureaucracies will be besieged, as well, by interest groups and individuals who lobby for particular interpretations. The social impacts of laws ultimately reflect the general goals of laws and the political, organisational and legal interpretations by bureaucrats of how best to implement and administer the law. That is an exercise of power, hence a political process. The political nature of bureaucratic decisions is especially true for the EC, which has the 'right of initiative' for originating proposals and drafts for legislation in the community domain.

their governments. The European Council, comprising the heads of states of MSs and the president of the EC, suggests general policy directions for the EU in its annual summit meetings; these often reflect the views and priorities of its rotating presidents. All policy decisions within and for the EU, in the end, are negotiated among the four basic institutions and the interests they represent. Most fundamentally, the potential clash of interests and priorities between member states and the community as a whole can only be resolved through extended negotiations and political compromises. This requires a delicate balancing act, a dance of competing sovereignty claims and shifting alliances and partnerings among the dancers.

Nor are the interests and priorities of all member states aligned. Significant tensions and differences of opinion exist between small and large states; not all MSs, for their own domestic reasons, have joined Schengenland and the latest 12 MSs have not yet been fully integrated into Schengenspace; only 16 MSs have adopted the euro as their currency; and three non-EU micro-states and Turkey belong to the European Customs Union. There is a lot of resentment and distrust among national publics and government agencies of the 'Eurocrats' (the EC bureaucracy) in Brussels about how they make decisions and whose interests they really represent. These sentiments cannot be ignored in any analysis of the development of IBM in the EU.

Integrated border management, as it takes shape and becomes institutionalised within the EU and at the external borders, is the end result of lengthy and contentious political discussions and negotiations. Member states believe that control of their borders, even when these are also external borders of the EU, is a sovereign right which they do not give up when joining the European community, while EU institutions, specifically the EC, assert the need for MSs to give up some sovereignty for the good of all. MSs seek to limit the loss of sovereignty while the EC wants to expand the community policy area, over which is has a large say.

All policy domains are immersed in and constrained by the developing body of laws and regulations that exists in the EU, the *acquis communautaire*. The (hard) *acquis* contains all the regulations which have the force of law in the EU. The soft *acquis*, such as the Schengen Catalogue, contains non-binding regulations and recommendations on how hard *acquis* regulations may be implemented. The *acquis* is amended and added to whenever new mandatory laws and regulations on any aspects of EU activities are issued, and is said to be over 3,000 pages long if collected in one place. The *acquis* matters for IBM since police and border guards are subject to general rules contained in the *acquis*, such as the protection of people's rights and privacy; multiple codes of conduct of a general nature (e.g. use of force); criminal laws;

accountability and transparency expectations; personnel regulations; law on non-discrimination and rights; and legal constraints on data sharing.

The *acquis* and associated accountability institutions and laws (such as the Court of Justice, the European Ombudsman, the European Data Protection Supervisor and the European Code of Good Administrative Behaviour promulgated by the Ombudsman's Office) act as back-stage mechanisms which are expected to influence the actions of border guards, while more specific regulations on their competencies and how they should conduct their work have been enacted as well.

The legal documents which most specifically impact on IBM are the Schengen Convention of 1990 (European Union, 1990) and the Schengen Borders Code (European Union, 2006). The initial Schengen Agreement of 1985 has been expanded and incorporated into the political and institutional structure of the expanding EU, and provides the legal basis of the AFSJ within the EU. New member states, to be admitted to Schengenland, have to meet the threshold requirements for admission (and the ability of their citizens to travel freely) as stated in the Schengen Convention and added to the body of EU laws (the *acquis communautaire*) through incorporation into the Treaty of Amsterdam in 1999. (The treaty itself was ratified in 1997.) Admission to the EU does not automatically admit a new MS to Schengenland. Only when evaluated and judged to have met the requirements for admission by experts from the European Commission and MSs, and after the evaluation has been agreed to by the CEU, can new MSs enter Schengenland. A positive report from the team is 'a *sine qua non* for full SCH membership' (anonymous reviewer).

Not all current member states have met the requirements of the Schengen Convention, resulting in a two-tier Schengenspace at this time. Restriction on mobility at the interior borders of the most recent member states have not been lifted completely, but will be removed once those states bring their security agencies up to European and Schengen standards. For example, restrictions on free mobility still remain at the borders between Poland and Germany, and between Romania and Hungary.

The Schengen Convention delineates areas of cooperation for the external borders and interior space of the EU: internal borders, police and security, and the Schengen Information System (SIS). Police and security (Title III) is divided into police cooperation (Articles 39–47) and other security areas (e.g. narcotic trafficking, extradition and legal cooperation). Rules and regulations for each policy area are carefully spelled out. The Treaty of Lisbon deals with the same issues for the AFSJ – cooperation at the borders and within the interior space – under five headings: general provisions, policies on

border checks, asylum and immigration, judicial cooperation in civil matters, judicial cooperation in criminal matters and police cooperation.

A large number of institutional and legal developments have fleshed out the bare bones of the convention. The Schengen Borders Code (SBC), enacted in 2006, spells out additional detailed regulations on how the external and internal borders are to be managed; there exists, as well, an extensive catalogue of CEU, European Parliament, EC and European Council laws, decisions and recommendations which attempt to deal in great detail with every possibility, contingency and issue raised by the effective management of borders.

## 1.2 European Borders

What policy issues are raised at the external borders of the EU? The external borders now, if one thinks of the EU as one region with common and shared interests, enclose a population of about 500 million, living in a space roughly half the size of the USA, with an economic activity (measured as GDP in 2005) slightly larger than that of the USA or about three times that of Japan (European Commission, 2007b). A significant portion of the region's GDP is created by guest workers and legal and illegal immigrants.

The external land (green) border now runs roughly south to north along Sweden's western border, loops around the top of Finland and winds it way south to Greece and the Mediterranean, separating member states at the borders from non-EU neighbours and potential accession states; sea (blue) borders of member states run along the Mediterranean, Atlantic and Baltic seas, with the Black Sea borders added once Bulgaria and Romania are fully admitted to the Schengenspace; and there are airport checkpoints for flights originating outside the EU in every MS.

A look at the map shows some oddities, and a major external/internal land border normally separated out in discussions of border management. The oddities are territorial remnants of past colonial ambitions: islands which technically are part of the EU, such the Canary Islands, Martinique and Reunion; the small Spanish enclaves of Ceuta and Melilla on the African continent which are surrounded by Morocco; overseas territories controlled by member states and still considered part of the EU, such as French Guyana; and Greek islands far closer to the Turkish coast than the Greece. These remnants of past empires and European expansion present a control problem because once people have entered them, legally or illegally, they are in the EU and have acquired by their presence, legal or not, certain rights not granted to people outside the external borders, such as petitions for asylum. At the same time, if entry was illegal and was detected, immigrants

will be detained, investigated, placed in detention facilities and ultimately deported (or admitted if asylum status is granted).

Many of the current problems with controlling the inflow of illegal migrants into the EU occur in these colonial remnants, but at different times as migration flows and transnational crime routes shift in response to control efforts – Ceuta and Melilla one year, the Canary Islands another year. Colonial remnants and inconveniently located islands, such as Lambedusa which is much closer to Tunisia than Italy (but is Italian territory), have forced the EU to extend its border control activities far beyond the geographic continental limits of the EU.

Some European states – Norway, Switzerland and Iceland – have not joined the EU but have agreed to participate in the Schengen Convention and the SBC. Great Britain is a member of the EU but does not participate completely in the freedom of movement vision and provisions that apply to the AFSJ.[5]

Another important border control issues for IBM are what one might call territorial holes in the EU: states and regions which are surrounded by EU MSs. Since these territories and countries are not in the EU but are enclosed by EU space, the EU has little official control or influence over them other than by their desire to become members of the EU at some point in time. Two small holes do not raise big problems: Kaliningrad, which was given to Russia after the First World War but is separated from Russia by a strip of Lithuanian and Polish territory; and Switzerland, which is not a member of the EU but has voted (in 2008) to join Schengenland and accept its attendant obligations.

The big and problematic territorial holes are the states which emerged after the collapse of Yugoslavia (the exception being Slovenia, which was accepted into the EU), and Albania. The expansion of the EU to 27 current member states leapfrogged the six (or potentially seven if Kosovo remains an internationally accepted state) Western Balkan states, thereby creating an external border within rather than at the edges of the EU. This poses a starkly different policy problem for IBM in the Balkans, as the new states lack political stability and much of the transnational illegal movement of people and goods follows the so-called Balkan route which runs right through the territorial hole.

The colonial remnants (and one can include the British territory of Gibraltar), the holes in the EU and the exceptions to full participation

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[5]  Domestic politics and disagreements on how closely the UK ought to become associated with EU institutions and policies have limited the UK's participation. A strong and vocal section of the political élite and the public have not been supportive of many EU initiatives, including the lifting of border controls among member states.

negotiated by some MSs complicate border management. Reading EC documents, for example on the establishment of FRONTEX or the SBC, one finds lengthy sections which, in the best bureaucratic language, deal with all the exceptions, modifications and reservations to the common rules required by the incompleteness of existing EU memberships and loyalties.

## 1.3 Policy Issues at the European Borders

A number of basic financial, practical and ideological policy issues in protecting the external borders of the EU have emerged. One is the distribution of financial obligations for border security. The costs of protecting the internal EU space cannot be borne only by those states which happen to be located at the external borders, whether land (green) or sea (blue), but need to be shared among all EU member states on some rational basis. Complicated formulas have been used to calculate the allocations of financial support. Means by which costs can be shared include the contribution of personnel from all states towards a common border security agency and the creation of an external border fund (EBF) which will repay or subsidise the border control costs of MSs which happen to be at the external borders.

Practical problems for IBM include how to enhance inter-agency cooperation and how to coordinate operational cooperation or a joining of national contingents into one cohesive and unified border control system – the basic integrated border management issue. That raises the question of how to integrate personnel who are organised in distinct and varying national structures, carry out different roles in their own states and are trained, controlled and administered in distinct national styles – not to mention the practical problems of language, equipment, technologies – into one border control system or agency.

In addition, there is the practical policy issue of how border guards[6] will cooperate with customs and immigration officers who control and facilitate the flow of legal and illegal goods at the crossing points where all work, as well as other relevant security and collateral agencies (e.g. health, transportation) which have an impact on domestic and border security.

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[6] The issue of what to call security personnel who control borders is somewhat contentious. Some states call their security personnel border police, others border guards; EU documents refer to them generally as border guards. The most common-sense definition is contained in the guidelines (European Union, 2004: 20), which define them as 'specialized, unified, well-trained and fully professional and independent police-like border guard forces'. They are police, but with limited and specific jurisdiction and authority. When I use 'border guards' in the paper, that is the definition to which I refer.

Another issue is 'where exactly is the border'? The green, blue and air[7] borders are 'imagined' physical lines on the ground or in rivers, lakes and seas. But border control activities occur far beyond those lines and extend deeply into the domestic security space and systems of other states. For example, the collection of intelligence on organised crime groups engaged in transnational crime and the issuing of visas or entry permits are border control actions. States, and the EU, have actively engaged private corporations (airlines, shipping companies) in protecting borders far away from the physical borders, and many domestic security agencies have been harnessed to track down border crossers who illegally enter protected space or enter legally but overstay their visa limits. In an age when technology has wiped out physical controls at the borders for many transactions (money transfers, the creation of documents and trafficking arrangements) through instant communications, focusing purely on the physical borders is a limited response to the border problem. The borders are not a line, but a zone with unclear and even global limits. The operational question is how a traditional external border protection system can be transformed, linked to and integrated into a wider zonal and global border control system.

Another issue focuses on exactly what are the risks and threats posed by the new external borders. Without even limited consensus, it will be difficult to design and implement a border control system that deals with threats or develops systems of information sharing that describe and analyse the dynamics and extent of threats and vulnerabilities. Yet it would not be surprising if different member states had divergent views of risks and vulnerabilities.

Basic ideological/political questions centre on trust and accountability. The trust issue is crucial: namely, how can enough trust be created such that interior states are willing to depend for their security on the willingness and capabilities of external border states – in effect turn aspects of their sovereignty over to other member states of the EU, some of which have no recent histories of effective and democratic security sector management?

Citizens and governments of the interior EU member states can only be and feel safe if the new external borders effectively control the ingress of unwanted people, goods and threats. That requires a 'philosophy of mutual trust [as] the core idea in the establishment and development of border security systems' among policy élites, political leaders, citizen groups and border control agencies (DCAF, 2001: 19). Such trust is often in short

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[7]   Air borders normally refer to controls at designated airports, but can include green borders if planes attempt to fly across the borders without proper clearance. Airport security presents a different problem from planes flying into a country illegally. For example, much drug trafficking into the USA is by planes which island hop across the Caribbean from Latin America or cross from Mexico into the USA. Once detected they have to be traced to their landing places, normally grass landing strips since the planes are small, in the USA in order to apprehend the planes, pilots and their cargo.

supply, and has to be earned by EU institutions which claim to speak for the interests of all, and by new member states.[8]

The two-tier Schengen access system which applies to recent 10+2 additions to the EU is an indication that such trust is not yet complete. Recent member countries are not yet part of the Schengenspace and still have some limitations on the free flow of people into the older Schengen countries placed on them; the entry of Romania and Bulgaria (the +2 states) led some member states to argue for a delay in lifting border control restrictions until Schengen-linked preconditions had been met, as trust that the border and security systems of both states had been sufficiently reformed and brought up to EU standards was lacking.

Accountability, the belief and commitment among accepted political leaders and security agencies that they have to explain their actions when challenged, is a crucial issue for participation and working with other countries and their agencies in an integrated border control system. How will the border police or guards be controlled and sanctioned if they misbehave or engage in corruption once they are working within an integrated IBM system? Are there workable institutions and processes in place to ensure that border guards provide effective security but also abide by international and EU legal and human rights norms and codes of conduct, or will the security agencies continue to enjoy impunity for their actions as they have in the past, before the collapse of the Soviet Union and its *cordon sanitaire*, and the entry of newly independent or liberated states into the EU? What new mechanisms are being developed and put in place to ensure transparency and accountability within a community-wide IBM system?

Democratic control of border guards is no less an essential necessity than is control of the police, military or intelligence agencies. In the EU, oversight and accountability over the actions of border guards rest with the member states, supplemented by the norms of the *acquis communautaire*, the Schengen *acquis* and specific codes of conduct, and by a 'mutual monitoring mechanism called the Standing Committee on the Evaluation and Implementation of Schengen' (European Commission, 2002: Introduction, Article 10).

Yet, in general practice and within the framework of managerialist policy thinking, oversight is expected to be implemented and enforced by almost 'self-executing' *acquis* norms (professionally trained guards will abide by them), supplemented by national oversight arrangements and EC bureaucrats and MSs security agents who staff the Schengen evaluation committees

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[8]  The trust issue occurs at any border. For a discussion of how trust levels have influenced the ability to cooperate across borders among the three NAFTA states – Canada, USA, Mexico – see Cottam, 2006; Cottam and Marenin, 2005.

which show up occasionally. Democratic oversight of IBM is always mentioned in the administrative and policy documents issued by EU institutions, but how well and to what effect these phrases are implemented are unknown or little discussed.

## 1.4    Conceptions of Integrated Border Management

Given the multiplicity of issues involved, IBM has diverse meanings in the border management literature and in policy discussions in the EU. For analytical clarity one can distinguish three perspectives or models on integration: IBM in the context of security sector reform (SSR/IBM); EU and EC deliberations on the practical meanings of IBM within the EU (IBM/EC); and the status, authority and competences of FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) as stated in its establishment regulation and later amendments. Though analytically distinguishable, conceptions and models of IBM shade into each other in practice. The models point to the continuum of integration and border management needs which have to be dealt with and the difficulties in achieving a widely accepted version of IBM. IBM within the context of SSR is a much more complicated process than supporting operational coordination of existing MS border guard agencies. SSR/IBM has more comprehensive goals than FRONTEX, and the integrative changes required are more complex and extensive.

The common elements of IBM in the three analytical conceptions (or models) include organisational and operational cooperation (or working together) by all agencies which have some legal authority to exercise an aspect of border control; the harmonisation of laws and policies to ensure that controls are executed in a similar manner anywhere along the borders; and cooperation in collateral functions which support the effective management of border controls, such as intelligence sharing, basic and advanced training of border police, common visa and asylum policies, and the extraction of lessons learned that could be utilised in amending and improving functional and operational activities.

The most common conception of IBM in various documents is the 'four-tier Schengen model' stated in the Schengen Catalogue (CEU, 2002). The catalogue, issued by the CEU in 2003, is a set of recommendations and guidelines (rather than law which has to be followed) on how to think about policy issues in IBM. IBM has four goals (and tiers): securing cooperation at the borders; conducting measures in the countries of origin of illegal mobility and threats; cooperation with security actors in other states; and

cooperation with domestic security agencies – in other words, working together at the border and upstream and downstream with other relevant actors.

The differences between the models centre around the number and types of governmental agencies and civic society groupings which should be included in an integrated system; the extent to which domestic and international agencies should be integrated into operational activities and collateral functions at the borders; and horizontal integration at border posts, specifically cooperation among border police, customs agents and other controllers (e.g. health inspectors).

Models also differ in the importance attached to democratic accountability mechanisms which need to be incorporated into an IBM system. Essentially, border controllers are police; they are authorised to use the law and force to control people at borders and away from the borders. They are given great power. They have the responsibility to exercise that power according to law and professional norms, and need to be transparent and accountable for what they do or do not do. Models differ by the perceived need for accountability and the types of mechanisms enshrined in them.

### 1.4.1 SSR/IBM

IBM linked to security sector reform and governance (SSR and SSG) represents the most integrative, complicated and complex conception of IBM and leads to a corresponding complexity of agencies, tasks and policies which have to be integrated. As derived from analyses and policy discussions of the security sector and its reform, IBM in the SSR context refers to problems associated with linking and enhancing cooperation among domestic and transnational security-providing agencies, normally conceived to include military, police, intelligence and border protection agencies, and other collateral agencies relevant to border management.

The basic assumption and arguments are that security in any state or regional system is provided by multiple actors, all of whom share some responsibility for providing safety under democratic guidance and accountability. There is within SSR thinking a strong sense that the integration of the security sector has to include all security and collateral agencies (including civic society associations) which have a responsibility for or a hand in providing security. SSR represents a global theoretical and policy-oriented view of integration needs and processes – meaningful anywhere, but also applicable to the conditions of the European continent. Border guards are simply one element in a functioning security sector.

There is, as well, a strong emphasis on ensuring the democratic governance of security systems (SSG). The powers and authority given to the four core security agencies require democratic oversight to prevent abuse and corruption – conventional temptations for those granted the right to control people, and who by their actions affect the fortunes and rights of people.

The EU has endorsed the concept of SSR, most specifically in the CEU conclusion on a 'Policy Framework for Security Sector Reform' adopted on 12 June 2006 (CEU, 2006b). But as Derks and More (2009) point out, the implementation of the policy framework has been beset by problems. For one, 'there is a lack of clarity and tensions regarding competencies' (ibid.: 5) over domestic security, military affairs and foreign policy. (The former second pillar included military affairs and foreign policy.) More important has been the disconnect between rhetoric and practice. 'On paper, the EU policy endorses a holistic approach to SSR. However, in practice most EU SSR-support projects do not reflect the holistic and integrated character of SSR but instead concentrate on one or two individual parts of the security sector'; and democratic oversight aspects of SSR are 'neglected almost completely' (ibid.: 7).

SSR/IBM has been, most consistently, the model and goal for security sector reforms and IBM in the Balkans. Much of the impetus and material support for reforms has come through regional and international programmes provided by states, regional organisations and NGOs.

### 1.4.2 IBM/EC

A second meaning (IBM/EC) is associated with the specific dynamics of EU expansion by early 2007 to 27 states, with other accession countries waiting in the wings, and the creation of a borderless Schengenspace within the common external boundaries of the expanding EU. The EU, through various mechanisms and institutions, has sought to strengthen external control capacities by creating an overlay of support for border guards of MSs. IBM/EC connotes the various and changing efforts promoted by the EU to integrate border management at the external borders and assist external MS border control agencies in working out bilateral and regional cooperative agreements. IBM/EC is in many ways the least defined model, and largely consists of statements of goals, aspirations, the need to do something and a variety of policy aims as the EU has expanded. Institutionally, IBM/EC has undergone various mutations, shifting from an envisioned European border corps to the latest and current mutation, FRONTEX.

As noted above, compensating measures and mechanisms for control of the interior space are part of the EU's conception of what security requires

operationally and institutionally. The creation of the AFSJ opened up mobility to all, including criminals and other threats, which could not be effectively confronted by traditional, nation-state police and criminal justice agencies operating independently. Police cooperation to deal with conventional and transnational crime and illegal migrants (once they have successfully evaded external EU border controls) has increased massively. Europol became legally integrated into the EU structure as an independent EU agency. Greater cooperation mechanisms among criminal justice agencies, such as EUROJUST, have been created (Lopes da Mota, 2009). The sharing of data among diverse intelligence information systems, such as SIS and SIS II (the Europol-based information system for MSs), has been routinised.

### 1.4.3 FRONTEX

The third and most limited model of IBM, at this time, has been institutionalised as the European Agency for the Management of Operational Cooperation at the External Borders of the Member Sates of the European Union (mercifully abbreviated as FRONTEX). FRONTEX is the highest level of integration acceptable to the member states of the EU which are loath to give up control over their (and the common) borders.

As the long title implies, the tasks and goals of FRONTEX are to enhance and support inter-agency and operational cooperation among the still autonomous and sovereign border control agencies of MSs, and to develop and promote common policies on training, risk assessment, joint operations and assessments of impacts. The basic goal is to ensure that the border guards of MSs conduct their work in similar, that is in 'European', ways. The focus of FRONTEX activities is largely limited to controlling physical border crossings by people; its other activities, e.g. risk analysis to detect likely illegal migrant streams flowing towards the borders or the development of a common core training curriculum for MS border guards, are in support of border control processes at the physical external land, sea and air borders.

The SSR concept is relevant for the EU and its interior space but has been an issue mainly with potential accession countries, which need to bring all their security sectors and agencies up to European standards. SSR has more general relevance to notions of how to reform security and justice systems anywhere, while the EU's IBM idea and strategy are more relevant to recent EU border control developments, with FRONTEX as the institutional culmination. Ultimately, though, the three concepts will have to merge if and when the Balkan territorial hole is filled in through accession. If and when an integrated EU border control system, including possibly a new autonomous or independent operational border agency, can be created, it will have to be

integrated, in turn, into the existing security sectors within the international fields, transborder neighbours and the Schengenspace members of the EU.

The three models will be discussed and evaluated below in greater detail.


## 1.5    Borders as Theoretical Objects

Borders have become fashionable objects of academic and scholarly enquiry. Do they still matter, and how? What reasons can be argued that their relevance has declined or increased? The basic underlying theme in scholarly thinking is that borders are complicated subjects and topics; they are 'barriers, bridges, resources and symbols of identity' (O'Dowd, 2001: 68). Borders include and exclude. They provide assurances of security against changing transnational threats and they are targets to be subverted and avoided by illegal activities. They protect social and economic interests, hence are a resource against foreign intrusions and competition, and they open to invite guest workers needed for local economies. They delimit stable identities and coherence in a shifting world and, as is the case in the EU, seek to create new identities, normative attachments and political loyalties.
There exists, as well, a large and growing body of literature which focuses on borderlands, or border zones, to understand the dynamics by which cooperation across borders has developed historically and what lessons case studies of borderlands might hold for theories analysing and policies promoting IBM, and greater cooperation among border police among regions and globally (e.g. Witt, 2001).


## 1.6   Questions

The paper will address four basic questions.

- What models of IBM have been pursued in rhetoric and practice in the EU?

- What is the current state of IBM institutions and policies in the EU and potential accession countries?

- What future developments are likely? Where are the obstacles to further integration?

- What is the optimal level of integration? Can there be too much integration?

To understand the vagaries of IBM in the EU now, and its likely future, I will first lay out some of the conceptual and practical issues relevant for IBM.

The nature of borders in the current world needs to be clarified and elaborated; practices of control and management at the borders and upstream and downstream have to be enumerated and described; the multiple meanings of integration have to be analysed. Stated differently: what are borders; what is border management; and what policies and practices constitute integration?

The development of IBM in the EU can be viewed through the three conceptual lenses or models described earlier, not for the sheer joy of the intellectual exercise, but because the lenses allow me to analyse and evaluate the institutionalisation and performance of the IBM 'models' within the context of the EU's political history. The models allow me to discuss the conceptual and policy issues which affect borders, management and integration, to offer some reasons why IBM will experience limited success in the EU as it is currently structured and suggest some ways forward towards the goal of an optimal IBM system.

## 1.7    Thesis and Argument

I argue that a coherent and unified IBM system in the EU is unlikely to be achieved in the way IBM has been defined, modelled and institutionalised. If the EU's conception of IBM as an integrated organisational system were actually implemented in all its aspects, this would lead to organisational and operational inefficiencies and waste on a massive scale.
Integration is more likely to run along two pathways. The first is integration achieved through a thickening of webs of information and databases and the harmonisation of policies, but leaving operational controls of borders largely in the hands of MSs.

The integration of information systems as a prerequisite for inter-agency cooperation and the harmonisation of training, regulations and performance criteria (to a lesser degree) are likely further steps towards IBM. But combining MS border control agencies or melding different agencies, depending on which model is pursued, into a common overarching border guarding organisation or management system is highly unlikely.

Nor is it clear what added value such an integrated system would produce. There would also be serious political reservations about the threats to privacy, government control and subterranean encroachment on the protection of rights and justice policies a complete integrated system might bring about. Effectiveness could outweigh justice, a fear widely expressed by Eurosceptics and national publics, vide the rejection of the proposed EU constitution by the Danes and recent reservations by the Irish about

ratifying the Lisbon Treaty.9 Loose coordination of agencies and more effective operational cooperation in specific border management tasks are the most likely future.

The second pathway is FRONTEX, which will continue to expand its authority and competence but is probably close to reaching its optimal level of efficiency, for the simple reason that as long as the basic tensions between community and MS interests persist and are built into the institutional structure and language of the EU, going beyond encouraging and supporting operational cooperation at the border lines will be extremely difficult. Even if FRONTEX were to become a truly autonomous agency independent from member states, and the executive authority for a European border guard corps, it would be a small agency by resources and personnel compared to the border guards of all 27 states (who number about 450,000) and would still have to rely on MSs for resources and support.

Border management was handled by member states long before the notion of IBM rose to salience in EU policy thinking. The practices of managing and controlling the border are still the prerogative of MSs even in the current EU structure. The EU's IBM system, no matter what shape it takes, will float on top of the border control systems of each member state.

What IBM contributes is a second layer of integration added to the basic practices of border management by states. It is still unclear whether this new layer, the new policies and institutional structures, will change in any major way how border control is conducted by MSs. The IBM/EU model encourages coordination and cooperation, but with little linking upstream or downstream to other border-control-relevant agencies except through information sharing, the deployment of liaisons to external states, the creation of contact points within member states, the harmonisation of regulations and practices and limited cooperation on deployments of guards. The autonomy of MSs to control their borders remains unchanged, and the management of borders will continue to be done and controlled, with some outside advice, by MSs as long as the current EU structures and division of authority and competencies remain as they are. The Lisbon Treaty does not change that.

The FRONTEX model is even more limited, as it focuses on physical legal and illegal border crossings by people (not goods), with some nods to

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9    Those reservations have been overcome. Irish voters reversed their rejection in 2008 of the Lisbon Treaty –
that 'complex, impenetrably legal documents that had been eight years in the making' (Pogatchnick, 2009) –
when they voted for the treaty in October 2009 after receiving public assurances from EU officials that the
treaty would not require raising business taxes, joining a European army or legalising abortion.

information sharing and coordination with other agencies and non-EU countries through MOUs and working agreements.

The most dramatic shift in the integration of border controls would be the adoption of the SSR/IBM model. This model, as pursued and somewhat institutionalised in the Western Balkans through the efforts of local states, regional organisations (such as the OSCE) and NGOs (such as DCAF), involves a much greater linking, on a regional basis, of border controls to internal policing and cooperation with neighbouring states. This represents a significant step towards integration, but still is not complete in terms of the SSR rhetoric. For example, SSR includes the military in its discussion. But the military hardly appears in EU language (except through mentions of coastguards and on-the-seas interception efforts), nor is it included in the IBM/SSR model. Integration efforts in the SSR/IBM model are focused on the police and border guards, who can contribute to effective and fair border controls, with intelligence agencies and other actors relevant to the four-tier Schengen model in the background.

This third potential pathway, SSR/IBM as pursued in the Western Balkan states to bring them up to EU standards, is not likely to be incorporated into the practices and policies of the EU's IBM concept, though elements of that model – e.g. innovative training methods, inter-agency linkages from the border back to domestic security agencies – may. But as a complete IBM system, SSR/IBM is simply too ambitious and complex to fit into current and likely future EU political constraints. It would be practically impossible to get all agencies specified in the model to work as an integrated organisational system.

## 1.8   Roadmap

The paper will first elaborate the policy issues and theoretical conceptions of borders, border threats and integrated border management which provided the rationale for EU and MS policy-makers as they sought to develop a functioning IBM system. In effect, there are two issues: one deals with how any border is best managed for purposes of security and the efficient flow of legal commerce and mobility, and the second question asks how diverse border management institutions and policies can be integrated into a more cohesive and effective control system. Subsequent sections will discuss the changing nature of borders in the current world and scholarly reflections on those changes, elaborate the various issues and policy problems which have arisen in border management and analyse the various conceptions of IBM which appear in the policy and scholarly literature. These introductory sections (I–IV) set out the general management problems for integrated

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border controls and the policy and scholarly contexts and thinking by which progress towards an IBM system in the EU can be described and assessed.

The following section (V) lays out the historical and political background and contexts for border controls in the EU. Sections VI–VIII describe in some detail the three models of IBM which have been pursued in the EU, with a focus on FRONTEX as the current institutional realisation of IBM at the EU level. Section IX examines the various challenges which are faced in trying to establish IBM in the EU. Lastly, Section X suggests lessons that could be learned and applied in building a stronger integrative capacity and IBM system in the EU.

## 2.    The Changing Nature of Borders

### 2.1    Global Interdependence and Its Impacts

Borders are a popular scholarly topic since they define and make visible states, the basic political building blocks of regional and global systems. But has the stability of the Westphalian state system which emerged over the last four centuries been undermined by the increasing interdependence of states? One can argue that the growing interdependence of states, economies, cultures and populations, enabled by technology, has seriously eroded states' capacity to control personal mobility and the transmission of information and capital, and to assure the integrity of their borders. Legal economies have their illegal counterparts, the criminal activities conducted by transnational organised crimes which cannot be controlled by one state alone. Vast migrations flow across the globe as people seek jobs, attempt to escape massive local violence or flee from political persecution. States are in the world, and the world is in the states. In this view, the notion that borders still matter seems a quaint and outdated way of thinking. Borders are merely the crumbling remnants of sovereignty and will be washed away incrementally by the floods of legal and illegal mobility of people, goods and information.

Yet one can also argue that borders have become more important as interdependence offers new and enhanced opportunities for the mobility and global distribution of conventional and new threats. States still matter, and conflicts and tensions across the globe still depend for their management and resolution on state activities. Borders still define the state as the ultimate actor in dealing with threats to security, justice, rights and freedoms. No other agency can do what the state can do.

A more complex perspective on borders is that they are simultaneously becoming more and less important. They matter less since the capacity of states to control the mobility of people, goods, services and capital has been seriously eroded and control has drifted away from states, or has to be shared with non-governmental agencies and groups (multinational corporations, transnational NGOs, IGOs and transnational policy groupings and communities). At the same time borders retain their ultimate status as one of the defining characteristics of states – namely sovereignty over a limited piece of territory – and remain essential political building blocks of the global system.[10]

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[10]    I have no wish or ambition to argue this controversy here. For those inclined to read more, one can find links to over 1,000 articles and numerous border research institutes, and their publications, at www.qub.ac.uk/cibr, the website for the Centre for International Borders Research at Queen's University, Belfast; see also the references in O'Dowd (2001) and Furness (2000). All I wish to assert is that borders are being managed by the

In addition, since borders are guarded by at least two states, or a region and bordering states in the case of the EU, views on what needs to be done (what is the problem) and how to do it (domestic and transborder organisational arrangements, policies and priorities) are likely to differ by time and space, and will lead to patterns of cooperation which will fluctuate in salience and intensity as national priorities and political wills shift. As IBM develops organisationally and operationally it will not and cannot be controlled by one sovereign state or a regional structure, unless the continent becomes the United States of Europe.

Border security systems are about more issues than security at the border. Their design and implementation are influenced not only by the reality of threats and security needs but also by how such threats are perceived, categorised, interpreted and integrated into a larger 'securitisation' discourse (Loader, 2002; an extensive discussion of the rhetoric and normative content of the securitisation discourse in the EU can be found in Guild et al., 2008c). IBM in the EU will evolve within a wider political discourse on the nature of threats, vulnerabilities and acceptable control policies. As internal border controls are eliminated, external borders and the increased threats from illegal activities and new, post-Cold War security threats have become crucial issues in policy discussions of what the enlargement of the EU to include 'transitional' countries entails (Hills, 2005). The security discourse reflects widespread public anxieties, identifies strangers as threats to the well-being of EU member states, supports and tolerates productive law enforcement techniques against security threats which would not be acceptable to members of the EU and reinforces an emergent us-versus-them EU identity. Under the Schengen regime which new members must accept, formerly open borders will now be closed to citizens left outside the Schengenspace, creating a new 'iron curtain' (Anderson, 2000: 23) between the EU and its neighbours. In short, the structure, competencies and powers of IBM institutions as these are created will require domestic and transnational agreements among the 27 member states of the EU, and will be shaped by multiple political, objective and subjective factors.

Linked to the notion of securitisation, but approaching the question from the perspective of good governance and democratisation, are the fundamental reforms thought necessary to ensure democratic control of new border management institutions and policies (Loader and Walker, 2007: 195–233). The border control system and border police need to be subject to democratic oversight and governance, as do all security agencies which have the right to use force to control people. Specific accountability mechanisms have to be developed as new integrated border control strategies and

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EU and member states, and depict, analyse and critically evaluate the specific ways in which this is being done.

institutions are being created. The exercise of accountability cannot continue to rest, mainly or solely, with current member states' mechanisms.

## 2.2    The Paradox of Borders

Borders have to be walls but also gates. The basic policy issue at borders is how to balance the needs for fortification with the need to soften border controls; how to balance encouraging the legal flows of people goods services and capital thought necessary for economic development and political stability into domestic territories while keeping non-legal flows out; in short, how to balance the need for mobility with the need for control. As Hobbing (2005a: abstract) notes, the 'concept of integrated border management' represents a delicate attempt to marry security concerns with trade facilitation. Integration 'becomes a genuine balancing act for an incomplete federation such as the EU, with its sensitive mix of a single external border and 25 [now 27] separate legal/administrative systems'.

That balance requires political decisions about which values and interests matter and how much emphasis should be placed on promoting them. Where does the balance lie between promoting economic growth and softening border controls[11] versus protecting the security, rights and freedoms of people and fortifying the borders, and who will decide?

In the case of the EU, the initial formal decisions about laws to govern border management lie with the EC, which has the 'right of initiative' for originating all 'community' legislation or 'the monopoly for launching legislative initiatives' (Council of the European Union, 2006: 11) which may then be accepted and passed into law by the European Parliament and the CEU; once passed into law, they will be implemented by the EC.[12]

Of course, this is too clean a description on how security legislation comes to be. The European Council, as the main policy-making organ in the network of EU institutions, will suggest new policy directions, priorities and initiatives, and invite the EC to come up with draft legislation which then will be discussed and adopted (or not) by the CEU and the European Parliament, and then becomes (or not) law, to be administered by the EC. It is also unlikely that no informal discussions take place during the vast number of conferences and meetings attended by political élites (who know

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[11]    That mobility is essential for the economy was stressed by an EC official who asked, rhetorically, how great an influx of immigrants into the working population will the EU need in 2050 given current demographic growth projections in the EU? What is going to be the shortfall? Fifty million was the answer. Economic growth cannot continue without attracting a large labour force to the EU (interview, EC).

[12]    An interesting though unexamined question is how much 'Europeness' exists in the organisational culture and thinking of officials in community bodies, such as the EC and FRONTEX, who speak for the common interests of all. They are citizens of different states and have probably spent much of their working lives in their home states, but now they should not think like national citizens. They have to put their national identities aside and speak for all citizens and states of the EU. How possible is that?

each other well in any case) on what could be done and what issues need to be addressed. Decisions proposed and taken by the EC are based on a prior and persistent interplay of people and ideas which is ultimately formalised by EC drafts and regulations.

Implementing IBM in the EU, though, depends on the detailed regulations and documents written by EU bureaucrats on how to go forward. IBM in practice will be what the EC writes down, and how much authority and discretion it assigns in the regulations it writes to the institutions being created. For example, in the case of FRONTEX the establishment regulation specifies the tasks, powers and organisational arrangements, and declares FRONTEX to be an autonomous and independent agency within the EU framework. How FRONTEX works is heavily influenced by the words of the establishment regulation, although the FRONTEX officials contribute their own ideas on how to implement their tasks and duties within the basic framework set by the EC.

## 2.3 Border Threats and Vulnerabilities

### 2.3.1 The Security Threat Continuum

Border management seeks to control external access and threats to domestic territories and populations. Effective management requires a precise and legitimate conception of what is a proper border and legal crossing and what is non-legal or irregular, what is safe to let in and what threatens security. Legal mobility will always have illegal counterparts – violations of the laws of the state and threats to its people and style of governance. But all illegal border crossings and transactions are not equal as threats.

Threats may be arranged along a continuum from least to most serious. In the end, border management has to balance the need for openness of borders against the likelihood of risks and vulnerabilities – that is, what constitutes threats which must be controlled and what threats are of lesser importance and for which controls may be less stringent without leading to potential harm to community and national security interests. Threats and vulnerabilities vary and require different policy solutions.

Violations of border control laws are equally illegal but not equal in terms of security concerns. A car carrying nuclear material has to be stopped, but ten half-starved and bedraggled immigrants without proper papers in a leaky boat trying to reach Europe to find a job are not a serious security threat (unless a terrorist is hiding among them, a highly unlikely possibility). Organised crime smuggling drugs into the EU is a different threat than the organised smuggling of cars from the EU to transitional countries. Minor

normal transborder crime is a problem, but poses a very different challenge to controlling the trade in human beings for sex work. Crossing borders without proper papers is a violation, but far different as a threat compared to smuggling arms.

Threats to security can be classified into five general categories which, though analytically distinguishable, merge at their edges:

- normal criminal acts which cross borders (e.g. car thefts on one side of the border and 'chop shops' across the border);

- technical violations (lack of proper papers, and irregular, illegal migrants looking for work);

- transnational organised crime (various forms and types – smuggling cars, guns, drugs and other commodities, human trafficking, the illegal transfer of arms and nuclear materials, or the illegal transnational disposal of dangerous materials such as radioactive waste);

- terrorist security threats;

- threats to the integrity of border management – corruption, abuse of power, violence against other border guards.

Proper and effective border management, whether integrated or not, requires that law and policy make clear distinctions on what is worth paying attention to and spending limited resources on, and what has lesser importance and can be placed lower on a priority list of things for border guards to be doing. This is a technical issue in many ways, but also a political issue since conceptions of threats are easily manipulated, *vide* the recent focus on illegal migration, a discourse in which illegal immigrants have come to be defined as criminals who need to be treated as such.

A prerequisite for effective IBM, as well, is a clear notion of vulnerabilities arranged in some order of seriousness or criticality. There is little chance to manage borders in an integrated and effective manner, given resource scarcities, unless there is a clear sense of what matters and border guards are trained to distinguish among levels of threats and vulnerabilities. Border guards cannot do their work efficiently if all illegal acts are equal. This is a standard policing problem. If police enforced every law on the books they would be unable to deal with serious matters, as their time would be taken up with minor incidents that are illegal, occur frequently and cannot all be controlled. Traffic control is a typical problem. If police stopped cars for every violation they observed, they would be stuck half a mile or less from the station house and would never be able to patrol their beats. The same

applies to border guards. Dealing with illegalities of a minor nature will allow more serious threats to pass unchallenged, a tactic probably not unknown to experienced border smugglers and organised criminals.

The basic border control and security problem is not illegal immigration, but the mobility of people (Koslowski, 2007). Millions of tourists, business people, family visitors and legal workers move across the globe every year and arrive at borders. The size and extent of legal mobility may simply overwhelm the capacity of the state to manage its border efficiently. Too many people, goods and carriers arriving at borders are the real balancing problem. Thickening borders, extending them globally through a variety of technological and cooperative mechanisms, is one way of preventing being overwhelmed. Risk analysis, such as conducted by FRONTEX, which focuses on group behaviours rather than individual acts seeks to predict from what locations illegal migrants will come, what routes they will travel and what segments of the external border they will reach, in order to prepare and reinforce border guards to deal with the influx.

The Schengen Borders Code acknowledges this problem and dilemma. It allows local border guard commanders to relax border control checks temporarily if doing them in the normal way will create massive congestion and long lines at border crossing points. This is a major concession to the need for trade and mobility, and grants much discretion to the commanders of border guards. There are no data how often this has happened, but one can suspect that at crossing points which are major routes for people and traffic it is a continuous necessity. Any checks which take longer than a few seconds will lead to congestion.

A list of the border checks which are to be conducted by border guards at land, sea and airport checkpoints makes it pretty obvious that these cannot be done in a few seconds for all people who cross the borders. Checks also have to be conducted for people and traffic leaving the EU. The checks include verification of valid travel documents, and (when required) of visas or residence permits; examination of exit and entry stamps; verification of maximum allowed stay; verification of departure, destination and purpose of stay; verification of corresponding documents; verification of means of subsistence for length of intended stay; verification that the person, means of transport and transported objects are not likely to present a threat to security, public policy, health or international relations, by checking against relevant databases; a presumption that a third-country national has overstayed her/his time in the EU; and a search of persons and vehicles in accordance with the national laws of the state which controls the border crossing point (European Parliament, 2006: Article 7). If all those checks were done, it would take a long time for each person or vehicle.

In practice, though, the implementation of checks at borders occurs in three tracks – borderland residents, EU citizens and non-EU citizens – as a way of minimising the potential for delay. Residents of borderlands will be dealt with by 'fast-lane' mechanisms and documents which allow multiple crossings and stays within the borderland area. Citizens of EU MSs will be subject to basic checks, while citizens of non-EU states receive detailed checks. In addition, crossers may be processed quickly in 'primary', or be pulled out of the line if they arouse the suspicions of border guards or the guards are alerted to a person by local, national or EU-based information systems, and processed in 'secondary'.

### 2.3.2 Integrity and Corruption[13]

One type of threat that is generally not considered in a threat continuum is the integrity of border management. Corruption of border guards, which is known to happen, undermines the integrity and existence of border controls and needs to be taken seriously as a problem in the planning, implementation and management of border controls. Corruption weakens and can destroy the most carefully designed plans and policies of IBM.

Border controls only work if the workers – border guards, customs officers and health and transportation inspectors – do their jobs as they have been trained. If border guards fail to do their jobs properly, because they have become corrupted, are lazy, engage in other activities or pursue personal inclinations on whom to stop and question, then the border disappears as a control mechanism, and all risk and vulnerability assessments become meaningless. When you can bribe a border guard you do not need proper papers; it does not matter if your electronic file shows you to be a security risk; you can carry whatever you want across the border. There is no border when there is no control. The border opens up and you are through.

Corruption affects the functioning of other border control institutions: migration and asylum control efforts are stymied; programmes to control the trafficking of illegal goods – drugs, arms, cars, people – are undermined and the work of domestic and international control agents is wasted; customs fails to collect legal dues and fees; intelligence assessing potential terrorist attacks is turned into useless knowledge; and the work of domestic law enforcement agencies is made more complicated as they have to deal with problems which proper border control would have prevented. The more border management is integrated, the greater the harmful consequences of corruption for the work of other agencies.

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[13]  For scholarly and official (international codes and documents) definitions of corruption see International Council on Human Rights Policy (2009: 15-21).

It is conventional knowledge that successful transnational organised crime could not be sustained on a massive scale and over lengthy periods without paper fraud, violence and corruption: fraud to create fake papers; coercion to intimidate victims and competitors; and the corruption of border controls. Without corruption, transnational crime would not disappear but it would be made more difficult to organise and carry out and require more coercion.

Corruption also violates not just EU legal norms but, more generally, human rights enshrined in multiple domestic, regional and international conventions (International Council on Human Rights Policy, 2009). Corruption undermines both effectiveness and justice.

The potential for corruption extends beyond the border police. Reimann (2001: 44) provides an extensive and detailed description of the tactics and strategies pursued by the German border police to achieve the four basic goals of 'securing the borders; measures in the countries of origin; international cooperation; [and] national cooperation'. What is interesting is the large variety of skills and personnel required to carry out these multiple tasks and duties.

The increase in perceived threats from foreign terrorists and a rhetoric of war suggest a further expansion of control efforts and needed control skills at the borders and elsewhere. Intelligence collection and risk analysis personnel will be deployed inside and outside the country; liaison personnel of various sorts (police advisers, trainers and observers, customs and drug enforcement officers, documents experts, delegates to regional and international planning groups and international/regional organisations) will be stationed outside the country; undercover operatives to detect organised illegal and criminal activities and plans will work globally; training will be provided by numerous agencies; and a massive managerial capacity and staff to coordinate strategies, policies and activities will have to be developed. If the border security zone is extended to include legal authorities to prosecute violators, guards at detention centres for illegal immigrants, asylum seekers and other suspects, and legal professionals involved in negotiating and executing international extraditions and mutual assistance agreements, the complexity of the security system is even more apparent. What this list, which could be extended by specific examples, makes obvious is that border security is not of one piece and nor can it be done by one organisation. Abuse and corruption among border controllers can occur anywhere that control activities are done. Accountability and oversight, hence, will require different mechanisms with different rules for transparency, disclosure and external oversight of an increasingly large and diverse number of agents and agencies.

## 2.4    Types of Borders

Not all borders are alike, and they have to be managed in different ways. The nature of threats, the space and area that have to be controlled, the types of equipment needed and the skills to use them, the number of personnel required, the extent to which information exists and is immediately accessible in shared databases, the level of integration which has to be achieved among numerous agencies, contingents and personnel on the ground, and the overall costs of routine control efforts and special projects will vary. Each border poses specific problems.

Airport borders are probably the easiest to control. Border crossers arrive in a confined space, are visible at all times (except toilets but who knows, there may be cameras in there) as they walk through various checkpoints, their papers are checked quickly against information in databases and they are observed for unusual and suspicious behaviours by a large number of border guards, dogs and their handlers, and occasional profilers.

Green borders are basically similar to airport checks for people who cross at established checkpoints. The real control problem is the borders between checkpoints, which constitute, one would guess, 99 per cent of the physical length of all borders. These borders cannot be patrolled by personnel in any efficient manner, hoping to spot illegal crossers as they are transported or walk across the borders. These borders can at best be placed under surveillance by technological means (long-range radars, sensors sprinkled on suspected routes), air patrols by helicopters, small planes and drones, or observation towers. In general, border controls which often were handled in earlier times by military units have been replaced by technology, fast response when alerted and the assistance of national police. Once suspected illegal migrants are detected, border guards can be dispatched to intercept them if possible, and local national police can be notified of the incursions of unwanted and irregular crossers for further law enforcement actions within the internal space of the EU.

Sea borders present their own challenges Control requires massive investments in ships and observation technology to spot small boats on a large ocean before they reach the territorial waters and shores of the EU. In recent years sea borders have been the major focus of immigration control. Still, numerous boats make it across the Mediterranean and an unknown but large number of illegal migrants drown as their boats are not designed for long journeys and inclement weather, and probably are all overloaded to start with. For example, in 2008 37,000 illegal migrants managed to reach the small Italian island of Lampedusa from North Africa, according to the IOM (*New York Times*, 2009), after great but unknown loss of lives when overloaded boats capsized or sank.

The loss of life within migrant streams which cross seas adds to the political difficulty of controlling the sea borders. In the EU, land crossings are not very likely to lead to people dying (though this is a major issue at the Mexico-USA land border). But when deaths occur, control policies and border guards will be accused of contributing to or causing the deaths of migrants by their activities, which force migrants to seek longer and more dangerous routes of entry into the EU.

Since not all borders are alike in terms of ease for crossing illegally, dangers experienced by crossers and vulnerabilities to threats, a one-size-fits-all border management regime is not likely to work well. When one adds the complexity and diverse levels of threats, not just illegal migrations, border management requires adapting rules and regulations, e.g. the SBC, to the specific conditions of different borders.

## 2.5 Borderlands

All borders are surrounded by border zones, 'borderlands' or regions in which people tend to ignore the national borders which separate them from each other. Since borders have also moved frequently in Europe, border zones, rather than being artificial entities, are natural, pre-existing areas which frequently have become intersected and divided by shifting national and state borders.

Border zones tend to have a life that differs from core national cultures and politics. In Europe, Euroregios have sprung up to deal with political and practical problems unique to a border zone which require some mechanisms for cooperative problem solving. People living and working in border zones tend to ignore the border in their daily lives. For example, many people working in Geneva live in France, since it is cheaper; and many people living along the French-German borders in the southern Rhine Valley work in one country but live in another. Schengenland has merely made legal and easier what before was common practice in the border zones.

Borderlands develop institutional and informal ways of dealing with common problems that straddle the borders – e.g. sewage disposal and sanitation, environmental issues, crime and security, and transport systems – and can only be resolved by local transnational formal and informal cooperation policies and practices that frequently can be at odds with national priorities and policies.

Border zones develop systems of political, economic and security cooperation which could provide insights into how to integrate the EU's external border control systems. They are, in Bort's (2005) words,

'incubators of integration' (see also Hobbing, 2005a). Border zones also exist at the external borders of the EU. The Galicia area which straddles Poland and the Ukraine is a clear example where political and border control developments have interrupted economic and social activities which have existed for a long time. Poland and the Poles are in the EU and the Ukraine and the Ukrainians are outside looking in.

Borderlands normally develop a regional culture which may differ quite widely from what are thought to be national cultures, as they combine elements of both cultures into their unique borderland culture. At a minimum, people in borderlands tend to speak at least two languages almost interchangeably. Their loyalties and even notions of citizenship may clash with national conceptions. Borderlands people are used to working with others across a national dividing lines which they frequently see as merely complicating their lives.

Wert (2008: 106), based on his study of the Lille district, argues that borderland security policies reflect 'two simultaneous dynamics' – national priorities and local concerns. National priorities on the control of borders may be seen as intrusions and disruptions of established social and economic networks, and will be resisted via technically illegal crossings. In borderlands 'there is a "tug of war" between culture, local political clout, market forces and the multiple activities of government, as they may be variably structuring a borderland'. In consequence, 'as national border-security policies attempt to enable security personnel to recognize dangerous individuals and substances, they must compete not only with the increasingly large market-driven flows of goods and people crossing the borders and borderlands but also with the local culture and political clout of borderlands and the border security policies implemented by other government levels and agencies' (Brunet-Jailly and Dupreyon, 2007: 5, 9). This argument holds for borderlands within the EU, and also for those straddling the external EU border.

The first and central policy implication is that border security cannot be achieved 'by pursuing uniform and inflexible policies that are centrally established... The top-down approach to developing and implementing border policies thus leads to ineffective border security policies. Designing and implementing effective border security policies necessitates factoring in local economic, cultural and political elements.' Unfortunately, 'typically, security agencies and central government departments underestimate the influence of specific borderland characteristics because they have only partial or limited understanding of borderlands' (Brunet-Jailly, 2007: 352; also Hills, 2004, 2006). IBM will not work well unless the security dynamics of borderlands are incorporated into thinking and planning, and some

discretion to adapt centrally created regulations is granted to national and local policies and individual border control agents.

For example, Emerson (2005: 2), in his discussion of Schengen visa standards as they have impacted on the Western Balkans, notes that people who were allowed to cross freely now need visas to enter Slovenia, and that the Western Balkans faces the prospect of being 'driven back into an inner ghetto space. This applies of course only to law-abiding citizens, since criminals can walk or bribe their way across these frontiers with little difficulty. The introduction of visa requirements is a stimulus for corruption and criminality, since the borders are unenforceable, and the attempts to install them create incentives for illegal activity, including the trafficking of goods and people.'

The EU is well aware of this issue. In addition to the basic Schengen Borders Code, the EC has developed a set of policies for fast-track crossings of borders for people who are *bona fide* inhabitants of borderlands, defined as a zone 50 kilometres wide 'as the crow flies' (European Union, 2006: 14) from each side of the border line. Local borderland regimes are usually agreed bilaterally, and can be adapted to local issues and problems, but must abide by the general polices and restrictions of EU regulations.

It is also worth remembering that the Schengen Agreement, which has develooped into a major set of rules and regulations on mobility within the EU, grew out of an agreement in a Euroregion to help facilitate police cooperation across controlled national borders. Bort's (2005) notion that borderlands are incubators of wider cooperation fits Schengen quite well.

## 2.6   Borderless Spaces

Technology, through the creation of the internet, has led to a genuine borderless space – cyberspace. As the net exists in some ethereal place which no one can effectively control, the very notion of borders becomes meaningless. The only control on interactions, legal and illegal, in cyberspace is counter-technology by states to disable servers, control access to sites and prosecute and punish people who attempt to avoid state control on the use of the net. But, as with the attempt by Soviet authorities to control *samizdat* underground literature and communication, such efforts by states will always lag behind the ingenuity of people trying to evade controls.

Threats to security and illegal activities which before the net had to travel through traditional and more easily controlled channels are now difficult to detect and even more difficult to control. Money laundering can be done with the push of a few keys; fraud schemes target millions of people

instantly; child pornography videos and pictures travel from the country of origin across the globe at lightning speed; identity thefts and exploitation of the victims' resources are an everyday possibility; secret and confidential databases can be accessed by hackers and the information sold or misused. Traditional forms of border control simply cannot deal with these problems. States have to develop their own technology experts to detect, disable and suppress cyberspace-based threats, and strengthening regional cooperation among police forces and intelligence agencies is a must.

Technology has changed the structure and dynamics of threats and vulnerabilities, and the nature and possibilities of integrated border management. It is not clear to what degree cyberspace has been considered in the EU as part of IBM. In interviews with FRONTEX officials, when asked how cyberspace crime is dealt with in risk analyses and the coordination of border controls, the basic answer was that this was a criminal problem for Europol, not a border problem.

## 3.    The Practices of Border Management

### 3.1    The Managerialist Impulse in Policy Thinking

Policy-makers and planners tend to think that problems can be solved by an iterative cycle of problem definition, selection of appropriate alternatives and plans, effective implementation and assessments of effectiveness and efficiency. As long as the problems are accurately defined, plans are well thought out based on theory and experience, the people tasked with implementing policy do their job as they are trained to do and are properly supervised, and the results of assessments are fed back into the policy cycle, problems will be alleviated and sometimes even solved. The basic goal in policy development is detailed, precise and comprehensive policies and regulations which will guide planners and implementers in their work. In addition, once the work is done and projects and policies are evaluated for their impact on the problem in a scientific and systematic manner, the findings of evaluations and impact assessment can then be channelled back into planning and policy development, creating a continuous policy cycle that refines policies and increases their effectiveness and efficiency. Problems properly understood are clean and can be managed.

In addition, and this is one of the advantages of policy thinking, the process of working out goals, objectives and success criteria provides build-in notions of how to manage the process and assess results – criteria which are accepted by the planners and managers as legitimate standards for judging how well they are doing.[14]

The documents, laws and regulations of the EU on IBM exhibit this underlying managerialist impulse. Problems can be managed and success will depend on the quality of thought and supervision that went into the planning and execution of a policy. What is missing in this way of thinking is the possibility that the planning and execution will be shaped not just by well-designed policies but by the inevitable discretions, gaps and errors inherent in any policy and the creative ingenuity of personnel in all security agencies, including border guards, at all levels of the organisation. It is only

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[14] Even policy evaluations which would seem to be non-political, if done by proper social science methodologies, are political in the end. What happens if assessments show that a policy has little impact or makes little difference to the problem to be alleviated through intervention? That question of 'how worthwhile are small policy effects?' cannot be answered by social science criteria. Explaining effects or impacts is what social science can do. Thinking backwards from results or impacts, what if the policy can be shown not to work, or only partially? The reasons could be that the problem was not accurately delineated; that plans were based on faulty or insufficient reasoning; that implementation was not done as planned; or that impacts were assessed by invalid and inaccurate methods. Each of these steps in reasoning backwards from results can be analysed to determine where the policy went wrong. Such assessments are only possible if, for example, the validity of plans can be tested, i.e. what scientific or experiential information and knowledge supports expectations that plans will work? What theory of human, organisational or political behaviour suggests that doing this or that will, if properly implemented, achieve stated goals? Policy planners tend to believe that policies should not be planned and put into action on the basis of common sense ('everyone knows this will work') or uncontrolled experiments ('let's see what will happen if we do this'), for that would be wasteful and inefficient. But on what good and social-science-based reasoning are current IBM policies based?

at the 'street' level or 'coalface' (to use an expression from British policing) – the border points, and the work practices adopted by border guards – that the impacts of plans and policies can be observed as the ultimate reality of integrated management.

The mangerialist perspective also understates or neglects the multiple determinants of border control policies which are linked to the specific histories of current and candidate countries. As Hills (2006: 77) notes, based on interviews and observations of border guards at work, 'contemporary European guarding practice is underpinned by multiple rationalities – policing, security, politics, institutional, and functional are representative'. Border control policies are not neutral in their consequences for the political fortunes of local regimes and the 'reorganisation required by Schengen is not always in the interests of security agencies concerned' (ibid.: 78). Having good and explicit regulations, which the SBC does, is not enough to ensure that border control will happen as designed. Hills (ibid.: 84) further notes, discussing Albania, that 'Schengen standards mean little in an environment characterized by political interference, organized crime, guns, social deprivation, ethnic tensions, and economic instability'. She also adds, when discussing Bosnia, that in the political and social conditions of that country, 'the imposition of European-style guarding standards and procedures necessarily generates rule breaking, as individual guards negotiate with their superiors and peers, and with local inhabitants and traffickers, for all of whom borders are a resource' (ibid.: 82).

It is one of the axiomatic generalisations in research on police and their work that the discretions inherent in such work will not only be affected by laws, rules and regulations, or by managerial and organisational directives and dynamics, but also by personal and group-based preferences on how to conduct security work in a way that conforms to 'working rules' which all police develop to ensure that their job is done safely and with some elements of convenience and comfort (e.g. Ericson, 1982: 11–16; Stroshine et al., 2008). There exist occupational cultures and informal understandings of the work in any organisation, and especially so in police organisations, which will not conform completely to what the formal requirements and expectations demand.[15] The multiple structural, organisational and personal determinants of work performance make border controls and integrated border management a messy rather than a clean problem. Messy problems are not alleviated well by clean policies and regulations.

From a policy perspective, border management, following the bureaucratic and democratic notion that rules and regulations should govern conduct, is

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[15] Hills (2006: 78) argues that a 'canteen culture' or occupational subculture, comparable to that observed in all police forces, 'is probably present among guards, but no analysis of their occupational culture is known'.

perceived mainly as a technical issue, a question of thinking through what the problem is, what goals are desired, what means will work to achieve goals. Border management and integration are not perceived as political issues. This does not mean that officials are unaware of the politics of border management. They are very much so. But that is a different issue for them. That is not their job. Political issues have been dealt with by the time regulations are developed and implemented. If new political decisions require changes, the regulations will just have to be rewritten and amended.

Of course, border management, and even more so integrated border management, is not merely a technical issue. Even if impacts are properly assessed as a way of checking on the effectiveness of a policy, or whether policies 'add value' in the rhetoric of the EC and FRONTEX, and if impacts can indeed be determined in a valid manner, that does not end the political aspect of evaluation. The political question remains whether the added value, or impacts gained from a policy, is worth the costs of the policy. If impacts are small or negligible or costs are higher than gains (by some comparable yet difficult standard of measuring both), should the policy be abandoned or changed? That is not a technical question.

The managerialist impulse effectively limits conceptions of the work that the EC and FRONTEX officials think they should do. Their work is writing policies, plans and regulations; assessing their impacts; deriving lessons learned; and amending regulations to reflect assessments and political developments and demands as these change over time.[16]

One example can support this point. In interviews I asked what happens if border guards abuse their powers or engage in corruption. This is not an idle or irrelevant question for IBM, besides the notion that corruption effectively does away with border controls, since studies of corruption in policing generally identify three areas of police work– border control, undercover work, traffic control – as presenting the greatest opportunities for corruption and abuse of powers. The answers given generally mentioned that there is the acquis, there are the Schengen Convention and the SBC, there are national laws on accountability, training increasingly emphasises human rights, non-discrimination and  integrity, and there exist professional codes of conduct. All these rules and laws and training, taken together, will prevent corruption. Maybe for most border guards, but clearly not for all. Corrupt border guards will have gone through the same training as non-corrupt ones. Other factors come into play besides well-developed policies, and need to be considered and mitigated.

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[16]  One of the difficulties in reading EC regulations is that they are typically amendments to existing regulations and are written in a style that incorporates the old and the new into the same pages through extensive footnotes and within-text notes and explanations. The results are basically opaque and incomprehensible documents which need expert interpretations to be deciphered.

### 3.2 The Basic Tasks of Border Management

The two basic policy issues and operational tasks at the border are the detection and filtering out of the small number of security risks and illegal crossers from the large numbers who do cross legally; and balancing out the openness and closure of borders.

One basic goal is building filtering policies and skills which are accurate, efficient and fair before, at and after border crossings. Of the millions who cross into the EU legally (about 300 million in 2007, most of them at airports, and most of them tourists and business people), only a few are serious security risks. The difficult task is detecting the (most likely) tiny number of people who represent serious security threats and are concealed in the vast maelstrom of people entering and leaving the EU. The number of illegal migrants is much higher, but still only a small fraction of the overall number of people entering the EU legally. Some illegal immigrants will try to cross at established crossing points using fraudulent papers, but the large majority will seek to cross in the spaces between checkpoints. As Aas (2005: 2000) argues, 'how to discern between "good" and "bad" global mobility thus becomes the vital task of contemporary governance' at the borders.

It is difficult even to think how to assess the quality of filtering of border control systems. The research and evaluation problem is that violations or threats which were not detected by the practices of border guards are not incorporated into the formal statistics. The figures cover only detected violations and threats. This is a well-known problem in assessing drug smuggling. Border guards know how much was seized, but they do not know, nor does anyone else, the amount of drugs which were not seized but were successfully smuggled across the borders. The same holds true for people crossing the borders illegally. The official statistics only show the successes, but not the failures of control or filtering.

Secondly, policies and regulations need to balance the need for openness and closure. Mobility should be controlled, but not to the degree that it causes disruption to the legitimate mobility of goods and people. This balance is difficult to specify exactly, and in practice, in the regulations for border control issued by the EC and FRONTEX, the need for control is stressed more than the need for mobility. There are verbal nods to the need to not overdo controls, but those are minor sections and use fewer words compared to the descriptions of the necessary control tasks.

As noted earlier, some of the balancing of openness and closure is left to the discretion of border guard commanders, for the simple reason that all contingencies which might require easing border controls cannot be spelled out.

### 3.3 The Border Is Everywhere

### 3.3.1 Borders as Processes of Control

For purposes of policy, it is a misconception to think of borders as demarcated lines drawn on maps and on the soil and waters between internationally recognised states. Rather, borders are best understood as the systematic processes and practices for controlling the mobility of people and goods to protect states against the influx of unwanted people and goods and the exit of wanted people and goods. Borders exist wherever controls over the mobility of people, goods, services and capital in and out of states or regions are exercised by state and regional agencies and authorised non-state actors. Protecting lines on the ground is only one element in the processes of border control. Conversely, wherever control over transnational mobility is exercised by a state or region, a border has to be crossed.

The major impact technology and globalisation have had on borders is not that they are disappearing, far from it, but that border crossing points are springing up all over the globe. The 'ability of surveillance [and intelligence] technology to "delocalize" the border means not only that the border can be moved outside of national territory in order to avert potential risks, but also that the border can be dispersed and moved inside the territory' (Aas, 2005: 208). There continue to be lines separating states and regions, but these are becoming less and less important as control activities are shifting away from the borders to other delocalised border crossing points, so that by the time a physical person reaches the actual border line much of the border has already been crossed. All that remains at the physical border is to verify the identity of legal crossers, by checking papers and information systems, and to filter out and detain, refuse entry or deport persons who have not properly crossed the earlier border points. In many ways, the personal belongings of crossers are more important for border checks at the physical border than the persons themselves. Persons have already been checked, but their luggage has not.

### 3.3.2 The Thickening of Border Controls[17]

Since borders are everywhere, controls have to be everywhere. The notion that border controls should focus exclusively on a physical border line is outdated. Delocalised borders require diverse methods of control and management.

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[17] The examples of thickening policies have been taken from websites, documents issued by the EC and CEPS publications.

The EU has suggested that a 'model of concentric circles of migration policies could replace that of "fortress Europe"'. Near neighbours should gradually be linked to the Schengen regime, 'particularly with regard to visa, border, control and readmission policies', while a 'third circle of States will then concentrate primarily on transit checks and combating facilitator networks, and a fourth circle (Middle East, China, Black Africa) on eliminating push factors' (European Council, 'Strategy Paper on Immigration and Asylum Policy', July 1998, cited in Furness, 2000: 98).

**Territorial thickening**

Borders have been deterritorialised. Checks have been moved away from the borders through the expansion of controls upstream (where mobility and threats originate) and downstream (when mobility and threats have entered domestic space). Controlling borders occurs across the globe, from neighbouring states which are enticed to participate in border controls and management to the states which are the major sources of migrations of people. Better to stop migrants before they leave their home countries than to wait until they get to your own border.

Other means by which the border has been deterritorialised have been employed by the EU. One mechanism is coopting other states to do border control in their jurisdiction for another state or region. For example, the EU and member states have signed agreements with other states which allow member states to deploy ships and surveillance equipment in their respective territorial waters. Effectively, for example, the border of Europe now lies in the territorial waters of the coast of Mauritania and Senegal by an agreement between Spain and the EU and these two countries. Other states have agreed to control their own borders to prevent the transit of migrants towards the territory of Europe. Of course, such agreements require quid pro quos. Other countries are not likely to help the EU purely for altruistic reasons. The EU offers economic assistance, equipment, information sharing, integration into existing networks of political benefits (invitations to participate in public rituals, access to political leaders), larger than normal visa allocations for temporary workers from a country and help to resolve criminal or corruption problems in another state (ceasing accusations, dropping criminal cases against local élites, extraditing wanted persons to their home states).

Capacity-building assistance for border and security systems, which may have their own domestic uses for local political leaders, is offered to prevent the influx of irregular migrants and threats at borders next to one's own borders. For example, the USA offers advice, aid and equipment to Mexico to be used at the border with Guatemala; The EU has used various means to

convince other states to assist, such as issuing extra work visas to nationals of Morocco if Morocco assists in reducing the flow of illegal immigrants through its territory. It is better and more efficient for the EU if illegal immigrants are stopped and sent to their home countries by Morocco rather than Spain. The EU also negotiates with other neighbouring countries, e.g. Libya, for similar support in controlling migrants, mainly Nigerians, who try to reach Europe after crossing the Sahara to get to the Libyan coast.

State agents may be stationed in another country to check papers and allow access. For example, people crossing by ferry from Vancouver Island, in Canada, to the USA will be checked at the embarkation port rather then where they finally disembark in the USA. Customs agents from one country are now stationed in the ports of many countries to pre-check and pre-clear container shipments.

The net effect of such arrangements and negotiations is that the ultimate territorial border of a country, or region, is not the only physical border control point that has to be crossed in person to enter the EU.


**Functional thickening**

Border control tasks can be shifted to other actors, many of them non-governmental agencies. Others will do the work previously done by national border guards and customs. The main problem is getting other actors to agree to do this, and how to train and monitor other actors so one can trust that the quality of their work is at least equivalent to what one's own agents would have done.

The expansion of control processes upstream and downstream has altered in fundamental ways how control is exercised and by whom. The expansion of borders to locations beyond the borders of nation-states has necessitated the cooptation, voluntary or mandated, of private institutions and companies in border control work. Much of the control work before an individual reaches the physical border is now done by non-government agencies, mainly in the areas of document verification, information sharing and interrogation by private personnel at border checkpoints, such as boarding planes or ships.

Private actors (transport companies, private data-collecting agencies) can be mandated to perform certain activities by the threat that if they do not assist the state's control efforts they may not be allowed to operate within the territory of a state. Airlines must pass on passenger information or they will not receive landing rights. Transport companies must transmit 'profiling' information on the shipments (origin, content, originating shipper) they will deliver to a country, which will allow local agents to check mainly those

containers or cargoes which fit a suspicious profile rather than search all shipments, which cannot be done in any case (Guiraudon, 2006; Lahav and Guiraudon, 2000).

Liaison officers stationed in another country and country contact points (and offices) fulfil a similar function. They collect and pass on information which will be helpful in sorting out the legal from the illegal, the safe from the threatening goods and persons which arrive at the border. They can also train others to do 'filtering' work prior to persons leaving a country.

Illegal migrants will be detained and deported. Managing and detention facilities can be delegated to private companies. Deportation may be arranged on privately owned airplanes, buses or trains. Governmental functions can be deconcentrated. Governance can be reinvented and reduced by privatising some functions, even those deemed sensitive and security related.

The state will continue to do the steering, but others will do the rowing, and often for free (O'Malley and Palmer, 1996; Rose, 1996). The state remains in control of what needs to be done, but the hard work of providing security can be outsourced to non-governmental actors. And the state will insist on training and monitoring others to ensure correct and trustworthy performance.[18]

**Technological thickening**

Border control can be enhanced by using the latest available information, detection, analysis and communications technology. The more the government knows, the better is its control capacity, if the knowledge is good intelligence and people know how to use it. Tightening the webs of intelligence creates technological curtains around borders.

Much of the effort to manage borders has shifted to technological means: biometric passports and other fast-entry documents; real-time information sharing when a passport is swiped or an iris scan is compared against the so far limited databases; intelligence collected and connected to detect security threats; software to integrate databases into a seamless web of information on any person approaching a border; developing interoperable hardware and software; risk analyses which depend on having an integrated data-sharing network.

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[18] As with military work, much of it is now outsourced formally and informally to private and non-governmental agencies, individuals and corporations even in times of war: work that used to be monopolised by the state, and was considered too sensitive in terms of national interests and security to be delegated, is now entrusted to the work habits and attentions of private actors.

The need to fortify the border, especially surveillance conducted on green and blue borders, is largely accomplished with equipment and tactics derived from military innovations, and some work is done directly by military personnel (such as coastguards) or through participation in joint command centres, such as the Spanish Regional Coordination Centre for Gran Canaries in which the Ministry of Defence, the army and the navy participate (COWI, 2009: 38). As they come to be more dependent on technology and equipment initially developed for military uses in order to control or gather information from long border lines and situations, border guards will rely more and more on intelligence information and analysis as guides to action. They may be police, and that is the professional aspiration of border guard managers, but they will be more like a constabulary than civil police forces.

The EU has placed a lot of faith and resources in creating integrated, or connected, databases and information systems for border control, akin to the SIS systems developed by Europol for sharing information among national police agencies. The latest big effort is EUROSUR, an 'integrated network of maritime monitoring and surveillance systems: (a so called system of systems)' which can deliver real-time information to maritime patrols in the Mediterranean (the system could also be used at land borders) (Jeandesboz, 2008: 10, citing EC documents).

At some point everything worth knowing about security threats – domestic to international, crime to terrorism – will be integrated into a system of systems, available to authorised agents and most likely kept hidden from the protected public.

**Fortifying the physical border**

One of the most traditional border control systems – building walls around territories – has lost its lustre and utility, but not yet completely. Walls look strong and forbidding. They are visible. They symbolise the sincerity and effectiveness of protection efforts. They show that the government is serious about providing security (Andreas, 2000). They are the last-ditch barrier against threats and illegal mobility when the other means (deterritorialisation, technology, cooptation) have failed. Walls surround prisons precisely for those reasons. They keep the bad people from the good people.[19]

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[19]   But walls and fences do not serve as effective border control mechanisms. Many borders are too long to be walled up in a physical way, though the USA is giving it a serious effort in the 1,800 miles long border with Mexico. This may be changing, as the new administration has expressed some doubts about the comparative effectiveness of border fences.

There are few places left in the world where actual walls or fortifications still exist to keep people out. The image of a wall around the West, to cite a well-known book title (Andreas and Snyder, 2000), is somewhat of a misnomer. There are no walls any more, only border crossing points spread across the globe. The only location in the EU which still has a physical barrier, not a wall but two fences with a space in between for patrols, is the border around the enclaves of Ceuta and Melilla (Gallardo, 2007). Physical walls have been replaced by technological barriers, the mining of datasets, surveillance of land and sea spaces, and the work of border guards at crossing points.

### Collateral thickening

The most indirect way of controlling borders is policies which seek to weaken the motivations and reasons why people would want to cross borders illegally. Since the vast majority of illegal crosses are people looking for work, helping countries develop economically is a long-term strategy which is pursued anyway for other reasons by aid givers, but can also be defended as a border security policy. Similarly, supporting political change and democratisation and suppressing and deterring inter-communal violence are other strategies to keep asylum seekers and refugees from crowding the EU's borders.

All these thickening strategies are pursued by the EU. One consequence of such policies and their greater coordination and integration is a gradual strengthening of border management by different means and in different policy domains.

## 3.4    Border Regimes

The process of bordering and rebordering, of creating real and virtual borders across the globe, is guided by national and regional security concerns, but more specifically by border regimes.[20] Border regimes point to the interplay of formal and informal, universal and local, and agency and public interests, and to the complexity and multifunctionality of border management.

In short, border control policies cannot be understood or viewed only as a system of formal institutions, roles and powers. The dynamics are much

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[20]    As defined by Anderson (2000: 15-16), 'border controls are embedded in "frontier regimes." Frontier regimes consist of agreements about borders with neighbouring states, whether bilateral or multilateral; the practices that have grown up around them; the administration and management of borders controls; related systems of police and customs cooperation; and institutions and arrangements for transfrontier cooperation. Implicit in these regimes are the various conceptions of functions that are fulfilled or that, it is thought, should be fulfilled by borders. Also central to the regimes are territorial ideologies – perceptions of the meaning and significance of frontiers held by policy-making elites, the population of frontier regions, and, more generally, by the inhabitants of a country."

more complicated. As Reimann (2001: 53) argues, in Europe at the beginning of the twenty-first century border security arrangements 'in the traditional, particularly military sense, are neither feasible no politically desirable'. Border security must be as flexible and adaptable as the new contexts and threats which will arise.

Responding to the new borders and new threats, border controls have become more technologised and intelligence oriented. Technological means require different specialised training, detection routines and decision-making skills. The 'sixth sense' of well-trained and experienced border guards and customs agents, which they fall back on to detect and further investigate suspicious people and cargo, has been supplemented, if not replaced, by bureaucratic decision-making rules, technical expertise, reliance on intelligence and technological sophistication.

## 3.5    Crossing Borders

What happens when an individual crosses borders? How is border control experienced by the individual? Where is the border encountered? What activities by border guards constitute controlling of borders? It is essential to give the answers to these questions in some detail if one is to understand the practicalities of border control and integrated management.

### 3.5.1  Where is the border encountered?

The border is encountered across the world, even though a border crossing ultimately is tied to a territorial state. The normal process of crossing the border tends to occur in stages, some easier than others; and it occurs in two forms, the virtual and the real self.

What determines and enables you to cross borders legally? It is a legal document issued by a state, state-authorised or international agency which identifies who you are and allows you legally to cross the borders of other states (when no visa requirement exists). The office which has the authority to issue the right papers is the first border encountered by travellers. Identification papers, most commonly a passport, represent the concrete and continuing sovereignty of the state. Without proper papers, without an officially certified identity, one is homeless, a stateless person with no rights to travel or enter or exit a state in which one resides as a citizen or legal resident, nor can one approach another state for legal entry. A passport-less and paper-less person exists in legal limbo. This is a common problem for refugees and persons displaced by violence and conflicts who cannot prove a legal national identity wherever they find themselves. They only have their

personal stories and unverifiable papers to assert who they are. Temporary international passports or identification papers seek to bridge the identity gap until such people are returned to their home states. The best-known examples are probably the Nansen passports issued after the First World War.[21]

The first border may be encountered in person by going to the office authorised to issue passports or other identification documents, or vicariously through intermediaries, mostly commercial enterprises, which will carry your travel documents and application papers, often downloaded from a website, to the official document-issuing office for a fee.

The second border is the visa application process, when that is required. Without a required visa, mobility becomes an illegal enterprise. The not-insignificant financial costs associated with getting a visa may also sidetrack potential applicants into contemplating other means of crossing a border. Visas are issued on the basis of legal agreements among states and a background check of varying intensity and accuracy (based on legal criteria, security issues and information systems available to the issuing state agency).

Visas may be issued by commercial firms contracted for that work. For example, as a citizen of the USA, getting the required visa to enter Australia can be done on the website set up by the contracted firm, but is the same legal document as if it had been issued by the government directly. As another example, an American citizen who wants to visit Vietnam can contact a travel agency, which will collect the required personal information and relevant travel data, take that information to the visa office in Vietnam and receive an authorisation which can be faxed or attached to an e-mail to the person going to Vietnam. The authorisation needs to be printed off and presented at the point of entry into Vietnam to the border police, who will then issue the visa for a fee.

The next crossing, when such requirements exist, is the collection and transmission of personal information by a transportation agency to the state to be entered. In many cases agents of transportation companies (airlines, ferries, ships) will also interview travellers, based on training (e.g. detecting fraudulent documents, interrogation techniques) provided by states and governments, before they are allowed to board. Such actions by private agents are authorised by bilateral or regional agreements, such as ESTA, the electronic travel authorisation system, or the PNR (passenger name record)

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[21] A Nansen passport was an internationally recognised identification card issued by the League of Nations to stateless refugees who had been displaced during the First World War. The passports were named after Fridtjof Nansen, a Norwegian explorer, scientist and statesman, who developed the idea for the passports. About 450,000 passports were issued. In 1938 the Nansen International Office for Refugees received the Nobel Peace Prize for this work.

agreement between the EU and the USA.[22] For example, travellers from MS airports flying directly to the USA will experience some fairly intensive and detailed questioning from airline personnel, especially if they fit taught profiles, before they are allowed into the airline waiting area or on the plane.

The last legal border crossing is the physical entry into another country at designated entry points. The actual crossing of borders, the physical encounter with the border, occurs at checkpoints manned by border guards and customs inspectors at land crossings, airports and seaports.

For example, arriving at an airport the border is encountered while on the plane filling out required entry and customs forms; in the arrival halls, in the form of profilers inconspicuously stationed and costumed to determine if you fit a security threat profile; at passport and document checkpoints which will validate your papers and identity and determine the reasons for your entry; in the comparison of your particulars against information systems for risks and threats to which they may have been alerted by required information collected and electronically passed on to the entry state by transporters and carriers or by the swipe of a biometrically encoded passport into the computer system; at luggage carousels where dogs may sniff your bags to detect illegal goods (and if the dog alerts, you will be questioned, your luggage may be checked and if it contains illegal goods you may not be detained or turned back and not allowed to cross the borders); and at the red and green light – something to declare or nothing to declare – passages manned by customs officers. Only after you have passed these checks have you legally entered into another state.

At land border checkpoints, if travelling by private car, border guards and customs officers (often using dogs) may conclude after asking a few questions that sufficient reason exists to move you into secondary for further questions and inspection of your vehicle.

Illegal entrants, of course, will bypass these border control points but will have to deal with other complications, such as how to avoid being detected and captured before, at and after crossing the border.

### 3.5.2  How is the border encountered and crossed?

The border is encountered in two forms, as a virtual and a physical self. The virtual self is more important, in the end, for legal border control and management than the real, the physical self. In a somewhat paradoxical way, the real person is less important for the physical crossing of borders then

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[22] The agreement required extensive and lengthy negotiations, as the USA wanted passenger information which in the EU is protected private data which could not be shared without violating EU laws (Schrader, 2006).

their means of transportation and their luggage, as the real person has already been virtually processed before arriving at the border, but their belongings and means of transportation have not.

**The virtual self**

There exists a virtual avatar, a data shadow, an immaterial *doppelganger*, for most people who reside in countries where technology has become the dominant form of interpersonal and financial transactions. The virtual self is comprised of all the legally authorised bits and pieces of personal information and actions collected by government and private agencies and consolidated into a description of the person in a variety of information systems. Since there are multiple and often incompatible databases, the virtual avatar most likely is depicted in multiple configurations. Only when the dream of intelligence analysts – a completely integrated system containing all the captured bits of information, misinformation and rumours – is fulfilled (and turned into the nightmare of civil libertarians concerned about 'big brother' intrusions into privacy) will the final virtual avatar coalesce.

For example, every time one buys an airplane ticket, personal and travel information and details of how the ticket was paid for are passed by the carrier to other agencies, which add the new information to an existing virtual personal file (Bennett, 2005). The virtual avatar is built up over time whenever a technologically accessible transaction occurs or is deposited into an electronically accessible database – a credit card sale, an application for a driver's licence, a rental agreement, a complaint against a credit card company, a criminal accusation or conviction, fingerprints, iris patterns and other biometric identifiers (such as taken routinely now at USA crossing points for non-citizens by cameras and the swipe of the passport), medical histories stored in computers by hospitals and insurance companies, credit histories revealing patterns of financial transactions and (ir)responsibility. All become the raw resources for the broad brushstrokes by which governments and private agencies depict the essential virtual person.

Salter (2005: 47) makes the point this way.

> Giving your passport to the immigration officer – having your information checked against data bases – effectively signals your integration into the machinery of the modern state. You become data – an instance of a profile, a case, a file number... [T]he submission of oneself in terms of information is still a political act of obedience – the data trail of your entry will remain etched in the memory of the state long after you have been forgotten.

Of course, there may be legal requirements on how long information can be held in a file, but only a small portion of the information that is likely to be in the file is covered by such regulations.

The avatar file will also contain, based on the work of law enforcement intelligence agencies, the military (if the person had served in the military at some time) and border guards, titbits of facts and rumours, estimations of a person integrity, unusual activities or suspected political leanings collected from neighbours, employers, friends and enemies which add to the depiction of the virtual person. This process is continuous, some of it acknowledged and transparent, while other data-collection efforts are either denied or shrouded in secrecy, leading in the end to an image of who one is that only the government knows, or rather that only government agencies which have access to all of the file know. The person whose virtual representation then becomes the basis for controlling the real person, either at the border or anywhere the state has the capacity to control, has probably the least level of knowledge on what her/his virtual avatar contains. Information in the file becomes almost cemented in stone, almost impossible to remove, as people whose names have shown up on restricted-flyer lists or whose identity has been stolen and misused by someone else have found out. It takes years to rectify and remove even small mistakes and bits of misinformation.

You are not who you think you are to the controlling state. For purposes of control and risk assessments, the state is not interested in you as the complete person, your dreams and desires or your loves and hates (unless they are driven by ideologies). The state is interested in your essential person, those aspects of your life and actions which might indicate a risk or threat as defined by the state. The creation of your virtual *doppelgänger* will be driven by computer searches which sift through your life using keywords in search of bits of information which, when assembled, constitute you as you matter to the state. As far as the state is concerned, you are as you exist in databases and computer systems.

**The physical self**

What is interesting for border controls is that the state initially has little interest in the real self, the physical person. Its decisions on how to manage borders are largely based on the virtual self, the aspects deemed by government agencies to constitute the important security and risk lineaments of the real self. The virtual self arrives at all border crossings long before the real self. A swipe of the passport or personal information taken from the real person and entered into the data system then links the virtual to the real person who has arrived at the border. At that time and point the virtual and the real person become one, the intelligence-based virtual person and the

observed real person merge, only to re-enter separate realms once past that entry point.

 The only times the real person matters at border crossings are those occasions when an illegal or suspicious activity is detected or observed at the border by security personnel, possibly leading to information which was not yet in the virtual self, but which will certainly be added. Only at the remnants of sovereignty, the physical borders, does the real person come into play.

### 3.5.3  Border crossing control activities

The two selves constitute different border control problems. In the end it is only the physical self that can be allowed to pass or be stopped, detained and deported. The real person can be seen, touched, arrested if need be. Yet much of the ability to allow or deny entry is based on the virtual self. The virtual self is not real, it has no tangible existence, but it is this 'unreal' image which matters to the state. Control of the virtual person can only be done in a virtual way by creating and altering the avatar as information flows in and by assessing its validity and accuracy before incorporating new information into the virtual depiction. Conversely, in terms of threat, the virtual avatar could be manipulated by the real self it represents in order to disguise threat and risk, a possibility the controlling state has to consider and for which eventuality is has to develop virtual countermeasures.

Control activities at the border are differentially discretionary for border guards depending on the virtual or real self. For the virtual self, information technology has basically eliminated discretion and limited the possibilities of abuse and corruption. Only in situations where not just one guard but the organisation as a whole is implicated in malfeasance would such abusive and corrupt acts be known. For the real self, some discretion continues to exist, based on the skills and hunches of border guards.

## 4.    The Multiple Dimensions of Integrated Border Management

### 4.1    The Integration Continuum

The meanings of the integrated management of borders are not obvious. A definition first: integration means, at the minimum, managed, persistent and systematic working together by multiple agents, agencies, organisations and states. Persistent is defined as the opposite of *ad hoc*, and indicates that working together is based on a planned and thought-out strategy in response to a recurrent policy problem. *Ad hoc*, in contrast, is working together by chance, the needs of the moment or in limited events. Systematic refers to working together by all relevant actors based on an informed analysis of policy goals, issues, actors and likely success policies. Systematic points to the prior need to know who the actors are and policy domains that have to be included in integrated work. Managed means that a common method for making decisions which matter has been adopted and is being implemented by a corps of managers.

Working together can exist on a continuum of integration, from least to most persistent, systematic and managed forms, ranging from near *ad hoc* cooperation and collaboration to the integration of existing agencies and processes into a new system, or organisation, for addressing a defined problem. The steps or levels on the integration continuum can be stated in many ways, with few or many steps. The point is not to come up with one correct number of levels but to demonstrate that integration can take many forms.

The ladder of integration on the continuum, from least to most integrated, that will be used in this paper has eight levels.

1. Autonomous decisions taken by actors working on the same policy problem but on parallel and distinct tracks, with information sharing ('letting you know what we are doing') on a voluntary basis, quite frequently arranged informally.

2. Systematic and mandated information sharing among multiple agencies.

3. The loosely coupled coordination of agency policies on a voluntary or semi-mandated basis.

4. Strengthening operational cooperation among multiple agencies on an encouraged or mandated basis (most of this type of working together, or integration, occurs on a bilateral basis within the EU but will be supported by FRONTEX activities).

5. The harmonisation of goals, standards and policies among existing agencies, including common standards of performance (such as training by FRONTEX).

6. Multiple organisations and actors working together to achieve a common goal under a unified organisational management structure for limited but lengthy time periods, such as task forces or joint operations (these goals are promoted by FRONTEX).

7. Formally established permanent organisations working under a common internal and external governance system within one state or regionally, staffed by delegated officials from other agencies, such as Europol.

8. Newly created autonomous organisations which are staffed by independently hired personnel and have the executive authority to carry out tasks done before by other agencies.

The levels are also criteria for judging how far IBM has come in the EU and what are likely further integration levels that could be achieved. In the early 2000s one possible model of IBM, a European border corps, came close in conception to the highest level of integration (but with fairly limited authority), but gave way to a lesser model of integration, FRONTEX, which operates mainly on integration levels 4, 5 and 6, and seeks to facilitate and assist the border control agencies of MSs in achieving coordination, cooperation and the harmonisation of laws, regulations, policies and operations.

## 4.2   Horizontal and Vertical Integration

Horizontal integration refers to agencies in the same location, at border checkpoints, working together to manage the flow of goods and people. Vertical integration (upstream-downstream, forward-backward linkages) refers to border control agencies cooperating with security and control agencies within their state and in bordering and third countries, both at the borders and away from the borders.

Clearly, horizontal integration is a lesser task than vertical integration, simply by the number of agencies and control processes which have to be integrated, and the fact that vertical integration requires transnational cooperation.

## 4.3    Integration Domains

Complicating conceptions of integration is the question of what policy domains and tasks can and need to be integrated. What areas of activity have to be brought into a common framework for working together?

Integration may focus on and be limited to coordinating operations and tactics; to building inter-agency cooperation and coordination; to common forms of capacity building, such as training or joint exercises; to combining databases and developing the needed software and hardware; to agreements in risk and intelligence assessments on what threats and vulnerabilities need to be assessed through a common methodology and seriousness scale; and integrity and accountability measures and policies.

Different tasks and policy domains may be harder or easier to integrate. For example, combining databases is largely a question, once political agreements have been reached, of technical skills and finances. Inter-agency cooperation requires a far more extensive set of reforms, such as changes in organisational cultures and administrative dynamics and practices (e.g. recruitment, training and career development).

A unique but growing domain integration problem is how to combine the virtual and real selves in the end: how to match the virtual avatar to the real person in case some enforcement or control action needs to be undertaken targeted at the real person. One cannot arrest the data shadow, but one can be alerted that the virtual person may materialise in sight and be available for detention and control. One problem that can exist is persons who have the same or similar names, when the data constructing the virtual avatar may describe or be derived from different real persons.

## 5. The Political Contexts of IBM in the EU

### 5.1 The Political Playing Fields of EU Integration

Europe is not what it used to be. It is the region of the world which has advanced further along the path towards political and economic integration than any other, in the process challenging deeply held assumptions about the nature and qualities of people and societies of different European states. Long-held national stereotypes, entrenched political cultures and historical claims about identities taught and perpetuated in national educational systems, and repeated in public and media discourses,[23] have had to be pushed aside.

There are numerous reasons why the creation of the European Community and Union has mattered so much to policy and political élites in the countries of Europe. What the 'European project has attempted is not the obliteration of borders but new, more democratic, and consensual ways of managing border changes to replace the long European tradition of inter-state war, violence and coercion' (O'Dowd, 2001: 68). Integration seeks to replace cross-border conflicts, which have been the norm, with cross-border cooperation beneficial to all states and their populations. Integrated border management, in addition, seeks to find ways of confronting and controlling new and more diffuse security threats and creating a *cordon sanitaire*, a buffer zone of third countries, around the EU (interview, FRONTEX).

One policy for achieving this end has been the European Neighbourhood and Partnership Instrument (EPNI). The major objective of EPNI is 'to develop a zone of peace and stability – a "friendly neighbourhood," "a ring of friends" – with whom the EU enjoys close, peaceful and cooperative relations in an otherwise conflict-ridden neighbourhood' which will help insulate the core of Europe from the 'dark zones' (Dimitrova, 2008: 60, 59).

The evolution of how to manage the external borders of the EU has been about more than just border controls and preventing security threats. It has been, in a fundamental way, about the meaning of Europe in the lives of its inhabitants and how to encourage and protect the emerging European identity.

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[23] Jokes told about other nationalities and regional groups, though minor cultural expressions, capture the flavour of how others are perceived in contrast to self-images. The Dutch make often quite derogatory jokes about the Belgians, the Germans about Italians, Americans about the Polish (often these are the same jokes but with nationalities switched) and Londoners about people from Yorkshire.

## 5.2    The Historical Fluidity of European Borders

Rebordering has been the historical European reality. Borders and states, defined as the entity controlling a territory through law, force and public support or apathy, have always been fluid arrangements. This is true of all states, from the developing world and the Americas, where borders were drawn by colonial imposition and rearranged, somewhat, by anti-colonial wars and independence struggles, to the developments of European states.

'One of the most striking features of EU borders is their variability and heterogeneity' (O'Dowd, 2001: 76), and a shifting sense of identities rooted in history. Current labels attached to states still point to the fluidity of identities and borders. A case in point is the two large islands off the northern coast of Europe, variously referred to as England, Great Britain or the United Kingdom, and Ireland proper (or, as sometimes happens, Southern Ireland). The English may live in England or Great Britain, but the Welsh retain their culture and language, as do the Scots, and desire some autonomy from the central British government; while the people of Northern Ireland, stuck in a small part of the Irish island as a result of Irish rebellion against British colonial rule, have endured decades of violent conflicts about where they belong, who they really are and where their loyalties and citizenship should lie, and only recently negotiated a (temporary?) ending to the violence and conflict. These labels do not denote states but cultural groupings thrown together through conquest, rebellion and the slow encroachment of a domestic and international identity and the political system called a state.[24]

The current expansion of the EU, the almost disappearance of borders internal to the EU and the salience of external border management are merely a continuation of the historical patterns of rebordering Europe. Rebordering has always been a political process, accomplished by negotiations, family relations and marriages, conquests and rebellions, and tied to national identities and cultural groupings defined through political ideologies, imagination and the invention of historical connections and similarities. Some examples can make this quite clear.

Germany (like Italy) did not become a single state until the 1870s; it experienced the subsequent dismantling and loss of its territory after the First and Second World Wars, and regained a unified German state and political system only after the reunification of East and West Germany.

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[24]    The EU recognises such cultural diversity in its official languages (23 as of 2008) but also in sub-state languages, such as Gaelic, Basque, Romansh or Welsh, which may be used by citizens for official communications to some EU institutions.

The creation of the Ottoman and Austro-Hungarian Empires eliminated existing borders, threw together under a common rule quite distinct nationalities and, when the empires collapsed, left remnants of prior nationalities strewn across Central and Eastern Europe with often quite artificial and undefined borders. Some remnants, e.g. Czechoslovakia, split peacefully into two states in a velvet divorce. Other remnants, e.g. the artificial state of Yugoslavia, collapsed into violence, ethnic cleansing and warfare among successor states.

Nations existed for a long time without a state. There was no Greece for close to 2,000 years but there were Greeks longing for a past imagined as future. Poland's borders have fluctuated for centuries as its territory was divided and redivided many times among conquering nations.

One consequence of persistent rebordering is ethnic minorities living in the 'wrong' state, and regional attempts at separation, secession or autonomy from current states, as well as borderlands which are divided by state lines. The list is long. Cultural minorities live in other states: Germans in northern Italy, Poland, Romania and the Czech Republic; Basques in Spain and France; Turks in Bulgaria; Albanians in Serbia/Kosovo; Hungarians in Serbia/Voivodina; one could go on. Separatist longings can be found in many states: Galicia and Catalonia in Spain; Corsica in France; the problems of Alsace and Lorraine between France and Germany, and the Welsh and Scottish in the UK. Borderlands with common cultures, linkages and history became divided by state-imposed lines: e.g. South Tyrolia and Alto Adige in Italy, or the Basques living in Spain and France.

In short, cultural communities precede and survive states. Borders, the mark of statehood, are not congruent with the historical developments of communities. States are truly artificial but have become entrenched in systems of national, regional and international relations and laws which need a focal point, an actor to speak for a territory.[25] Changing borders, redefining whom they separate, exclude and include, are not an aberration in Europe.

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[25]  When I wanted to spend five months in Geneva on my last sabbatical leave, I had to get a residence permit as the tourist visa only gives you permission for 90 days' stay. Rather than receive the permit from the Swiss government, it had to be issued by the cantonal government of Geneva. Equally non-state-based is the process of gaining Swiss citizenship, which can only be done after gaining cantonal citizenship. In short, it is not the Swiss central government but the cantons which determine residence and citizenship, a very odd situation indeed for a state.

### 5.3    Searching for an EU Identity

### 5.3.1  Restructuring an Expanding EU

Notions and policies of what the EU is, represents and wants to be have always been fluid. The current EU began on a very limited basis in 1951 as the European Coal and Steel Community, and has progressively expanded since then to its current configuration, institutional framework and decision-making processes. Such changes are likely to continue, and raise the question whether the EU has reached its practical limits, the ends of Europe. Progress towards formal ratification of the latest community treaty, the Treaty of Lisbon (drafted in 2007), which restructures the institutions, their powers and rights and the decision-making processes of the expanded EU, has been marked by a number of landmark treaties which expand areas of common interests – the Treaty of Rome in 1957 which converted the Coal and Steel Community into the Economic Community, accompanied by a treaty on cooperation in nuclear matters; the EU Treaty of Maastricht in 1992 which established the Union of Member States and a three-pillar arrangement for distinct policy areas (community or common interests, foreign policy issues and member states' interests), and also moved the justice and home affairs policy area into the community pillar and placed JHA under the competence of the EC; the Single European Act of 1986 which led to the creation of a single or common market; the Treaty of Amsterdam in 1997, which extended pooled sovereignty or community policy domains and moved border control into the first, the community pillar; and the Treaty of Nice of 2001 which 'streamlined the EU's decision-making processes' (European Commission, 2007a: 6). There has been a continuous search for an institutional framework for the EU which reflects and fits the changing political and economic interests and priorities of member states, facilitates the inclusion of new members, advances a willingness to pool or share sovereignty with EU institutions and promotes an ever-increasing range of tasks that have been turned over to EU decision-makers and EU laws.

The Treaty of Lisbon agreed by European leaders in late 2007 continues the process of restructuring. The need for a new treaty is justified by three 'fundamental reasons: more efficiency in the decision-making process; more democracy through a greater role "for elected legislatures"; and "increased coherence internally". As the EU has grown and its responsibilities have changed, it makes sense to update the way in which it works' (Treaty of Lisbon website). The rule of unanimity will be replaced by qualified majority voting for many issues to accommodate the increase to 27 MSs. Decision-making on foreign policy will be further centralised.

Another major change has been the abolition of pillars. 'EU action will be facilitated by the abolition of the existing separate policy areas – also known

as "pillars" – that characterize today's institutional structure with regard to police and judicial co-operation in criminal matters.' The treaty will 'have considerable influence on the existing rules governing freedom, and security and justice at EU level and will facilitate more comprehensive, legitimate, efficient, transparent and democratic EU action in this field' (ibid.). The treaty will 'facilitate action at the European level through the use in almost all circumstances of the "Community method", i.e., qualified majority decision-making based on proposals from the Commission' (ibid.). The language used leaves it somewhat unclear what the impact of the treaty on IBM will be.[26] The treaty seeks to clarify more precisely what are community and MS interests and what are common external policy interests. The Lisbon Treaty does away with the language of pillars but leaves the same security policy domains as before within the respective competencies of the EC and the MSs. The pillars may be gone, but the tension between community and MS priorities remains.

### 5.3.2 The Ends of Europe

It is likely that over time the existing holes in the EU will be filled in by the accession of states in the Western Balkan region once the political context has stabilised, especially with further agreement on the *de jure* status of Kosovo. Switzerland, committed to its neutrality, is not likely to join the EU formally but in practice has acceded to almost all the policies that integrate its economy and security within the EU *acquis*. Countries still outside the EU – Norway and Iceland – have joined customs and security agreements through side-treaties and MOUs, knowing that their economies and security are closely linked to Europe. The UK reluctance to participate fully in the Schengen accords on free internal mobility fluctuates as domestic political power and fortunes shift among Eurosceptics and supporters of further integration.

The thorny issue for the expansion of external borders is Turkey, which has sought accession. Two issues dominate that accession debate. Is Turkey really a European country, being located mainly in Asia/Middle East and formally an Islamic republic with a large population (second after Germany were Turkey to enter the EU), and what will the expansion of external borders which would follow Turkey's accession mean for border management and the security of EU states? Were Turkey to become a member of the EU, the external borders would shift to Turkey's borders with Armenia, Iraq and Syria and massively increase Black and Mediterranean Sea borders. For EU

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[26] Unfortunately, the treaty will not be easier to read for the uninitiated (one reason for the explanations on the website), as it continues the pattern, habits and style of amending existing treaties that are found in other regulations and laws, and the two major treaties will be renamed: Maastricht becomes the Treaty on the European Union, and Amsterdam becomes the Treaty on the Functioning of the European Union (Treaty of Lisbon website).

officials dealing with IBM and external borders, that is not a pleasant prospect. Coordination and integration policies would be much more complex and complicated (interviews, FRONTEX). At some point Europe ends as a territorial designation. There seems to be some agreement that the end is close to being reached, for going further would undermine the very notion of a European identity.

The expansion of the EU, after the admission of 12 new MSs, is at a temporary standstill, needing a breathing space to figure out how well this latest expansion will work in all policy areas. Decision-making processes have become more complicated when 27 states participate in discussion and policy-making, especially when a rule of unanimity prevails.[27] The reform treaty (Treaty of Lisbon) is a response to these new realities. It is not likely to be the last restructuring treaty.

### 5.3.3 Political Contexts and Constraints on IBM

Much of IBM is regulated by *acquis* norms and regulations. Yet there also 'are several fields of activity that are guided by political decision and after that by EU institutions. The enlargement process, external relations, crisis management operations and support to third countries are examples of this' (Council of the European Union, 2006: 11).[28] Specifically, conceptions of IBM and the implementation of border controls have been shaped, as noted earlier, by the growth of a European *acquis* and associated sets of institutions; the continued control over borders by MSs; and the creation of laws and regulations dealing specifically with IBM. In addition, control over a common foreign policy for the EU, which has been centralised and strengthened by provisions in the Treaty of Lisbon, will influence how IBM can develop. Some aspects of an IBM policy are and will be shaped in fundamental ways by foreign policy decisions. The following are three examples.

The EU pursues a friendly neighbourhood policy through EPNI, created in 2007. EPNI replaces earlier EU assistance instruments, and seeks to encourage cross-border cooperation at the external borders to assure neighbouring external countries that existing commercial, financial and security arrangements will be maintained as much as possible even as the external borders are hardening. The goal is to prevent new dividing lines between the EU and its neighbours, and to 'bring about economic and

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[27] A FRONTEX official told me that it used to take about two hours for meetings to give everyone at least a chance to speak. Now there are almost double that many participants, and meetings last four hours. Not an efficient use of resources. (Well, he phrased it more colourfully.)

[28] Oddly enough, the draft later refers to 'the mandate and sovereignty of the FRONTEX', which cannot be correct. Right above that phrase the draft notes that FRONTEX 'therefore remains dependent on the support of the Member States' for the coordination of border management policies. The proper word should be either independence or autonomy, not sovereignty (Council of the European Union, 2006: 11).

political privileged relationships between the Union and each neighbouring country', a policy supported by extensive financial assistance for partner countries of a projected 12 billion euros for the 2007–2013 period (European Commission, 2007c: 22).

The forward linkages in an IBM system will have to exist within the arrangements made under EPNI. FRONTEX has to work within the foreign policy priorities of the EU. This is emphasised in the establishment law. FRONTEX is tasked (Council of the European Union, 2004: Article 14) with facilitating 'operational cooperation between member states and third countries in the framework of the external relations policy of the European Union'.

A second impact on IBM relates to the EU's policy on visas and asylum seekers. Asylum seekers whose applications are denied will be deported, by policy, to their last safe transit country. In effect, those last countries transited by seekers on their journeys from their home countries to the EU, typically the external neighbours, will have to deal with returned or deported asylum seekers. The EU has passed the problem back to them, but also seeks to mollify bad feelings by other support programmes for those countries. Similarly, people entering illegally – without proper papers – will be deported, and helping organise deportations has become part of the responsibilities of FRONTEX.

A last example is more general, based on the theory and policy that illegal immigrants leave their home states because they cannot find jobs there or survive at all, and hence seek work elsewhere. They are driven by need, and if such needs can be alleviated to some degree by foreign aid programmes and other assistance, that might reduce the flow of illegal job seekers. This policy is beyond the competence of IBM agencies within the EU, but provides a context that will have be taken into account, such as in intelligence projections on the dynamics of illegal migration movements and routes conducted by FRONTEX and other national and EU intelligence agencies.

The most important political constraint on IBM reforms, though, remains the authority of member states to control their own borders. As noted by the Council of the European Union (2004: Introduction), 'the responsibility for the control and surveillance of external borders lies with the Member States. The Agency [FRONTEX] should facilitate the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.' Member states have the right to devise policies, establish institutions and regulations, and recruit and train personnel as they see fit for the protection of their own borders. The vast

majority of controlling borders is done by police and guards working for MSs. Every regulation on IBM or border controls issued by the EC contains language to the effect that those regulations do not override the inherent sovereign rights of MSs to control their borders, of course as constrained by the norms and mandates contained in the *acquis* and specific regulations such as the Schengen Borders Code.

## 5.4 Conceptions of IBM

Integrated border management has different meanings within the general literature on borders and within the policies of the EU. For convenience one can distinguish three perspectives or models on integration: IBM in the context of security sector reform; EU and EC deliberations on the meanings of IBM (IBM/EC); and the competencies of FRONTEX, with SSR/IBM the most complex and FRONTEX the least integrative approach to IBM.

The concept of integrated border management was first introduced in the conclusions of the Tampere European Council in 1999, and later by the Laeken European Council of December 2001, the goal being more effective border control and better risk analysis and anticipation of personnel and resource needs (European Parliament, 2005: 2).[29] Later European Council meetings developed an action plan for the management of the external borders of the EU and called on the EC to develop legislative and operational measures for controls at checkpoints and the surveillance of borders away from legal crossing points, to include these components: 'a common operational co-ordination and co-operation mechanism, common integrated risk analysis, personnel and inter-operational equipment, a common Corpus of legislation and burden sharing between the Member States and the union' (Council of the European Union, 2006: 2).

Even after IBM was announced as a goal, exactly what it meant for the EU in practice was not that clear. 'The elements of such a model remain scattered across a range of documents with varying statuses' (Jeandesboz, 2008: 2). Various definitions have floated around, and still do, but they contain common themes and elements.

One is the definition of border guards, as found in the SBC. A border guard is 'any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of the border and who carries out border control tasks'. Border control is defined as

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[29]  The EU, European Parliament and EC websites give a quite detailed account of the various resolutions and conclusions passed leading up to the creation of FRONTEX. The concise history and background to the IBM concept as it was developed in the EU can be found in Carrera (2007), Hobbing (2005) and Guild et al. (2008); and on the general growth of the EU JHA acquis in Apap (2004), Kovács (2002), chapters on the EU in Caparini and Marenin (2005) and in the numerous EC and EU documents on border controls (which typically repeat the history of integration efforts in their beginning pages).

'activities carried out at a border, in response exclusively to an intention to cross a border, and consisting of border checks and border surveillance' (European Union, 2009: 3).

IBM was defined in the initial EC document (European Commission, 2002: Section III) on the expected development of a European corps of border guards to include a common corpus of legislation; common coordination and operational cooperation mechanisms; common integrated risk analysis; MS staff trained in the European dimension (an interesting phrase!); interoperable equipment; and burden-sharing between member states.

The most authoritative definition[30] was issued by the presidency of the Council of the European Union (2006: 4) to define IBM in a more precise way, after noting that 'the famous term "Integrated Border Management", even if widely used, has so far not been defined despite several attempts to do so'. The CEU suggested the following definition.

Integrated border management consists of the following dimensions:

- 'border control (checks and surveillance) as defined in the Schengen borders code, including relevant risk and crime intelligence

- investigation of cross border crime in coordination with all competent law enforcement authorities

- the four-tier access model (measures in third countries, cooperation with neighbouring countries, border controls, control measures within the area of free movement including aliens control as well as return [as described in the Schengen Catalogue (2002)]

- inter-agency cooperation for border management (border guards, customs, police, national security and relevant authorities) and international cooperation

- coordination and coherence of activities of Member States and Institutions and other bodies of the Community.'[31]

The CEU suggested certain essential principles which should guide the implementation of IBM. 'Management of EU's external borders is based on the principles of solidarity, mutual trust and co-responsibility among Member States, and has as a basic pillar full respect for human rights in both actions and procedures' (Council of the European Union, 2006: 5). Other principles include the requirements that border guards 'shall be specialized trained professionals' (ibid.); that community legislation will lead to the

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[30]   A FRONTEX official called this the 'best document on how IBM has evolved'.
[31]   The director of FRONTEX (Laitinen, 2008: section 2) used this definition word for word when discussing the work and tasks of FRONTEX, except to call this the exhaustive definition.

uniform implementation of controls; that IBM must include the 'owners of the infrastructure such as airport authorities, shipping and aviation companies and their agents' (ibid.: 10); that surveillance requires 'operational analysis, planning and command on a regional level above the basic organizational unit with a limited area of competence' (ibid.: 8); and that a 'common methodology in measuring the operational effects of border control' needs to be devised (ibid.: 12). The draft further recommends that risks at the border can 'be minimized by fluent cooperation between border relevant authorities within individual Member States. Joint crime intelligence activities between border guards, customs, police and the national security authority have been highlighted as a recommend practice by the Schengen evaluation committees' (ibid.: 13).

The operational and practical implementation of goals and principles are not precisely delineated, and will depend on such regulations and mechanisms as the EC establishes.

The common theme in conceptions of IBM is the need for integration, or at least coordination, of relevant actors for border controls within countries, at the borders and cross-nationally. There is agreement that border guards are the core agencies and actors in making IBM work. The basic differences are the lists of other actors who have to be included in an integrated system, ranging from those engaged in checkpoint controls and surveillance to an increasingly longer list of actors at best tangentially related to border management; and what range of tasks should be included in specific programmes and institutions.

For example, though there is much stress on crime control in the definitions, the basic EU IBM institution, FRONTEX, does not deal with crime directly, except to share information with national law enforcement agencies and Europol. Customs is left out of FRONTEX's mandate even though it would seem to be essential to effective horizontally integrated border control. The reason given is the functional division of labour between border police (security and control) and customs (budgetary issues, collection of fees and taxes). The two agencies and their agents do different work. Still, one can reasonably argue that both deal with threats to security – dangerous people and dangerous goods.

## 6.    Security Sector Reform and IBM

### 6.1    Integrated Border Management within the Context of SSR

The maximal conception of IBM can be found in the SSR (security sector reform) and SSG (security sector governance) literature,[32] which views the practices of providing security and order as a political arena populated by numerous state and non-state actors. From this perspective, integration means the creation of a systematic network of actors, powers, resources and authorities all working together towards the common good of security through effective and fair border controls. Since the list of state actors is large (military, intelligence, police and border guards being the most frequently mentioned, with supporting agencies – courts, corrections, legal actors – also part of the overall system) and a list of non-state actors just as long (human rights NGOs, think-tanks, academics), creating an integrated border management system is pretty much impossible but would incorporate border guarding into a holistic view of how security and order are provided within a territory or region and at the margins. But one cannot focus solely on border guards when discussing IBM. This model of integration underlies the approach taken by the Organisation for Economic Co-operation and Development (2007), the EU and DCAF (2005) in supporting border management reforms in the potential EU accession states in the Western Balkans.

Border management cannot be solved at the borders alone, but needs to include the relevant agencies within countries, at the borders and in other countries to meet the basic Schengen and EU standards for full border services – control systems must be effective, be adjusted to the specifics of risks and threats faced, and be based on best practices and experiences taken from reforms in prior-accession and candidate countries. As Hills (2006) has noted, the basic goals of IBM are perceived as legitimate and needed, but have to be considered in the wider context of politics, ideologies of control and national and regional security conditions.

An important lesson from studies of SSR is that changes in the security sector shift the balance of political power within a state and alter the relations between governments and civic society. SSR is not only a technical process which, once properly planned and stated, will be implemented without dispute or difficulties. For one thing, the implementation of reforms requires existing agencies and agents to change the way they conduct their work and, in the case of IBM, how they work together. Decisions on what to

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[32]    The dynamics of SSR have been extensively analysed and a number of basic lessons on how to plan and implement reforms have been learned (e.g. Ball et al., 2003; Bryden and Hänggi, 2004; Donais, 2008; Hänggi and Winkler, 2003; Huang, 2005; OECD Development Co-operation Directorate, 2004, 2005; Peake et al., 2006).

change and what to keep are political, as there has to be some discussion of who will do what and why. Security exists as a continuum, both in the threats faced, which can range from severe to minor annoyances, and in the responses by all security actors, which will reflect their respective competencies and commitments. Piecemeal SSR is incomplete but, more importantly, it is inefficient and ineffective.

The *OECD Handbook* (Organisation for Economic Co-operation and Development, 2007: 22; see Bryden, 2007) lists four sets of actors which need to be integrated if border management is to be effective: core security actors, such as police, customs, border guards, intelligence agencies, armed forces and coastguards; security governance and oversight bodies, such as parliaments and their relevant committees and civic society organisations; justice and rule-of-law agencies; and non-statutory bodies, such as media and private security providers. For convenience and practicality, sub-systems may be the focus of reform and integration, such as the criminal justice system, the intelligence system or the state security system, which includes security at the borders (Organisation for Economic Co-operation and Development, 2007: 23). The basic and by now non-controversial point is that border control policies and agencies cannot work in isolation from other agencies in the security system. 'Effective and integrated border management requires co-operation at three different levels': vertical information flows from border units in a 'ministry to the units working at border posts'; horizontal cooperation among all services operating at the border; and international cooperation 'between agencies involved in border issues in different countries' (ibid.: 155).

The *Handbook* stresses the need for accountability, integrity in performance and observance of the rule of law and fair treatment of all by border guards. It also suggests that in 'some circumstances' the best solution to the 'challenges of inter-agency cooperation and corruption' is establishing a 'separate border guard organisation' which can provide identity, 'management structures and internal disciplinary mechanisms' (ibid.: 156). Alternatively, in other circumstances, 'a steering committee or inter-agency commission' may be a better solution (ibid.: 157).

The normative, strategic and operational criteria for assessing success and progress in SSR/SSG are improvements in various aspects of internal security conditions, changes in the organisational structures and performance of security agencies, adherence to or movement towards UN and EU professional standards and codes of conduct related to the security sector, the development of effective and democratic oversight institutions, and peace-building efforts in post-conflict states (Panagiotopoulos, 2007: 13). The integrated management of border control agencies in SSR/IBM takes in a far

wider range of institutions, actors, problems and processes than are found in IBM/EC and FRONTEX.

## 6.2 SSR/IBM as Accession Policy

### 6.2.1 The Guidelines

Discussing SSR and IBM within the context of the Balkan states is not accidental. For one, analysing the domestic political and economic motives behind adopting SSR/IBM by the Balkan states lays bare the practical reason for accepting reforms suggested by outsiders, namely the desire to join the EU, while understanding full well that to be allowed into the EU will require some basic political and economic changes within the domestic sphere. To achieve accession will lead to a shift of power among political élites and security agencies. As SSR/IBM moves forward, the ultimate goal is filling in the territorial hole in the EU, largely for the practical reason that the Balkan route cannot be effectively controlled if the states in the territorial hole are left outside the EU. SSR/IBM represents the most complex and integrated notion of IBM, and it is in the Balkans that this model has been pursued with greater intensity and success than anywhere else in the EU.

The general priorities and standards for IBM can be found in the 'Guidelines for Integrated Border Management in the Western Balkans' (European Union, 2004; also see Hobbing, 2005a, 2005b),[33] which spell out threshold criteria which must be met for accession to the EU. EU expectations and standards have become firmly embedded in domestic political discourses and laws passed within each country. The 'still developing system for managing the EU external borders, consisting of rules, best practices and recommendations, are relevant for SAP countries, as they provide for ways to address their operational needs, and will ensure further integration into the EU' (European Union, 2004: 15).

The guidelines (ibid.) spell out what IBM means to the EU planners as applied, and adjusted, to the realities of the Western Balkans. IBM 'seeks to ensure proper in-country and international co-ordination among the various

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[33] The guidelines are not detailed technical specifications on how to establish IBM systems, but rather are of a 'strategic nature', indicating standards and issues which should be taken into account when developing national plans. The guidelines reflect a systems approach to planning and implementation. They stress rationalisation, systematisation, regularisation of relations among agencies in the three pillars, the need to define precisely competencies, efficiency and impact measures, appropriate administrative procedures, communications and IT systems, legal and regulatory frameworks, the development of human resources and skills, and detailed work plans specifying objectives, milestones and benchmarks, sequencing of activities, time-lines, expected outputs and the division of responsibilities for work (European Union, 2004: 40). Coordination and cooperation will need to be achieved by MOUs, inter-agency joint task forces, systematic communications among agencies, routing slips and regular briefings to relevant mid-level managers, all of these mechanisms taking into account the policy approach and strictures of national action plans, which will also have to be developed.

services involved in border management issues, in order to guarantee that borders are managed with maximum effectiveness and efficiency' (ibid.: 11).[34] Three pillars define relevant areas and aspects of coordination and cooperation which have to be addressed: 'intra-service, inter-agency and international cooperation' (ibid.: 16). The pillars are analytical categories, but given the 'sometimes atypical State structures or evolving institutional (if not constitutional) arrangements' (ibid.) in different states, they may not be precisely applicable.

The guidelines focus mainly on border guards, customs and veterinarian and phyto-sanitary services, but 'could include Ministries of Interior, Finance, Foreign Affairs, Economy, Defence, Tourism, Environment, Agriculture, Transport, Health, Telecommunications and European Integration' (ibid.: 24). Also mentioned are the Ministry of Labour (ibid.: 26) and international and EU processes (Pompidou Group, Budapest Process and the International Police Conference – ibid.: 39). Considering that 'integrating' the security sector and border management will require inter-agency working groups based on MOUs, a vast array of interconnections will have to be created to meet EU expectations for achieving SSR and IBM in the Western Balkans.

Even so, the list of possible agencies and groups to be included in an integrated approach leaves out some potential actors. As Hobbing (2005: 3) notes, 'the EU CARDS[35] formula, although a strikingly concise and reliable guidelines in many respects, is missing one important feature for success, which is the cooperation with the private sector, especially in the transport sector'. The chapter on 'border management' in the *OECD Handbook on Security System Reforms* (Organisation for Economic Co-operation and Development, 2007) lists state intelligence agencies and anti-corruption committees, in addition to the other state agencies mentioned in the guidelines; inter-state regional steering groups and policing organisations; community-based forums, cross-border peace-building committees and non-state vigilante and security forces; and private companies providing specialised customs or border security services The array of interconnections which have to be organised becomes wider, more complex and more extensive.[36]

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34  A somewhat different definition is stated later: the IBM concept 'covers the co-ordination and co-operation among all relevant authorities and agencies involved in border control, trade facilitation and border region co-operation to establish effective, efficient and integrated border management systems, in order to ensure the common goal of open, but controlled and secure borders' (European Union, 2004: 14).

35  Community Assistance for Reconstruction, Development and Stabilisation (CARDS) is the EU's regional assistance programme for the seven WB states. Authorised by EC regulation No. 2666/2000 in 2000, the programme seeks democratic, economic and administrative reforms in the WB to bring the states up to EU standards and possible accession. Clearly, the EU has been concerned about the territorial hole and how best to fill it in.

36  It is one of the critiques of SSR that the more one thinks about how to delineate it, the more governmental and civic society agencies and actors have to be included. In the end, the concept of SSR becomes so amorphous as to threaten its analytical and practical utility.

Among the more specific recommendations of the guidelines (European Union, 2004) are the passing of enabling laws which define agency competencies and authority; the creation of information-sharing systems available in real time to all relevant agencies; the promulgation of a set of procedures providing clear and precise guidance to agents on how to work within the integrated system and with other agencies; if possible, joint training and common manuals familiarising agents with the work and responsibilities of other agencies; and the development of a common MOU form which can be used to establish the lines of authority and communications among border control agencies.

In addition, planning must acknowledge the four-tier system of the Schengen regime: activities in third countries which will impact on border control systems; international border cooperation at three levels (local, horizontal cooperation among officials within their own territory on both sides of the border, bilateral cooperation between neighbouring states and multinational cooperation focusing on border management issues); control measures established at external borders; and further activities inside the territory of the Schengen states and among Schengen states (ibid.: 18, 63).

As with EC IBM documents, the guidelines focus on the planning aspects of border management and say little about implementation – which, it seems to be assumed, will proceed without much difficulty or hindrance if planning was detailed and complete enough. There is, as well, no substantive mention of the politics of planning and implementation, on the assumption, so it seems again, that rational and well-meaning people will understand why the plans for IBM systems are as they are and will abide by them without considering their own or their reference groups' political fortunes. Integration of border control management will be achieved when all the activities which need to be done have been done in order to avoid duplication, waste of resources and efforts, overlapping authority and work, inefficient communication and ineffective resolution of the inevitable disputes about competencies and responsibility for failures. The guidelines are replete with extended and detailed sets of activities which should be done, by someone, for some reasons.

The ultimate organisational goal of reforms should be, in accord with the Schengen Catalogue, 'specialized, unified, well-trained and fully professional and independent police-like border guard forces. Border Guards should form an independent, centralized unit, if possible within the general police structures, and have their own budget' (p. 20). These self-standing border guards will become integrated as part of a system of border management, but with distinct competencies and responsibilities.

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The overarching operational goal is the proper balance between facilitating the legitimate and legal movement of people and goods and preventing threats and risks to domestic and regional security. Yet how that balance is to be achieved cannot be found in the recommendations of the guidelines, for that is a political decision on how to provide easy access for legal activities and prevent illegal ones, and what and who present unacceptable risks and threats and what and who should be given legal access to the *cordon sanitaire* or buffer zone represented by potential accession states to the EU and from there to EU member states (Andreas and Nadelmann, 2006: 182–185). Risks and threats, legal and legitimate access need to be defined in a manner that fits the political priorities and situational realities of MSs and the EU.[37]

## 6.2.2 The Ohrid Declaration

A specific document stating the path to be taken by Western Balkan states in implementing the guidelines is the Ohrid Declaration (United Nations, 2003), which 'identifies concrete and specific measures necessary to achieve agreed objectives, taking into account some specific requirements in the parts of the region where, for exceptional reasons and on a temporary basis, military units are involved in border control and smuggling interdiction operations during a transitional period (i.e. before full military withdrawal in the framework of the security sector reform, and until border control is entirely under the responsibility of specialized professional police services, in accordance with European standards)' (ibid.: 1). The participating Western Balkan countries and the four regional partner organisations (NATO, EU, OSCE, Stability Pact) committed themselves to developing national regional instruments (laws, regulations, MOUs) for moving towards an IBM system and to working on specific measures set out in phased time-lines for the 2004–2006 period. Regional organisations agreed to assist in drafting regional cooperation instruments and provide training and financing for police and border guards. One NGO, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), agreed to subsidise regional workshops and training courses delivered on site and through a virtual border police academy, and help in the creation of a group of experts in each country and regionally who could assist in developing appropriate IBM systems and assess progress towards their achievement (Ebnöther et al., 2007).

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[37] For example, in some Western Balkans states, as elsewhere, smuggling is an honoured though illegal tradition and economic activity among many people living in border zones. Establishing an effective IBM system will disrupt those activities and deprive people of incomes, and will be resisted by evasion, the corrupting of border guards, paper fraud and political protests. This raises the questions of whether smuggling should be allowed to continue if it is 'harmless' and 'traditional' and how border guards will be trained to deal with traditional smuggling.

## 6.3    Implementing SSR/IBM in the Balkans

### 6.3.1  A Regional Approach and Multiple Actors

Creating an IBM system is a prerequisite for accession to the EU by the Western Balkan states. Progress towards creating such a system has been pursued with two essential assumptions and conditions in mind: that a regional approach is needed, and that multiple domestic and international actors doing reform work (assistance, advice, training, organising networks) should engage in some fashion in coordinating their efforts to avoid overlap, duplications, incongruent policies and conflicting advice. That is not an easy task.

The list of actors which have participated, and still do, in reforming and creating new security and border control systems in the Western Balkans is exceedingly long. Two examples show the complexity of coordination that is needed to have everyone work on the same agenda. The 'Annex to the Ministerial Statement' (2005) by Albania thanks the following for helping modernize the infrastructure and IT equipment at border crossing points: 'DCAF, PAMECA, ICITAR [that should be ICITAP, the US international police assistance agency], INTERFORZA, IOM, UNHCR, OSCE.' Participants at the third annual review conference in Sarajevo in 2006 included ministers of interior/security and chiefs of security services of all WB countries; representatives from donor countries (Estonia, Finland, Germany, Hungary, Slovenia, Switzerland, Greece, Poland and Romania); and representatives of the 'following agencies involved in Assisting Border Security Programmes – EU, NATO, OSCE, ICMPD, EUPM, FRONTEX, Danish Centre for Human Rights, the PSOTC in BiH, PAMECA, SIPRI, Stability Pact, Austrian, Swiss and US Embassy staff' (DCAF, 2007b: 22). In short, a veritable avalanche of advice has flowed into the Balkan states, seemingly without much of an attempt to coordinate and harmonise that advice.[38]

The annual review conferences, organised with the assistance and financial support of DCAF, are designed to present participants with an 'overview of all the activities taking place in the region and the participating countries in the field of border security' (ibid.: 21) and allow a 'regular evaluation of work as it progresses' (ibid.: 6). The conferences are the main mechanisms which inform the police and political leaders of the countries on what is

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[38]  What the acronyms represent can be found on their websites. The main point is that the region has been positively swamped with assistance programmes promoting SSR, police reforms and IBM. The region is used almost as a testing ground for how to do reforms. As one example, PAMECA stands for Police Assistance Mission to Albania, funded by the EU through its General Development Programme. PAMECA III will run from 2008 to 2011 (clearly there were two earlier programmes) and deliver technical assistance to bring Albanian policing close to European standards to help prepare the country for possible accession to the EU. The programme includes assistance for IBM, delivering strategy advice and supporting the development of joint border crossing points (www.pameca.org.al).

taking place and how all the assistance programmes promote common goals, reforms and policies, or not. The major outcomes of the conferences are ministerial declarations on how to proceed towards the goal of IBM in the Western Balkans in such a manner that the procedures and policies adopted will lead to accession status and admission of the WB states to the EU.

In 2009 the ministers declared they share the belief that:

> in serving our citizens through well established and functioning border control [we] express our care and responsibility for the common Europe, where our nations belong. We emphasize the central importance of the Border Security dimension in every aspect of the process of our negotiations to join the European Union and other European institutions. We trust that the progress will guide us toward freedom for our citizens initially and fully shared responsibilities for the Schengen area finally. (Ministerial Declaration, 2009: 1)

DCAF has been responsible for much of the coordination efforts to bring multiple actors to a common table. The ministers of interior/security of the Balkan states, in turn, have expressed their thanks to DCAF supporting and organising this work at every annual meeting. They appreciate the assistance provided by DCAF thorough its Border Security Programme:

> The cooperation with DCAF enhanced out strategic vision and facilitated the improvement in operational capacities of respective border services as well as created a regional network of experts strengthening trust and transparency... We moreover appreciate and thank the governments of Austria, Bulgaria, Croatia, Estonia, Finland, Germany, Hungary, Poland, Slovenia, Spain, Sweden and Switzerland for their contributions to the establishment and efficiency of our Integrated Border Management system through the DCAF Border Security Programme. (Ibid.)

### 6.3.2  The Police Cooperation Convention for South East Europe (Vienna Police Convention)

The Police Cooperation Convention was signed by seven Balkan countries on 5 May 2006 (Bulgaria acceded later) in Vienna, under the leadership of the Austrian presidency of the EU. The Police Convention is the outcome of efforts by many partners involved in reform efforts in South East Europe (for further information see www.pccseesecretariat.si).

Signatories include states which are now in the EU (Bulgaria, Romania), candidate countries (Macedonia), a neighbouring country outside the Balkans (Moldova) and the core Western Balkan states (Albania, Bosnia-Herzegovina, Serbia and Montenegro). The 'Vienna Police Convention' (DCAF, 2008b) commits the signatories to a significant expansion of police cooperation across borders, bilaterally and at the regional level. It is, in the words of a DCAF official, 'way beyond Schengen' in what the parties agreed to. DCAF

agreed to act as the secretariat to help implement provisions of the convention.

Important provisions include strengthening cooperation with 'respect to fighting threats to public security and/or order as well as with respect to the prevention, detection and police investigation of criminal offences' (Article 1). The convention will lead to enhanced information exchanges and greater cooperative police and border guard work within the territory of the signatories. Police may deploy their 'forces in the neighbouring border areas in line with coordinated planning' (Article 3). Risk analyses 'shall aspire to possess a uniform level of information about the crime rate situation'. To this end, national law enforcement agencies 'shall exchange status reports periodically or if the need arises, and make joint analyses at least once a year' (Article 7).[39] Liaison officers may be stationed with the police of other countries (Article 9). Cooperative training will be enhanced by 'exchanging syllabi for basic and advanced training', 'arranging joint basic and advanced training seminars and cross-border exercises' and 'permitting representatives of law enforcement authorities of the other Contracting Parties to attend advanced training courses' (Article 11).

Operationally, hot pursuits may continue into the territory of another state, but pursuing officers cannot arrest but only detain the person(s) pursued; the pursuing officers shall be easily identifiable by their 'uniforms, by means of an armband or by accessories fitted to their vehicles'; and pursuing officers may carry weapons but can only use them for 'legitimate self-defence' (Article 13). Officers engaged in surveillance as part of a criminal investigation may 'continue their surveillance in the territory of another Contracting Party' but are not authorised to challenge or arrest that person (Article 14); if requested, officers from another state can be permitted to conduct controlled deliveries in the territory of the requesting state (Article 15); undercover operations may be conducted as well in another state (Article 16); and 'officers operating in the territory of another Contracting Party shall be regarded as officers of the Party with respect to offences committed against them or by them' (Article 22).

With respect to transborder cooperation, direct communication lines will be established; when the need arises, 'mixed analysis working groups and other groups' will be formed (Article 26); joint criminal investigative teams will

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[39]  Article 7 has been institutionalised by SECI in Bucharest. SECI's long title on its website is the Southeast European Cooperative Initiative Regional Center for Combating Trans-border Crime. SECI was launched in 1995 and 13 countries are members (the Balkan states plus Greece, Moldova, Turkey and Hungary). SECI is different from most other IBM efforts in that it promotes cooperation among border police and customs (horizontal integration at the borders), following guidelines given by Interpol and the World Customs Organization. The website has a link to the ten best examples of police-customs cooperation. SECI is far ahead of FRONTEX, and some national customs agencies, in this regard. In cooperation with SECI members, and other states and agencies (e.g. Europol), SECI is developing a regime for a common threat assessment on organised crime for the South East European region (OCTA). The regime will draw on existing databases as adapted to the situation in the South East European region.

operate in the territory of contracting parties, guided by the laws of the territory in which they operate and led by a leader from that nation's law enforcement authority (Article 27); mixed patrols can perform duties along the common borders (Article 28); and officers in common centres 'shall cooperate side-by-side in the framework of their respective competencies, in order to exchange, analyse, and pass on information' (Article 29).

Finally, a committee of ministers, established in June 2008, will decide 'unanimously on the interpretation, implementation and application of this Convention' (Article 33). The convention shall also be open for accession by other states (Article 39).

The convention is a substantive step towards integrating police work – national police agencies working together with their own border police (the 'downstream' integration), other agencies at the borders and other national police across borders; that is, on three levels of the four-tier Schengen integration model. Once implemented, the convention will lead to a higher level of integration than currently achieved by FRONTEX or within the Schengen Borders Code. Though it was not developed and written in isolation from EU documents and best practices on police cooperation and IBM known and learned, the convention has transcended EU instruments in the extent of IBM sought and partially implemented.

### 6.3.3  DCAF Programmes

**Regional programmes**

Without wanting to slight the contributions of other actors, let me focus on DCAF's approach to IBM, since it is the most comprehensive regional plan and policy approach to IBM in the Western Balkans. Other actors, as noted above, have been heavily involved in reform efforts and assistance, but generally with a focus on one or two countries, e.g. the OSCE in Serbia or ICITAP in Bosnia-Herzegovina and Kosovo; and the EU has contributed substantial resources for national and regional IBM projects in the Balkans through various acronymed programmes.

DCAF's contributions to IBM have been mainly in two areas: creating a coherent regional approach, and support for developing a large range of training courses, workshops and conferences aimed at all levels in the hierarchy of security organisations.[40]

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[40]  DCAF involvement in the Western Balkans arose from a courtesy meeting at Geneva airport between the Swiss president and the president of Serbia, who was on his way to a meeting of EU presidents. The Swiss president asked what Switzerland could contribute to reform efforts pursued in Serbia; the reply was help bringing security organisations up to EU standards. The Swiss president said (this is hearsay, of course), 'Well, we have

DCAF has been a major actor and significant financial contributor to a regional approach to integrated border management in the Western Balkans. DCAF, from the beginning and working with other governmental efforts (e.g. the EU CARDS programme, NATO, the OSCE) and civil society institutions in the neighbourhood, has emphasised this regional approach, since 'uncontrolled migration or organized crime' cannot be tackled by 'one country' as 'these phenomena are driven by actors spread across the Western Balkan region' (Öövel, 2004: 121). The regional plan developed by DCAF envisioned a commitment of at least ten years to the reform effort, which was to be phased in gradually as guided by an international advisory board for border security. DCAF, as a permanent Swiss organisation funded by the Swiss government and international donors, could commit itself to that long a period, knowing that reforms of security organisations and cultures within changing political and security contexts would take at least that much time. 'Creating a harmonised border security structure is a long-term process.' One can't just parachute in and fix the border security system (interview, DCAF).

DCAF has promoted the integration and coordination of the activities of multiple independent local and international actors towards a common set of border control policies and goals. It has promoted a European, non-member-state-based approach to IBM, within the context of SSR and EU political realities. Other actors in the Western Balkans have more limited views and goals: to ensure that human rights are integrated into IBM thinking, or that military efforts are supported by effective policing, including border control; or giving bilateral assistance for police and border control reforms within specific countries.

**Ministerial conferences**

The ministerial declarations agreed at the annual review conferences reflect an increasingly complex understanding of and commitment to IBM and its meanings within the Western Balkan contexts. The earliest declarations focus on delineating priorities, such as legal reforms, risk analysis, strategic and organisational structures, operational requirements, education and training, IT, national and international cooperation and anti-corruption measures (Ministerial Declaration, 2005). These were the 'trouble' areas which, from the perspectives of national and international experts, required national and increasingly regional efforts to deal with them.

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this newly founded organisation called DCAF which engages in such efforts. We will put you in touch with them.' He did, or rather the Serbian ambassador did. It took six months to define DCAF's contribution, and another six months through a large number of studies to determine what the Milosevic regime had left behind and in ruins. DCAF found out that nobody was doing much with border policing and decided to focus on that topic (as well as parliamentary oversight of the security sector). Many of DCAF's recommendations were initially strongly resisted by the military and intelligence agencies, but welcomed by border guards. The programmes developed for Serbia were then offered to the Western Balkan states (interview, DCAF).

The 2006 declaration committed the signatories (Albania, BiH, Macedonia, Montenegro and Serbia) to support the 'policy of the EU member states toward Integrated Border Management', and to

'do our utmost to

1. overcome legal differences and foster international agreements on cross-border cooperation;
2. increase operational capabilities;
3. improve technical-interoperability;
4. harmonise the education and training processes of our Border Services'.

In view of these areas of activities, as mentioned above, 'we agree to the following objectives:

- to hold contacts between Border Police Leaders at local, regional and national levels;
- to appoint National Contact Points for regional cross-border liaison;
- to establish a liaison/desk officer network;
- to establish integrated border crossing points, inter-alia, local offices for the exchange of information and early warning messages;
- to promote joint patrols;
- to set up common risk analysis;
- to encourage joint operations;
- to move toward common information management;
- to coordinate investigations' (Ministerial Declaration, 2006).

The 2008 declaration reaffirmed commitments, noted improvements and tasked 'our relevant services to develop commonly agreed proposals for establishment of [a] Master Plan for setting up joint border crossing Points' and acknowledged the 'need to increase our responsibility and common ownership over the process needed to bring border control into full compliance with Schengen requirements' (Ministerial Declaration, 2008).

The latest declaration commits the signatories to the following reforms by 2012: harmonisation of border management legislation with EU standards; a common management concept (planning, organising, motivating and controlling); a 'full set of operational procedures for border checks and surveillance'; a 'modern Anti-Corruption Programme for the Border Police'; assurance that measures to implement this 'programme are continuously revised and upgraded'; a common operations centre; and common information-sharing procedures in logistical support operations (Ministerial Declaration, 2009).

All in all, the declarations move border security services towards greater integration within and without the Balkan states, and also indicate a strong awareness of the importance of organisational dynamics in the reforms of border management.

**Training programmes**

Four levels of education and training have been phased in over the years by DCAF. The first group to be educated in the intricacies of IBM were chiefs of border police services and senior staff of the core Western Balkan states (level 1); other training would focus on regional commanders (level 2), border station commanders (level 3) and future leaders (level 4) (DCAF, 2007b: 2). The main activity at level 1 is working groups, which have met routinely to discuss needed reforms, assess progress and suggest further steps in priority areas: legal systems; strategic and organisational structures, leadership and management; logistical support; education and training; risk analysis, criminal intelligence and investigation; and blue border surveillance.

The main goal achieved at the second level – regional commanders – has been the development of a two-year advanced distance learning course which 'can be seen as a cornerstone for a future Virtual Border Guard Academy' (ibid.: 3). At the third level – station managers – course development has focused on operational guidelines and job descriptions appropriate for that level of management in the border guard organisational hierarchy. At the fourth level, DCAF organises an annual summer training conference for about 50 future leaders, border guards but also 'scholars, NGO activists, journalists and government officials' (ibid.), which always meets in Andermatt, Switzerland. All these activities have been implemented through a large number of workshops, working group meetings and conferences.[41]

The advanced distance learning course went operational in 2005, starting with English-language courses. Modules on 'Change in the security environment', 'Leadership and management' and 'Border management' were offered beginning in 2006.

Training of station managers (level 3) began in 2005 with courses on 'Communication and stress management' and 'Leadership and green and blue border surveillance', with modules on 'Operational guidelines' and 'Station manager job descriptions' to be offered later. Classroom training has been supplemented by visits to border guard stations to observe their operations, in Estonia and Poland in 2006, and in Hungary in 2007.

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[41]  DCAF (2007b) gives a detailed listing and description of all meetings at the four levels up to the beginning of 2007. Meetings after that date are listed in DCAF (2008a) under 'Border security – planned events' for different years; for 2008 I counted 31 planned events. Detailed descriptions of meetings held in 2008 – agendas, participants, topics – can be found in the same document.

The training of future leaders reaches out to countries far beyond the EU and the Western Balkans. For example, the 2006 meeting was attended by 56 'promising Border Police officers from 18 countries' from the South East Europe region, from Georgia, Ukraine, Azerbaijan, Moldova, and from the EU (e.g. Estonia, Finland, Germany). Meetings include a one-day hiking and camping trip adapted to 'everyone's capabilities' (ibid.: 45). Topics discussed at the 2008 meeting included 'Before your are a leader, success is all about growing yourself', 'Life is a team effort' and 'Border guarding as a lifestyle'.[42] For the hiking and climbing exercise, which involved camping overnight, all 'national delegations were kindly requested to be ready for the delivery of one national poem which could introduce the country they come from and a popular song which could be sung together' (DCAF, 2008a: 271–274).

## 6.4    Assessments

The biggest weakness related to IBM pointed out in the Western Balkan country studies (Ebnöther et al., 2007) is the lack of implementation capacity, either because little domestic capacity (skills, knowledge, technology, finances) exists and has to be substituted by international advice and assistance, or because politics makes implementation difficult. So far, by the standards and goals stated in the guidelines and the Ohrid Declaration, the move toward IBM systems is, at best, in its early stages. In a sense, the easier parts – writing the laws – have been done. The harder work – carrying plans into action – is still in the formative stages.

At the same time, the localisation of EU standards and international norms as described in the country self-assessments seems to be largely pragmatic, *ad hoc* and instrumentalist, a necessary means to achieving EU acceptance and membership rather than the principled adoption of new democratic norms, goals and practices. If this assessment is correct, then the politics and mentalities of political and security agency leaders, and possibly civic society, of the regional countries will have to change alongside or preceding SSR. That will not be easy.

The wish by local political élites to become acceptable and accepted into the EU has to be balanced against local (in)security realities within and at the borders of the six Western Balkan countries, their political histories and dynamics, and the institutional traditions and cultures of security-providing agencies. The path from existing structural, social and political realities towards security sectors which meet European, as well as international, standards is not direct, straight or easy to traverse. SSR in accession and new

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[42]    These are somewhat surprising topics for a police training workshop, incongruously tilting towards a 'new age' rhetoric and its foundational psychological assumptions.

member states (which have not yet been allowed completely into the Schengenspace) is both a movement away from discredited policies and practices of past regimes and a movement towards new and acceptable standards and forms of conduct. There will be obstacles and objections which arise from local social, cultural, political and economic contexts, and these must be faced realistically.

Integration requires, in parallel or prior to integration efforts, substantial reforms of the separate agencies which comprise the security sector. The police and border guards in Balkan countries, some now in the EU (Romania, Bulgaria) and some looking in, have not been known for high levels of integrity or for paying much attention to the rule of law and the rights of people, being more attuned in their work to the wishes and demands of autocratic regimes. Much of the reform effort to bring the security agencies up to European standards has had to focus on decentralising, demilitarising, depoliticising and decriminalising the police and border guards; goals which have required major structural reforms in organisation, training, transparency and democratic oversight – not an easy process and one that can be reversed (Caparini and Marenin, 2004). Some tasks are easier than others. Decentralising the police is easier than changing their occupational culture from one of service to the state to one of service to their communities. Achieving democratic oversight and accountability requires changes in the political cultures of governing groups, a far more difficult task than teaching border guards new technical skills. Integrating agencies which are themselves being fundamentally reformed into a coherent border management system is both an opportunity, since reforms are being done on a systematic scale anyway, and also a complicated challenge, since the institutional stability of what is to be integrated is lacking.

A large number of actors have been involved in promoting IBM in the Balkans, and that complicates SSR and SSG, and progress towards IBM. One problem is that no European model of police reforms or IBM is offered by all actors, only models which reflect their occupational and ideological preferences.[43] The exception is DCAF, which has no national (i.e. Swiss) organisational preference for certain reform models, but has structured its activities in the Western Balkans on the advice and by the involvement of a large and diverse groups of experts, practitioners and scholars drawn from many countries. The result may not be a European model, as this does not yet exist, but neither is it a national preference. The model seeks to

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[43] At a recent conference, I chatted with a German police officer who had been involved in a German-sponsored project training the police and border guards in Albania. The subject of a European approach to police reform came up. 'There is no European model,' he said. 'There is the German model, the French model, the Belgian model, the Italian model.' The French are not going to teach the German model and the Germans are not going to teach the Italian model. When it comes to the specifics, you teach what you know works from you own experience, regardless of the 'European' rhetoric which surrounds your teaching. You can take a German out of Germany but you cannot take Germany out of the German (or Italian or Spaniard).

incorporate best lessons drawn from practice and scholarship in its training and operational assessments.

Two reforms have been substantial steps towards IBM. The Vienna Police Convention discussed earlier is one. The other important set of steps can be found in the targets, delivery method and contents of training organised and offered by DCAF.[44] Courses are targeted at mid-level managers, the most likely obstacles to any reform but also the most dynamic force for change if they can be convinced that reform is the right direction to go. The emphasis in content on management and administration is also essential for success of any reforms. What the training offers, as far as one can tell from the course descriptions, are discussions of typical organisational problems and issues (e.g. stress, leadership styles) and concrete examples of how to deal with them. There is a real attempt to translate the political and rhetorical goals of IBM into operational practices.

SSR and IBM in the Balkans adopt a regional approach, with partner states signing up for various agreements and policies and organising for their implementation. This could lead policies into a reform trap, such that regional policies may become a hindrance to being admitted to the EU or even after admittance. Accession to the EU is only offered to individual states, not regions. Policies which states have agreed to on a regional basis may not be in accord with the still-developing EU norms and standards on IBM, hence may have to be changed by each state; they may have to abandon their commitments to regional agreements which may not accord with EU IBM notions. This could happen in many policy domains, from logistics to training.

For example, the 2009 ministerial declaration, under logistic support, states the goal that 'procurement programmes for technical equipment respecting relevant EU standards are in place and lead to coordinated purchases of standardized, compatible and interoperable technical systems' (Ministerial Declaration, 2009). Two points can be made here. EU standards do not lead to interoperability, as they only specify technical requirements which can be met by different kinds of equipment. Secondly, the chance that whatever the region adopts as its interoperability standards will meet EU standards is highly unlikely, for EU standards will change over time as MS needs and resources change. EU standards in all domains are movable targets. At accession either the regional system may have to be scrapped or new equipment bought.

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[44] As elsewhere in the EU, training is provided by many governmental and non-governmental agencies. DCAF's efforts have been the most extensive, with other agencies focusing more on specific topics and 'student' populations. For example, NI-CO, a not-for-profit agency in Belfast (its slogan is 'sharing the experience of Northern Ireland'), has assisted in training at the Albanian Police Academy and in implementing IBM in that country (www.nico.org.uk).

A similar worry concerns training. Assistance programmes to the region have introduced, developed and will continue to expand mid-level managerial training courses. FRONTEX is also in the process of developing a mid-level managerial course. The chances that both approaches will have similar content are not high, unless cooperation among the two agencies and coordination in their approaches to teaching management topics can be negotiated. The 2009 ministerial declaration states that the five signatories will establish a 'well functioning Consortium (professional network of experts) between [their] national institutions responsible for border police education and training' (Ministerial Declaration, 2009). Fitting this network into the FRONTEX-based common training goals and courses may be difficult without substantive changes and extensive negotiations. (In my interviews, FRONTEX officials expressed an interest in working with DCAF; a DCAF official hoped that the advanced distance DCAF course could be handed over to FRONTEX in due time.)

In an interview (DCAF), an official expressed the view that rather than regional standards continuing to be 'subservient' to EU norms and accession priorities, regional standards, being in some cases more advanced or integrated, may change EU standards. The official mentioned the Vienna Police Convention as an example, and noted that DCAF had talked to the CEU and the EC and offered to help negotiate a convergence. The Vienna Police Convention had been presented to the JHA section of the CEU in 2006 and been approved there, and the CEU had encouraged South East European states to join the Schengen Convention. The DCAF official thought that the Vienna and EU approaches to IBM should be linked up and integrated, taking the best from each approach. Convergence rather than adjustment of South East European regional standards to EU standards should be the goal.

In sum, there has been a lot of process conducted by many assistance programmes in the Balkan territorial hole, a lot of outputs by many organisations and much reform-oriented rhetoric in the areas of law, security sector, policing and border management. What is not yet clear is how far process and outputs have moved the Balkan states towards greater adherence to and performance which meets EU standards in all these areas. In the end, that is the most meaningful question, so far answered piecemeal by any organisation which has delivered a programme. But there exists no overall assessment of the success of the various reforms, unless one can assume that accession to the EU, once it happens, will be the basic indicator.

# 7.    IBM in EU Policy Thinking

IBM is not an unprecedented idea. The experience of earlier experiments and integrative projects can point to likely problems faced when attempting to integrate the work of security agencies and the means to overcome these: border control cooperation in Euroregions and Schengenland; Europol as an example of the integration of national personnel into one organisational framework; the European Police College (CEPOL) as a coordinated approach to training police in a European manner; prior attempts to create a European corps of border guards; and numerous bilateral and multilateral joint task forces.

## 7.1    Structural Antecedents and Precedents

The continual expansion of the EU from six members in 1952 to nine in 1973, ten in 1981, 12 in 1986, 15 in 1995, 25 in 2004 and 27 in 2007, with three potential accession candidates waiting at the borders, necessitates new arrangements on how member states should relate to each other and what responsibilities for policy should be turned over to the emerging array of EU political and functional institutions.

### 7.1.1  Schengenland

As noted, the Schengen Agreement began as a borderlands initiative among law enforcement agencies in the Benelux area. From those limited territorial and functional beginnings, Schengen has become the major vehicle for internal cooperation and the integration of mobility and security institutions within the EU, mainly through the creation of the Schengen *acquis* to which MSs have signed up and which has become the major yardstick for accession countries and new members on how to reform and restructure security institutions and policies. The process of creating Schengenland has taught multiple lessons on how to negotiate and overcome national interests in favour of community interests, and has established the notion of community interests as a legitimate policy goal and criterion in the security domain.

### 7.1.2  European Security Agencies

A number of security agencies have shown that coordination and working together in the common interests is possible and desirable.

Europol started as a drug control agency, initially proposed by the German government, and grew into the current agency staffed by delegated police officers from member states who work together to solve security problems

for states and the EU as a whole. Europol officers have developed, in addition or as a complement to their national training and outlooks on crime, justice and security, a more European occupational culture (Bigo, 2000). Working at Europol has influenced their professional outlooks, at least in the minimal sense of being more aware of national differences in security policies and legal procedures, and ways of overcoming those differences or finding a common ground in EU-based laws, codes of conduct and agreements (Europol website). Europol is scheduled to become an independent EU agency in 2010.

CEPOL, the European Police College, was created to harmonise and standardise the training of mid-level managers from MS police forces. Training courses are offered at different locations across the EU member states and are attended by contingents of police officials from different MSs (CEPOL website). The functional goal is common training, but an equally important, though indirect, consequence is social and personal networks among police officers developed during the training sessions. Officers become familiar with personnel and policies in other countries and are more able to assess their own programmes and policies dispassionately.[45] The underlying assumption is that police face similar problems anywhere they work, and can learn from each other – a notion that has become a central motive for standardising legal constraints and the training of border guards/police.

### 7.1.3 Other Structural Developments

The earliest organisational mechanisms for integrating border security were task forces, a strategy unit in the CEU and the idea of a European corps of border guards.

Joint task forces across borders, negotiated bilaterally, have long preceded the EU's concept of IBM. They have been frequent practice among government bureaucracies dealing with common problems for which multiple agencies have some competence. It is only natural that task forces would be thought of and adapted to the need for a common border control system, this time not involving agencies from within one state but agencies and officials from many states. An example is the multilateral patrols conducted by police officers from the German *Bundesgrenzschutz*, Greece and

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[45] CEPOL is the culmination of efforts by European police leaders to achieve a common curriculum, way of thinking and organisational culture among national police forces, but it is not the only regional training innovation pursued within the European context. Other examples of regional programmes within Europe include the Middle European Police Academy (MEPA website) initiated by Austrian and Hungarian police officials and now grown to eight member states, with all instructions conducted in German; and the International Law Enforcement Academy (ILEA) (Marenin, 1998), created by agreement between the USA and Hungary, which trains mid-level police officers from former Soviet republics and Soviet-controlled middle European states, many of them now members of the EU.

Italy and British immigration officers at the Oder/Neisse border between Germany and Poland (Hobbing, 2006: 189).

The CEU, based on a draft from the EC (European Commission, 2002: III, 27), created the External Borders Practitioners' Common Unit as one of its 'task forces', with the idea that this group of national experts could and would devise ways by which the management of external borders could be improved. The unit supplemented the work of the existing Strategic Committee for Immigration, Frontiers and Asylum. It brought together 'those hierarchically enabled to commit their national administrations to the concrete actions of administrative co-operation for the control and surveillance of external borders in the areas covered by the Schengen *acquis*' (ibid.: III, 30).

### 7.1.4 The European Corps of Border Guards

The EC's conception of IBM initially focused on creating a new integrated border agency, similar in organisation and staffing to Europol. Personnel from different member countries would work together in a new organisational structure to protect the EU's borders. Integration meant recruiting, training, organising and managing elements from national border forces in a single body guided by EU standards and subject to the operational control of one head and a command structure appointed by the EU (Hobbing, 2005b).

The European border corps idea did not come to fruition because of objections from some member states and the findings of a feasibility study in 2002, which recommended a 'network' of national border police forces rather than an integrated border guard agency (Monar, 2006: 195–198). The CEU and the EC settled on a lesser form of integrated management, namely FRONTEX, which is structured as a network model and whose main task would be helping coordinate the work of MS agencies most directly involved in and relevant to guarding the external borders. This more limited view acknowledges that MS border control and security providers will continue to bear the major burden of protecting the borders, and focuses specifically on coordinating control work among national agencies and practices but without seeking to change their internal structures and policies (with the slight exception of adopting common training practices).

As a communication from the European Parliament (2009) noted, quite diplomatically, 'this cautious approach is the result of differences of opinion among the Member States'. The European Parliament approved the creation of the European External Borders Agency (later named FRONTEX) but added that it 'regrets the Councils' lack of ambition and calls for the creation

for the medium term of a Community-financed European Border Guard Corps' which would 'in an emergency and at the request of the Member States, be deployed to assist national authorities at vulnerable sections of the EU's external borders' (ibid.). Ultimately, the corps of border guards notion fell victim to disagreements among member states and border control agencies within states which were not willing to make the defence of their borders subservient to an EU agency over which they might not have much control.

The border guard notion continues to percolate in the background of recent policy developments. The idea has not disappeared but has simply been moved to the back of the policy agenda (interview, EC official). Nor has it faded from the policy thinking of FRONTEX officials, one of whom expressed the view that the rapid deployment teams would ultimately be transformed into a permanent border guard agency (interview, FRONTEX).

There appears in some of the writings on the future of border guarding and control in the EU (e.g. DCAF, 2001; the Schengen *acquis*; the SBC; the Ohrid Declaration; the work and words of FRONTEX officials; Reimann, 2001) a yearning for and advocacy of a unified, professionally trained, hierarchically organised, autonomous single agency, with all agents receiving similar training and working under the same regulations, to handle all control at the borders; it may continue to be subject to national laws but also work under EU control. More generally, underlying this sentiment is a search by border guards for identity, status and professional respectability akin to the police, based on the implicit recognition that now border guards are seen as not quite as professional or respected as the regular police. It is almost a demeaning term to call them guards, as this connotes limited skills and ambitions. Their image has to be upgraded. That sentiment is normally attached to the notion of 'border policing' as a semi-professional occupation. Whether border guards will or can achieve that status will depend heavily on the 'selling' and communication skills of believers in this goal.

## 7.2   Assessments

The evaluation by the EC of progress and achievements in IBM is quite positive. The assessment concludes that the ambitious agenda set by the EC and the CEU in 2002, in the plan for management of the external borders, has now been completed. The legislative framework has been consolidated. The SBC entered into force in 2006. Simplified rules for local border traffic have been introduced. An operational dimension has been added with the establishment of the FRONTEX agency. The concepts of burden sharing and consolidation have been given real meaning by the European Border

Fund, which, for the first time, allocates substantial financial resources to these policy areas (European Commission, 2008b: 2).[46]

Significant progress has been achieved fairly quickly by passing necessary laws which establish and define the authority for actions and the legal constraints under which security agencies need to operate; spell out the protection of privacy and data; argue for transparency and the right of public and media access to information; urge greater inter-agency coordination and cooperation and the authority to negotiate working arrangements and MOUs; assert the need for accountability and oversight; and detail the necessary procedures in numerous policy documents on strategies and goals for the security sector.

### 7.2.1 The Schengen Borders Code

The most important document for border management is the Schengen Borders Code (European Union, 2006), which entered into force on 13 October 2006. The draft for the code (European Commission, 2004) provides its background and justification. The code replaces the earlier 'Common Manual' (European Union, 2002) and repeals, amends and replaces other relevant EU legislation on border controls. It establishes basic rules which are to govern the management of internal and external land, sea and air borders. Being a standard EU regulation it attempts to develop a set of mandates for any possible contingency at the borders, within the framework of the basic principles underlying border controls – to ease access for legal travellers and carriers and to control or prevent access for those not in the possession of required legal documents or otherwise suspect. It seeks to govern the actions of border police, so that people and carriers crossing in different countries are treated in a similar manner, by detailed prescriptions of what must be done and how, and what has to be avoided. It is also full of exceptions to the basic rules for countries which are part of the EU but have not fully accepted all of the EU *acquis* nor Schengen protocols (such as the UK), as well as for countries which are not part of the EU, e.g. Norway or Switzerland, but have agreed to conform to Schengen rules.[47]

The SBC requires border guards to 'fully respect human dignity' and not to discriminate against persons 'on grounds of sex, racial or ethnic origins,

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[46] During an interview with an EC official, I thought that this was a very strong statement. I was told 'completed' meant having a legislative and regulatory framework in place, and was not an assessment whether IBM as a functioning system in the EU had been achieved. But the framework provided the necessary regulatory context in which IBM would develop and its successes be judged.

[47] The SBC covers entry into and exit out of the EU, though most of the provisions clearly apply to entry. When I asked a FRONTEX official what kind of exit checks should be done, he mentioned the case of a minor child abducted by parents or strangers. Border guards need to be alert to such incidents. Car theft is another example. Even though exit controls are important, it is not likely that they will have the same salience in the thinking of border guards as entry controls. Stolen cars are also an internal space problem, and could be intercepted by national police before they reach the external borders.

religion or belief, age or sexual orientation' (Article 6). A border guard entitled by national law may deny entry after checking papers or intelligence information, but it must be a 'substantiated decision stating the precise reasons for the refusal' and be entered into a required form (found in Annex V, Part B). The form must be given to the person refused entry, who then has a right of appeal in accordance with national laws.[48]

It is extremely detailed in some sections: e.g. what kind of signs should be placed for various border crossing lanes; what other documents may serve as legal papers for crossing purposes, such as a 'legitimacy certificate issued by the Secretary-General of the Council of Europe' (Annex VII, 4.4.); and no stamps need to be affixed to 'documents enabling nationals of Andorra, Monaco and San Marino to cross the border' into Spain, France or Italy (Article 10.3.(e)).

The code is a set of prescriptions carefully balanced to promote common rules and work habits, but not to such a degree that the rules would infringe on the authority of MSs. Required practices are stated, but always with a proviso that exceptions may be allowed for convenience or unusual circumstances, or to protect the authority of MSs and the validity of other formal agreements or laws.

An example of balancing the basic goals of openness and control is Article 8. An important exception confers upon the 'border guard in command at the border crossing point' (who will be a national officer) the authority to relax control checks 'as a result of exceptional and unforeseen circumstances... deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing becomes excessive, and all resources have been exhausted as regards staff, facilities and organization'. Relaxation of controls shall be 'temporary, adapted to the circumstances justifying it and introduced gradually' (Article 8). Entry and exit papers must still be stamped, and a report on the application of this article has to be sent to the European Parliament and the EC.

Another example of careful rhetorical balancing is Article 16, which mandates ('shall'?) that MSs assist and cooperate with each other, that FRONTEX coordinate operational cooperation among MSs, but also that 'without prejudice to the competences of the Agency' (FRONTEX) MSs may continue bilateral relations and agreements with other states as long as such cooperation 'complements the action of the Agency'. Exactly what 'complements' means is disguised in the undefined rhetoric of the code and

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[48] The language is quite interesting. Refusal is based on national law, which authorises a guard to refuse if proper reason exists; and appeals by people who have been refused entry have to be dealt with through national legal procedures. Despite the notion of solidarity and common external borders and rules, in the end it will be MS laws and norms, not EU law or norms, which govern.

will have to be negotiated if the need arises to assess what national practices and agreements are complementary.

Border controls at internal borders are abolished, and these may be crossed 'at any point without border checks on persons, irrespective of their nationality'. The abolition of border controls, though, 'shall not affect the exercise of police powers by the competent authorities of Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks' (Article 21a). Controls at internal borders may be introduced by an MS on a temporary basis not to exceed 30 days 'where there is a serious threat to public policy or internal security' (Article 23). Other MSs shall be notified as soon as possible about the reasons for and scope of the reintroduction of controls (Article 24).

Besides the balancing of access and control, of EU rules and national authority, much of the rhetoric has to be interpreted and creates significant space for discretion by border guards of all ranks. For example, when do national policies complement, or not, FRONTEX policies? Exactly when is the point reached that border controls can be relaxed to help the flow of traffic? When is waiting time excessive? Clearly that is a decision which has to be made on the ground by local commanders. Given that local commanders have discretion, the reality and work practices of border management cannot be predicted from these documents.

### 7.2.2  The Local Border Regime

The EU recognised that borderlands and zones may be differentially impacted by the closure of the new external borders and passed special provisions for genuine residents of border zones to ease difficulties in crossing the border. The new 'regime of local border traffic' (European Union, 2006) defines border zones and spells out the control efforts that apply to residents of borderlands.

The border zone regulations, or regime, seek to supplement and harmonise existing bilateral understandings on borderlands. The goals of the regime include 'promoting the development of border regions' and ensuring that the 'new external border is not a barrier to trade, social and cultural interchange or regional cooperation' (ibid.: 2) – that is, preventing a new iron curtain from falling between EU MSs and neighbouring third countries.[49] Member states, though, are authorised to adopt the local border regime to their specific circumstances, as long as 'such arrangements comply with and do not affect the provisions established by this Regulation' (ibid.: 4).

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[49]  The words echo those of EPNI and are clearly used to link local border regimes to the foreign policy of the EU.

Local border traffic is defined as the 'regular crossing of the external land border of a Member State by persons lawfully in the border area of a neighbouring third country, in order to stay in the border are of that Member State for a limited period' (ibid.: 3). A special visa (L for Local) will be issued to *bona fide*[50] residents of border regions, which will entitle the holder to cross the border multiple times. Other documents which avoid the need for a visa may be developed and issued to facilitate fast crossings.

The local border traffic regulations also apply to the 'temporary external borders', part of the current two-tier Schengen system between old and new (the last 10 + 2) member states, until these are abolished.

### 7.2.3 The European Border Fund

The European Border Fund was created too support MSs in their community work and help pay for expenses incurred protecting the borders and interior space of the EU. The initial allotment to the fund was 2.1 billion euros to help 'compensate MSs for external border controlling activities they undertake' (European Commission, 2005a: 2). The 'European Border Fund has committed to 1.820 billion Euros' for the period 2007–2012 (FRONTEXwatch, 'Border Regime': 2). Without EU financial support, few of the EU's IBM projects could get off the ground.

Whether the distribution of EU funds to MSs is sufficient to compensate the member states adequately for their work would require some quite precise and technical accounting techniques, including putting a value on the intangible benefits gained by MSs through their cooperation in joint teams.

### 7.2.4 The FRONTEX and Rapid Deployment Team Regulations

Two regulations establishing FRONTEX and authorising it to create rapid deployment teams complete the current legal and institutional framework for IBM. (See below for detailed discussions of both pieces of legislation.)

The legislative framework for IBM is in place. Goals, laws and regulations now exist on paper and in the minds of border management officials. The more difficult task has been converting policy goals through effective implementation into measurable impacts on the problems targeted by integrated border management.

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[50]  Of course, establishing the *bona fides* will be the tricky and difficult task before appropriate documents can be issued.

## 8.    FRONTEX

FRONTEX represents the continuation, or culmination, of earlier efforts to arrange cooperation among multiple border security agencies within the EU. Thinking on how to structure the mandate and tasks of FRONTEX was influenced by the experience and work of earlier EU programmes to establish integrated agencies, such as Europol, or cooperation agreements negotiated in Euroregions (Hobbing, 2005b; Monar, 2005). Rather than integrate border controls on an *ad hoc* basis or in response to specific needs, FRONTEX was established as a permanent and independent coordinating agency. According to its director, 'FRONTEX promotes a pan European model of Integrated Border Management, which consists not only of border controls but also other important elements. Effective protection of border [*sic*] does not start at the border and does not finish there' (Laitinen, 2008: section 2).

### 8.1    Origins

FRONTEX is, among the three models discussed earlier, the least integrative model of IBM in the EU. The focus of its activities centres on coordinating the work of MS border guard units, which may be quite varied from state to state, through common training, risk analysis, intelligence sharing, joint operations, equipment specifications and return policies for illegal immigrants. FRONTEX enables MS border agencies to work together in ways that would be difficult for them to achieve on their own or bilaterally. Protecting the external borders of the EU requires that practices, policies and regulations are roughly similar everywhere along external borders, since these now protect an internal borderless territory and reflect the solidarity of MS interests.

FRONTEX has a narrow focus compared to SSR and the IBM/EC notions of IBM. As its long title states, the focus is on the external border as it exists on the ground and the seas, and on coordinating cooperation and establishing common work rules among existing border guard agencies of MSs. The focus of its activities has been on recognised land crossing points and surveillance of the lines and territory in between; on cooperation at airports; and on controlling disembarkations at harbours and the surveillance of territorial and open seas. Within the four-tier Schengen model, FRONTEX has concentrated on border control, with rhetorical and some policy nods towards the other three tiers.

FRONTEX asserts that it has a global view, for example using risk analyses to predict where illegal immigrant streams are likely to originate and where

and how they will reach the borders of the EU; and by participation in the repatriation of illegal migrants to the last safe transit country or to their home countries. Yet, in practice, FRONTEX is basically concerned with what happens at the external and thickened border lines of the EU. By design or not, at least in the public eye, and by the resources FRONTEX has allocated, control of illegal migration has become its main goal and activity. Restricting its effort to controlling illegal migration has limited the level of attention which can be paid to other threats and vulnerabilities.[51]

## 8.2    The FRONTEX Establishment Regulation

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was established in 2004 by a CEU regulation (Council of the European Union, 2004) based on a draft submitted by the EC. All member states have a seat on the management committee for FRONTEX. Norway and Iceland are associated with the agency and management board through their participation in the Schengen *acquis* (ibid.: Introduction (23)), but with limited voting rights. Denmark, the UK and Ireland could decide to join if they accept certain parts of the EU *acquis*.

### 8.2.1  Core Goals

The basic goal and tasks of FRONTEX are worth citing in full:

> While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future Community measures relating to the management of external borders. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States. (Ibid.: Article 1)

The 'core aim [of FRONTEX] is to look for system solutions in the area of border management' and to 'reduce the necessity of ad hoc actions' (FRONTEX website).

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[51]    In an interview I asked 'What of illegal transborder crimes in cyberspace – e.g. money laundering, child pornography, fraud schemes – are these not border control problems?' 'They are, but Europol will deal with those.' 'What happens when border guards detect criminal activity – e.g. drug or human smuggling – and detain the offender?' 'Well, that will be the responsibility of MS police.' (Interview, FRONTEX.)

### 8.2.2 Tasks

FRONTEX has the following main tasks:

(a) coordinate operational cooperation between Member States in the field of management of external borders;

(b) assist Member States in training of national border guards, including the establishment of common training standards;

(c) carry out risk analyses;

(d) follow up on the development of research relevant for the control and surveillance of external borders;

(e) assist Member States in circumstances requiring increased technical and operational assistance at external borders;

(f) provide Member States with the necessary support in organising joint return operations' (Council of the European Union, 2004: Article 2).

Subsequent articles spell out how the main tasks should be organised and implemented. FRONTEX may, at its initiative and in cooperation with MSs, launch joint operations and pilot projects and conduct comprehensive evaluations of the results of such projects (Article 3); 'develop and apply a common integrated risk analysis model' and submit 'general and tailored analyses' to the CEU and the EC (Article 4); develop a common core curriculum for border guards and offer training sessions and seminars on selected subjects (Article 5); follow developments in research relevant for border control and surveillance and communicate its findings to the EC and member states (Article 6); establish a centralised records system for technical equipment loaned to FRONTEX by member states (Article 7); assist MSs with increased technical and operational assistance in unusual circumstances (Article 8); assist MSs in returning illegal immigrants (Article 9); facilitate the exchange of relevant information with the EC and member states (Article 10); agree on MOUs with Europol 'and the international organisations competent in matters covered by this Regulation' (Article 13); and facilitate operational cooperation between MSs and third countries (Article 14).

Lastly, Article 33 requires that the management board 'commission an independent external evaluation on the implementation of this Regulation' three years after the agency had begun its work and every five years thereafter, to assess 'how effectively the Agency fulfils its mission', and 'the impact of the Agency and its working practices'. The result of such evaluations will guide the management board in developing recommendations for changes in FRONTEX structures and working

practices. The first assessment, the three-year evaluation report by a Danish consultancy firm, was delivered to FRONTEX in February 2009 (COWI, 2009).[52]

Member states may continue to cooperate with other member states or third countries as long as such cooperation complements the action of the agency. The agency will also facilitate cooperation with among member states and the UK and Ireland, but reserve judgement on the Gibraltar borders (Article 12). Should the UK and Ireland decide to 'participate in the Agency's activities, the Management Board shall decide thereon' (Article 20.5). The budget of the agency will be provided by a 'subsidy from the Community entered in the general budget' of the EU, contributions from countries 'associated with the Schengen acquis', fees for services and 'voluntary contribution from the Member States' (Article 29.1). (So far there have been no voluntary contributions.) The European Border Fund will reimburse MSs for their expenses associated with border control.

### 8.2.3 Organisation and Management

The JHA (Justice and Home Affairs) Committee in the CEU, on 26 April 2005, decided that the agency would be located in Warsaw, Poland. FRONTEX was given legal status as community body able to engage in contracts and legal proceedings, and assured independence 'in relation to technical matters' (Article 15). The agency began operations on 1 May 2005.

The EC developed detailed guidelines on all aspect of the administration, tasks and obligations of FRONTEX. Following these guidelines, at the first meeting of the management board of FRONTEX in May 2005, the board adopted rules of procedures and appointed Ilkka Laitinen, a colonel in the Finnish Customs Service, as executive director of the agency (European Union, 2005a).

In addition to having authority to appoint the director and deputy director (and dismiss them for cause if so decided), the management board is the main policy-making unit in FRONTEX. It controls the budget, adopts the report of activities for the past year and the programme of work for the coming year and forwards these to EU agencies, exercises disciplinary authority over the director, establishes the organisational structure and staffing policies for the agency, and has to agree by vote on 'specific activities' which will be carried out at the external borders of a member state with the assistance of FRONTEX. Decisions are by majority vote. The board's membership is

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[52] COWI labels itself 'consultancy within engineering, environmental science and economics'. It was established in 1930, has about 4,800 employees and works worldwide. Oddly enough, there is no mention of SSR or IBM expertise on its website. The name COWI is derived from the first letters in the personal and family names of the two founders.

composed of representatives from all 27 states, each appointed by her/his government on the 'basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management' (Article 21.2), plus two representatives of the EC.

The director heads the executive arm of FRONTEX, being responsible for all administration and implementation of all programmes and policies adopted by the management board. Article 25 states that the director 'shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission, the Management Board and the Executive Bureau [officials appointed by the Management Board to assist the Director], the Executive Director shall neither seek nor take instructions from any government or from any body.'[53]

### 8.2.4 Staffing

FRONTEX has grown substantially over its first five years, and has received more resources each year than were asked for (interview, FRONTEX). The personnel strength was established at 57 in 2005–2006 and reached about 200 by early 2009.[54] Of the 203 officials employed in 2009, according to its website, 84 are temporary agents on short-term contracts; 50 are contract agents on five-year contracts; and 69 are seconded national experts on assignments of a minimum of six months to a maximum of two years long. Contract personnel are recruited through an open process on the basis of their knowledge of border management. Seconded personnel are nominated by MSs and drawn mainly from civil service employees in national security agencies.

Following an internal reorganisation of work in FRONTEX in 2008, staff work as executive support for the director and deputy director, in internal audit, a legal office, and in the administration division, while line work is organised into operations (subdivided into operations, risk analysis and the FRONTEX Situation Centre units) and capacity building (subdivided into training, research and development, and pooled resources units).

The budget of FRONTEX has grown from about 6.3 million euros in 2005 to about 80 million euros in 2009. FRONTEX has expanded its office space from one to now four floors in a 30-stories + modern building, all glass and

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[53] This seems a very strong statement on how much independence and autonomous decision-making the director has, until one places those words in the context of all the other regulations and *acquis* which govern EU agencies. This phrase seems designed to prevent member states and other EU agencies from attempting to exert undue influence over the activities of FRONTEX.

[54] The numbers change quickly. The FRONTEX website says 203 as of May 2009; the COWI report (2009: 24) says 219 as of the end of 2008.

steel with a giant lobby/atrium, located in the middle of the business district in Warsaw.

The distribution of the budget by function is heavily skewed towards joint operations (8 per cent land borders, 4 per cent air borders and 62 per cent sea borders), with training receiving 15 per cent, risk analysis 4 per cent and research and development 1 per cent in the 2008 budget. The other 6 per cent support other functions (COWI, 2009: 25). FRONTEX's own breakdown of the budget is somewhat different. The 'summary of operational outputs in 2008' (FRONTEX, 2008a; 17–20) gives projected budget numbers and their distribution by function. Of the total of 57.8 million euros, 4.2 million are allocated to specific operations and programmes at the land borders, 31.1 million at sea borders and 2.1 million at air borders; 0.6 million to return operations; 1.0 million to risk analysis; 0.8 million to the FRONTEX Situation Centre; 6.4 million to training; 0.6 million to research and development; and 1.1 million to pooled resources. Staff and other administrative expenditures bring the total to 70.4 million euros (ibid.: 4). Why these numbers differ from the COWI percentages is not easy to figure out.

## 8.3 The Rapid Team Regulation

A further step to enable FRONTEX to carry out coordinating duties and assist MSs was added to its list of competencies by the EC regulation of 2007 which created the authority to develop rapid border intervention teams (RABITs).[55] Rapid teams may be deployed 'for the purposes of providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third country nationals trying to enter the territory of the Member State illegally' (European Commission, 2007, Article 1.1). 'Responsibility for the controls the external border lies with the Member States' (ibid.: Introduction), though in unusual circumstances MSs may need additional resources and personnel to carry out their tasks.

To carry out this assignment, FRONTEX has established a RABIT pool of experts who are drawn from different countries and can be called upon to

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[55] The rapid team regulation is, technically, an amendment to the regulation establishing FRONTEX, so far the only expansion of authority and tasks stated in the FRONTEX founding document. During an interview (FRONTEX official) I was told that this regulation, for the first time, authorised the director of FRONTEX to make the decision to deploy a rapid team on her/his initiative, or move FRONTEX one step closer to having executive powers and not just coordinating authority. A limited negative executive competence does exist, in that the director has to approve whether a rapid team should be deployed, its personnel composition and the length and scope of its activities, but MSs retain the authority to request a rapid team. The director cannot deploy a team on her/his authority, but s/he can decide that the request for a team by an MS is unsubstantiated and deny the request.

serve. MSs retain the sole authority to nominate experts. When called upon to contribute, MSs may decline because their border guards are needed at home. When a request is made to FRONTEX to assemble a team, it goes to the director of FRONTEX. The director may send a team of experts to assess the situation in the requesting MS (ibid.: Article 8d.1), and shall take into account 'the findings of the Agency's risk analyses as well and other relevant information' provided by the requesting MS(s). Though it is not clearly stated, the language implies that the director may decline a request if FRONTEX's own analysis concludes that no 'urgent and exceptional pressure' exists. This has not yet happened (as of April 2009) since no MS has requested the deployment of a rapid team to its territory.[56]

Once deployed, RABITs fall under the authority of the relevant border guard hierarchy of the host MS. Team members have executive authority, but may only perform required 'tasks and exercise power under instructions from and, as a general rule, in the presence of border guards of the host Member State'; only host border guards can refuse entry. Team members can be armed and may use force, but only in accordance with the national laws of the host member state (ibid.: Article 6.3 and 6.6). In cases of misbehaviour of guest guards, the home MS retains disciplinary authority, but in more serious cases giving rise to civil complaints, the host MS may ask the home MS to compensate for damages done by their border guard(s); in criminal liability complaints, guest border guards 'shall be treated in the same way as officials of the host Member State' (ibid.: Article 11). (This last phrase mandates that criminal cases against border guards will be handled by national law in national legal institutions of the MS in which a case arises.)

The overall impression created by the language of the RABIT regulation is that FRONTEX will complement host border control in unusual or emergency situations, but not replace them, and that the host MS retains full control over all border guarding activities done by their own and guest guards. FRONTEX will merely supply needed resources, and leave the operational aspects of border control to the authority of the host MS – another example of the dance of competing sovereignties.

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[56] When asked, a FRONTEX official gave three reasons why no requests had been received so far. Member states may be unaware of the operational possibilities gained by having a rapid team deployed; they may think they look weak – that they can't even protect their own borders; and internal politics may have come into play. Of course, other reasons could be that no unusual or emergency situations have arisen, or that states think that *ad hoc* joint operations are just as useful.

## 8.4 Activities and Assessments

The work of FRONTEX is divided into the tasks outlined in its establishment document. The 2009 annual programme report recommends a major reorganisation of the administrative structures within FRONTEX, to respond better to the increase in size and additional work delegated to FRONTEX.

### 8.4.1 Risk analysis

According to Laitinen (2008: sections 3, 10), 'at the heart of all activities of the agency is carrying out risk analysis... All activities of FRONTEX are intelligence driven.' FRONTEX, or rather its Risk Analysis Unit (RAU), assesses threats, analyses vulnerabilities and weighs consequences before FRONTEX engages in any activity. The RAU prepares four types of reports: general risk assessments of security conditions in the EU; tailored risk assessment for specific situations which respond to requests from MSs; bulletins for specific issues; and support risk assessments for operational activities. The general risk assessment is public, and part of the annual reports issued by FRONTEX; the others are normally secret. FRONTEX risk analyses focus on broad themes and the mobility and actions of groups, and do not collect specific information on individuals or legal cases.

FRONTEX risk analysis is based on the common integrated risk analysis model (CIRAM), which was developed after 2002 within the CEU committee system and designed to 'be used mainly at the strategic level, and that would enable the collection, analysis and distribution of border security related information' (Carrera, 2007: 15). CIRAM provides a common risk analysis methodology for MSs. It does not operationalise risks, for example by developing specific indicators of risks and vulnerabilities, but instead emphasises a broad approach to the collection of all relevant information (e.g. multiple-source data searches). Part of the CIRAM methodology is to look for lessons learned and feed those back into analyses.

A risk analysis centre was initially located in Helsinki but later absorbed into FRONTEX, and the methodology supporting CIRAM became the basis for doing risk analysis in FRONTEX.

FRONTEX has developed a risk analysis network which links MS risk analysis units into a common forum for the exchange of information and ideas. The EC has recommended that FRONTEX becomes a 'hub' for an 'exchange of real-time, operational information between Member States' (European Commission, 2008b: 9), assumes management and promotes the integration of the various border-relevant information systems currently in

place within the EU, such as EUROSUR (the European border surveillance system being developed, with a focus on maritime borders), CIREFI (a data system on illegal immigration) and the ICONet (a secure web-based information network established in 2006 among national and regional migration management services). The EC notes that there 'are clear synergies and economies of scale to be found between the activities covered by CIREFI, the ICONet and the activities carried our by the Agency, with regard to gathering, analyzing and disseminating information related to illegal immigration' (ibid.: 6).

### 8.4.2  Training

The Training Unit has developed a plan for coordinating and standardising the training of border guards in the EU. It is ambitious, since about 450,000 border guards are employed by MSs, and the training activities planned are extensive. Training will seek to achieve three objectives: a common basic core curriculum; specific training based on operational needs; and the creation of an EU border guard training network (FRONTEX, 2009; all subsequent specific data are from this PowerPoint presentation, unless other sources are indicated).

The major achievement of the Training Unit is the development of a two-year common core curriculum (CCC) for border guards. The CCC was developed under the guidance of FRONTEX, with the support of over 40 experts from 21 countries, faculty at universities and international organisations; it consolidates and harmonises earlier EU efforts to develop a common curriculum for border guards. The CCC is designed as the general border guard academy course; it is divided into a common section for all border guards, and specific sections for land, sea and air border guards.

The CCC was launched at the FRONTEX partnership academy in Cesena, Italy, in March 2008. At the launch, FRONTEX director Laitinen stated that 'principles of integrated border management are the same everywhere in the EU. Training for our officers should be therefore the same in order to enable the smooth cooperation during joint operations coordinated by FRONTEX' (see http://soderkoping.org.ua/page 17532.html).

All 27 MSs have signed on to the CCC, although its implementation will be adjusted to the needs and capabilities of different MSs. Some MSs currently do not have a two-year training requirement for their border guards; they will adapt those sections of the CCC which match what they do, and move gradually towards meeting the two-year cycles of training. Other MSs may not have the resources or capabilities to adopt the two-year CCC in one go and will be encouraged to phase the curriculum in gradually. It is hard to

change people and how they act, noted one official in the Training Unit, so you have to introduce and implement change in stages (interviews, FRONTEX).

The Training Unit has also developed a mid-level curriculum which will be the equivalent of a BA university degree, and is in the process of developing a CCC measurement and assessment tool with advice and assistance from university-based experts. By the end of June 2008, 28 course weeks had been delivered and 145 border guard mid-level managers trained. An additional 36 courses were planned for 2009.

FRONTEX also organises special short-term courses on topics of interest and relevance. Topics for which special courses have been developed so far include detection of stolen cars, aircrew training, dog handling, RABITs, joint returns, false documents and English language. Topics in development or recently completed include human rights, air-border-related law, asylum seekers, use of force and Scheval (Schengen evaluation) training. The rights and law courses were added at the urgings of human rights IGOs and NGOs. By the end of 2007 97 training sessions, meetings and workshops had been delivered and '"training the trainers" courses had been organized with a total of 1.341 participants' in all courses (Statewatch, 2008: 3).

A one-week-long Scheval course was delivered for the first time in Helsinki in May 2009: 28 participants from 22 member states took part, 'the first time that the evaluators for SCHEVAL have undergone formalised training on a European level, according to a standardised programme'. The task of Schengen evaluation teams is to assess 'how the existing signatories of the Schengen Treaty comply with the rules' and whether they are 'sufficiently prepared to implement them' (FRONTEX website). One has to wonder how well evaluators performed their duties before they were formally trained.

Train-the-trainers courses will develop local experts in the CCC, mid-level and special topics courses, who are expected to become transmission nodes and contact points for further curricula developments. By 2009 137 officers from ten MSs had taken the train-the-trainer course; 130 were certified by FRONTEX as ready to be experts and trainers themselves. Candidates for the course are nominated by MSs and vetted by FRONTEX. Some have been rejected as insufficiently prepared or experienced (interviews, FRONTEX).

The BG Network will connect universities, 11 partnership academies, trained trainers and national training coordinators, who will act as liaisons between MSs and FRONTEX. The Training Unit will seek to expand this network to include NGOs, think-tanks and other training providers, such as

DCAF (interview, FRONTEX). A recently released (November 2008) interactive CD contains information on the history and structures of border guard services in all 27 MSs, and an eight-hour training module on false document detection (FRONTEX website). The information part of the CD is extremely useful for researchers as well as border guards, as it takes a lot of work to compile that information.

### 8.4.3 Research and Development

The role of the R&D Unit 'is to be a link between the research community and the end-users within the Commission and Member States' (FRONTEX website). It seeks to collect research findings and information relevant for border control, establish links with MS border guards, research institutions and universities, and assist in developing methodologies for assessing the value of alternative technologies.

Research has had a quite limited focus on technical equipment, mainly in surveillance technology and fraud detection, such as thermal-imaging and optical-sensing devices for sea and land surveillance, heartbeat and heat-sensing devices to detect people hidden in secret compartments, biometric identification systems, advances in IT equipment and software, and methodologies for assessing operational value.

Some of this research has been incorporated into larger systems and is being tested for effectiveness, as for example in EUROSUR, a Spanish initiative which seeks to create an integrated electronic surveillance system at the Mediterranean sea borders, but with utility for land borders as well. The system includes airborne surveillance, sea- and land-based radar, GPS satellite capabilities and other detection and discrimination imaging devices linked into a seamless surveillance curtain accessible in real time to joint operations conducted anywhere in the Mediterranean.

There is no research (at least none that is described) on non-technologies or 'people' topics, such as motivations for migration, underlying reasons for vulnerabilities or the effectiveness of human interrogation techniques. It is all about technology.

FRONTEX, based on experience so far, has developed two handbooks on best practices which 'have been disseminated to the Member States on CD for their internal use'. The handbooks can also be downloaded from the ICONet by authorised users, who do not include the public (COWI, 2009: 58).

### 8.4.4 Equipment

FRONTEX has created a database, the Centralised Record of Available Technical Equipment (CRATE), for all equipment available on request and on loan from member states. Having access to CRATE equipment is thought to facilitate the deployment of joint operations. In 2007 CRATE contained a list 'of 116 vessels, 27 helicopters, 21 fixed wing aircraft as well as 392 other tools for border surveillance and border control', such as mobile radar units, thermal cameras and heartbeat detectors (European Parliament, 2007).

### 8.4.5 Return Operations

When an MS announces that it will organise a return flight, it can post that announcement on the ICONet and other MSs which wish to return illegal migrants to the same destination can join the flight if space is available. FRONTEX helps to connect the MS authorities involved. By early 2009 14 joint return operations had been organised with the help of FRONTEX (COWI, 2009: 58).

### 8.4.6 Joint Operations

Joint operations to control borders have consumed the majority of resources and time of FRONTEX. As noted earlier, about three-quarters of the budget is devoted to JOs, and about 80 per cent of that goes to JOs at sea.

Joint operations are proposed by FRONTEX based on a risk analysis conducted by its staff. Once the director approves, a proposal is passed to the relevant member states, which are invited to a planning meeting; once all agree that a JO should be started, an operational plan is developed listing tasks, goals, contributors and needed equipment. A FRONTEX coordinator is assigned to monitor the implementation of the project, but operational lead stays with the main host country. An analyst at FRONTEX HQ is assigned to each JO to collect and organise the daily data flows. The FRONTEX Situation Centre also coordinates the flow of information to all MSs and EU institutions (The above short description is based on COWI, ibid.: 33–43).

In 2006 and 2007 FRONTEX helped organise nine sea, 12 land and seven air border operations, and seven 'covering several types of borders'. A total of ten pilot projects were implemented as well. All member states have participated in at least one operation, with an average of seven MSs participating in 'sea borders, 9 in land borders, and 11 in air border operations' (Statewatch, 2008: 10).

The programme of work for 2008 (FRONTEX, 2008a) proposed four/five JOs in each half year and '3-4 pilot project on best practices' at land borders; five/six long-term projects and two/three pilot projects at sea borders; and three/four JOs in each half year and two/three pilot projects at air borders (ibid.: 9–10). JOs Gordius, Hera and Nautilus, mentioned later, were among these projects.

The major expenditures of resources and personnel have been devoted to joint operations on the southern sea borders of the EU. The average cost for sea operations in 2007 was about 2.7 million euros, compared to 83,000 for land and 194,000 for air borders (Statewatch, 2008: 1, citing data taken from European Commission, 2008b: 3).

FRONTEX has taken the lead in organising the European Patrols Network (EPN), which started in May of 2007 among member states bordering the Mediterranean to patrol the costal areas on the basis of regional and bilateral agreements.

The Capacity Building Unit in FRONTEX has created and organises FRONTEX joint support teams (FJSTs), a pre-trained pool of national experts 'who can be deployed during operations coordinated by FRONTEX' (COWI, 2009: 53). FJSTs were created by an executive decision of the director in 2008. Member states are encouraged to nominate members from their pools to joint operations.

One of the more interesting findings in the COWI report (ibid.: 36) is the development of 'a common border guard lingo among participants in JO', but language problems remain since English, ostensibly the official language, is not well spoken by many participants. But people who work together learn how to communicate. The lingo seems one solution to the official language deficiencies, but also points to an emerging consensus on the nature of the work and even an occupational culture that may be emerging through common work.[57]

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[57] This development is quite similar to that which occurred at the Chunnel connecting France and the UK. French police operate the southern end of the Chunnel and British the northern end. They don't speak each other's language but have joint control over traffic going through the Chunnel. A system of 'policespeak' has developed which enables the police, via text messaging terminals at both ends, 'to "speak" to each other in real time without any knowledge of the other's language' (Ingleton, 1994: 7). Police can be quite creative. Of course, general language training is delivered by many agencies. The UK government, through the British Council – the cultural development institution similar to the Goethe Institut for Germany or the Maison de la Culture for France – offered English-language training for border guards in Eastern Europe.

### 8.4.7 Rapid Deployment Teams

Three demonstration RABIT projects have been conducted so far.

The first was held at the airport in Porto, Portugal, and involved border guards from 16 MSs with expertise in falsified documents, border checks and 'second line interviews'. The exercise was based on a fictional scenario that a massive influx of illegal migrants would arrive at the airport (two planes each day with a total capacity of 900) carrying forged documents from the fictional 'island of Central American Republic'. The exercise wanted to test management procedures for the deployment of a RABIT as well as team responses to unexpected operational challenges (FRONTEX website).

The second exercise was conducted at the Slovenian-Croatian border in early 2008. The hypothetical scenario confronting the team was a sudden massive influx of illegal immigrants along the Balkan route which had to be stopped. Border guards from 20 MSs participated in this exercise, which was designed to test 'possibilities of reinforcement of a Member State authority's response capacity in exceptional circumstances' (FRONTEX website).

The third ten-day-long exercise was conducted at the Romanian-Moldovan border in 2008, and involved 49 border guards from 23 MSs. The basic goal 'of the exercise was to test the management of the Rabit team's deployment mechanism' (FRONTEX website).

The internal assessments of the demonstration and test projects have been positive: RABITs can be usefully deployed to good effect. But as of now, the value of rapid teams does not seem to have been appreciated and accepted by MSs as none has so far asked for the deployment of a team.

FRONTEX has proceeded to create a RABIT standby pool of experts who can be drawn upon when the need arises. The pool has grown to about 600 personnel who will be made available to FRONTEX if requested, unless MSs can offer convincing reasons why they cannot release their personnel.

A handbook has been developed detailing procedures and required justifications for requesting a RABIT deployment, qualifications for selection of personnel, required operational plans for deployment and command, liability issues, powers and use of force while deployed, general rules on uniforms and accreditation, and prior training (FRONTEX, 2008b).

Personnel nominated by an MS for selection must have several years of work experience at the border and 'adequate knowledge of English as a working language' (ibid.: 4). In addition border guards made available to FRONTEX must have at least one core competence drawn from this list: border checks, surveillance at land or sea borders, advanced document experience, second-

line interviewing or analysis of risk and threats. Optional skills 'considered particularly useful for the purpose of determining the composition of a team for deployment' (ibid.: 5) include leadership, dog handling, radar operating, expertise in the law of the sea, operating four-wheel-drive vehicles and knowledge of local languages. Personnel, once selected, will be listed in a national expert pool from which FRONTEX can then draw members of a rapid deployment team. Personnel offered for selection by an MS are evaluated by FRONTEX, and some have been rejected (interview, FRONTEX).

Member states may request the deployment of a RABIT but need to specify the urgency of the situation, spell out envisioned needs and tasks, and offer detailed reasons for where and how long the team will be deployed. The director of FRONTEX, on receiving the request, will evaluate the need for deployment using FRONTEX's own analysis, and s/he may send an expert to the MS to assess the situation on the ground. The director has the power to reject the request if the reasons for it are deemed unsubstantiated (ibid.: 12). If the request is accepted, FRONTEX will develop a detailed plan for deploying the team and its composition, based on needed skills and the situational needs. Finally, a RABIT pre-deployment training course has been developed by the FRONTEX Training Unit, since MS training did not always 'provide the full package of competencies' (interview, FRONTEX). (The authority and powers of the team were described earlier under the Rapid Team Regulation heading.)

The handbook is a thoughtful, detailed and precise document for the basic contingencies which could arise in deployment situations. National RABIT pools have been established, but no actual deployments have taken place so far. How well RABITs would work in real situations is based on the experience and lessons learned from the three demonstration exercises conducted.[58]

RABITs may be seen as a resurrection of the border guard agency notion which was mooted in the 1990s. Rapid teams are based on the same selection and deployment principles as the border guard agency would have used, but with smaller numbers and less executive authority. That RABITs might develop or be the basis for a border guard agency was acknowledged, and seen as desirable development, in an interview (FRONTEX).

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[58] Unusual complications can arise. One of the common irritations for border guards in JOs or RABITs is subsistence payments while deployed, which are set by their home states. Some MSs pay a lot higher per diem than others, leading to guards who do the same work being paid quite differently. This is a problem beyond the control of FRONTEX.

## 8.5 Overall Assessment

### 8.5.1 Outputs and Outcomes

Internal assessments by FRONTEX point to a number of task achievements and outputs. 'We have finally in place at the European level an efficient operational mechanism for the national border guards' (Frattini, 2005: 2). Annual reports by FRONTEX are full of activities done during the past year. Programme statements for coming years list a large number of projects which will be done. It is clear the FRONTEX has been very active, despite limited personnel and resources, and has been quite successful in drawing on resources and establishing cooperation with MSs to further its projects. FRONTEX has been effective and creative in supporting cooperation among MSs, harmonising training, joint support teams and RABIT demonstration projects, conducting risk assessments, developing a database for equipment and developing a more efficient administrative structure and functional division of labour within FRONTEX. In other areas – research, return operations and developing effective organisational relations with other security agencies in the EU or elsewhere – the evidence is less clear.

Overall, FRONTEX has been quite good at creating outputs – that is, activities, projects and documents the agency can point to as the results of its work. Whether the outputs have translated into outcomes, or impacts on the problem for which outputs were designed, is less clear. Nor is it obvious whether proper, social-science-based assessment models and techniques for determining impacts are being used.

FRONTEX has also been quite successful, largely through the efforts of its director, in making itself known, and has begun to assert itself as the central border control and IBM-promoting agency in the EU. It has begun to reach beyond the focus on the border lines and used its delegated authority to negotiate and sign working agreements and MOUs with numerous states and international agencies. Working agreements have been signed with Georgia, Albania, Serbia, Bosnia-Herzegovina, Moldova, Russia and Macedonia, which typically, in news releases, state that the agreements cover such aspects of FRONTEX's work as information exchange, risk analysis, training, research and joint operations – all the tasks FRONTEX is doing now. A working agreement on operational cooperation has been concluded with the US Department of Homeland Security, seemingly taking advantage of an EU-US troika justice and home affairs ministerial meeting in Prague (FRONTEX website). What these agreements will lead to is as yet in the future. Agreements have been signed with Europol, and an MOU with CEPOL is in preparation. MOUs with the UNCHR and IOM have been concluded, and a UNCHR liaison officer is stationed in the FRONTEX offices in Warsaw.

FRONTEX has also organised numerous meetings of border control agencies, training sessions and information-sharing conferences in various cities in Europe. For example, the heads of coastguard services and representatives from other EU institutions (e.g. Community Fisheries Control Agency, European Space Agency) met in Warsaw in April 2009. The participants agreed to support 'the idea of creating more interoperable surveillance systems to bring together monitoring and tracking systems used for maritime safety and security, SAR (search and rescue) activities, protection of marine environment, fisheries control, control of external borders and other law enforcement activities for enhancing situational awareness and cost effectiveness.' They also recommended that 'surveillance information collected for civilian and military purposes should within the legal framework be shared regularly on a need-to-know basis between law enforcement and military authorities to avoid duplication and be cost effective' (FRONTEX website). This will certainly lead to an expansion of IBM, as enunciated by the EC and FRONTEX, in the number of agencies that would have to be included in a systemic approach to border management.

### 8.5.2 The COWI Assessment Report

The work of the agency was evaluated externally for the first time in 2008 by an independent Danish consultancy firm, COWI. The evaluation was mandated in the founding regulation and 'shall take into account the views of stakeholders, at both European and national level' (Council of the European Union, 2004: Article 33). The evaluation 'will look a the feasibility of making the Agency responsible for coordinating cooperation with customs and other authorities at the external borders responsible for goods-related security matters' (European Commission, 2005a: 2).

The report of COWI, selected by tender to conduct the assessment, was delivered to FRONTEX by February 2009, and is now publicly available on the website (COWI, 2009). The assessment is quite limited in scope, and only deals with the question of whether FRONTEX has succeeded in meeting the tasks set out for it in the founding regulation and spelled out in annual programme statements, and how stakeholders perceive it performance. The assessment report covers the two-and-a-half years from January 2006 to June 2008. The data were collected through interviews (with the caution that 'due to the in-depth nature of the interview guide it was not possible to collect answers to all questions during the interview'; ibid.: 28), documents, site visits and an e-mail survey of stakeholders, which yielded a low response rate of 25 per cent completed surveys (ibid.: 31).

Generally, the assessment is quite positive and concludes that FRONTEX has met its tasks or is on the way to meeting them. 'The Consultants can conclude that the main objectives of the Regulation are attained effectively' (ibid.: 9). FRONTEX 'has found a core role in coordinating operational activities. Member States get considerable added value through involvement in the operations, the exchange of experience and development of a uniform approach' (ibid.: 41–42). The report notes that assessing impacts may be premature, since the agency has only been in existence for a short time. For example, on the impact of joint operations, the major activity of FRONTEX, the report notes somewhat cryptically that the impact on 'controlling migration is not unambiguous'. There has been an immediate effect on increased apprehensions and reducing pressure on borders, but 'the effect seems only to be noticeable during the JO and will soon wane, once the JO is over' (ibid.: 43).

Overall, the assessment of impact or added value is not done on the basis of hard data but in general and descriptive terms. FRONTEX has been active, there have been many outputs, there is more operational coordination in border management activities then before and its has 'increasingly become a reference point for European IBM' (ibid.: 73). Things have changed, as they should have given the resources spent on creating and operating FRONTEX. But there is no assessment, or the capability to do such a task, that measures levels of change or a comparative assessment of what FRONTEX could have achieved with different operational policies. Only two small remarks hint at a comparative and longitudinal perspective. The report argues that FRONTEX might 'have made a greater impact on border management issues if it had focused building up internal procedures before going operational' (ibid.: 71), but that it is too early to tell; commenting on the number of working agreements signed with third countries, the report notes that 'Member States prefer that the Agency remain focused on the practical and operational cooperation issues and while leaving the politics to the Member States and the European Commission' (ibid.: 63).

The report is more critical of the administrative and management side of FRONTEX than its coordinating activities, concluding that the director has been more focused on external rather than internal tasks. The report finds that the evaluation by FRONTEX of its own activities is not done consistently, noting that the projects described in the annual programme statements are not the basis for assessing progress in the later annual reports.

Specific critiques concern the large number of seconded agents working at FRONTEX, who circulate in and out, leading to a loss of organisational memory and expertise and a need to familiarise new agents with the working habits of FRONTEX; the inability to attract qualified IT staff, which makes

the 'agency uncomfortably dependent on external expertise which is not sustainable in the light of increasing need for improved and high security networks' (ibid.: 70); the limited resources given to the Risk Analysis Unit (the presumed foundation of all of FRONTEX operations), which even lacks secure communications links with other agencies, such as Europol; the inability to respond systematically to media reports and critiques of FRONTEX activities; and the consultants are very unhappy that no headquarters agreement has been signed with the Polish government, making life and living conditions hard for FRONTEX workers.

Most of the report's recommendations are quite anodyne[59] and unspecific, arguing for better management and more integrated and holistic approaches to its external work. For example, the report suggests that 'FRONTEX should carefully consider the value for money that it gets from each research project or network that it participates in' (ibid.: 76); that the 'selection of specific operations should be based on priorities established through risk analysis' (ibid.: 75) – but that is what FRONTEX says it has been doing; and that 'a comprehensive and holistic approach should be applied on external border management through cooperation with UNCHR and IOM to ensure the incorporation of the protection-sensitive approach to FRONTEX activities' (ibid.: 77).

Three noteworthy recommendations stick out. FRONTEX 'should consider establishing a forum for a more formalised and regular contact with Civil Society Organizations, working with Asylum and Migration Matters' (ibid.); the report earlier had noted that there had 'been no structured dialogue with civil society' (ibid.: 61). Second, the internal workings of FRONTEX could be improved by 'a new organizational structure supported by active management involvement to develop the proper culture' (ibid.: 78), but it does not say what is missing in the current culture and what should be the new culture. Are people at FRONTEX not working together well, or are they lacking in European consciousness and thinking? Third, the report suggests that 'Member States and FRONTEX staff should work for an expansion of the mandate through the Council, Commission and Parliament' (ibid.: 73). It would be nice to know what the consultants have in mind; their more specific recommendations for tasks done and their analyses of challenges faced by FRONTEX seem to fit well under the current mandate. In their opinion, in which directions should FRONTEX grow?

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[59] During an interview at FRONTEX, conducted in early March, I saw the report sitting on the desk of the person I was talking to. He could not show me the report but thought it was superficial and lacked depth, largely because of the limited time the consultants had to conduct the research and write the report. The report also contains odd mistakes and inconsistencies. It consistently describes the Schengen Borders Code in the singular as the Schengen Border Code; and it does not use its own evaluation criteria. At the beginning, the report says it will classify its findings into three categories – very robust conclusion, robust conclusion and tentative conclusion – but never uses those terms in specific assessments in the report.

### 8.4.3 External Observers

External observers are more critical (e.g. Pflüger, 2008). A CEPS research paper argues that the EC's assessment 'fails to address the impact of such undertakings [specifically EUROSUR] on fundamental rights and freedoms, focusing solely on technical issues and overall efficiency' (Jeandesboz, 2008: abstract).[60] Further, the EC's evaluation of itself 'falls short of critically assessing the consistency of FRONTEX's activities with the fundamental values upheld by the EU' (ibid.: 1). FRONTEX is a community agency, but it has been unduly influenced in its policies and decision-making by the 'persistent dominance of national actors' (ibid.: 2).

Greater transparency and monitoring of what FRONTEX does are needed. 'The well-established democratic checks and balances founding the very nature of Community governance need to come into active play.' Studies on 'joint operations, risk analysis and feasibility studies carried out by this Community body should be subject to close scrutiny, review and independent monitoring', but that is difficult as 'a majority of its functions and their implementation are characterized by a high level of secrecy and lack of transparency' (Carrera and Geyer, 2007: 4). Guild et al. (2008a: 1) suggest the creation of an 'EU border monitor' to ensure that border management practices are in accord with 'EU law and the Charter of Fundamental Rights'.

Ultimately, the impacts of FRONTEX and IBM have to be seen in the levels and quality of freedom, justice and security, the fundamental values which underpin the norms of Schengenland and the *acquis communautaire*, that IBM achieves. That is a large order, and one FRONTEX is not likely to be able to assess in any valid way. Its work is much more narrowly focused on the tasks set for it. But neither does the EC seem to use these three standards in its discussions of how well IBM has been implemented and the impacts it has had. It falls to critics of the EU's approach to border security and IBM to point out these shortcomings and weaknesses in the assessment procedures.

The COWI report, which could have dealt with the larger issue of how systematically the EU conceptualised and implements IBM, does not address this issue, nor does it evaluate the claim made by FRONTEX that the 'core aim is to look for system solutions in the area of border management' (FRONTEX website). In accord with the specifications of the evaluation tender, COWI focused narrowly on the technical and organisational aspects of FRONTEX work. Yet as many critics of the EU's approach to IBM, and SSR more generally, have pointed out, approaching the issues involved in

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[60]  FRONTEXwatch (undated, 'Border Regime': 3) notes, somewhat sardonically, that the EC when discussing or defending EUROSUR engages in the 'usual security new-speak, in which they explain that defending the European border from migrants will increase the security of the Schengen area'.

border control and integrated management from a narrow and technical perspective and within the parameters of the managerialist impulse to policy-making ignores important aspects of what the EU and JHA and Schengenland are all about – namely establishing an interior space, well and humanely protected by external border controls, in which freedom, security and justice flourish. Those standards will remain mere rhetorical expressions unless and until they are used to evaluate the performance of established institutions promoting IBM.

## 9. The Challenges for IBM in the EU: Can IBM Succeed?

Where is IBM now on the integration continuum? Where did it start, and has there been progress towards integrating operations and agencies? Where does the EU want IBM to end up? Can IBM be achieved as conceptualised in all three models?

IBM in the EU faces numerous challenges and obstacles to its development and impacts. IBM is likely to progress in fits and starts, and unevenly in different integration domains. Obstacles to further integration arise from many sources.

### 9.1 Challenges for IBM/EC

#### 9.1.1 The Tension between Community and Member States' Interests

The EU portrays itself as a community, but its foundation continues to be the sovereignty of member states. Whatever institutions, policies and programmes the EU pursues and the authority it possesses are granted to it by member states which have decided, for their own reasons and interests, that sharing or giving away some of their sovereignty would be beneficial to them as well as the larger community. Agreeing to place some decision domains under the authority of the community indicates a political calculation by member states, and that calculation is contested within the state and among the states.

The EC and FRONTEX depict themselves, when they work, as managerial implementers who carry out their work once the political process has led to a decision in the community domain. They claim to be 'depoliticized Community agencies' but are surrounded by a 'highly political spectacle' (Carrera, 2007: 9). That claim, argues Carrera, is false for three main reasons: FRONTEX's dependence on voluntary agreements by member states to work with it and with other states; the emergency nature of many joint operations, which are driven by political pressures from particular member states; and the rather 'substantial degree' (ibid: 14) of influence exercised by the EC over FRONTEX.

Border control and security and how to manage IBM are inherently political activities, within states and within the EU. The EC claims that it speaks for the European community as a whole, that it promotes the common interest and that it is the guardian of EU treaties. But what is a community or common interest and what is not is unclear until decided through political processes. Managing IBM involves numerous decisions on how to negotiate with member states, other EU agencies and civil society associations.

Managing IBM is not merely implementing a process and seeking goals on which all member states have reached a consensus. Implementation itself raises new issues which have to be worked out. The fact that the basic policy decisions in FRONTEX are made by the management board which includes a representative from each member state plus two representatives from the EC ensures that policy and political interests of MSs are reflected in what FRONTEX does. A depoliticised, managerialist rhetoric from the EC and FRONTEX cannot hide the underlying political realties of IBM.

That tension is built into and acknowledged in every law and regulation issued by the EU on IBM. As long as that tension and the right of MSs to control their own territory and borders remain, integration can only proceed as far as MSs and their publics will allow. Member states have a stake in community policy domains, but they retain a strong commitment to their own problems, populations and political dynamics.

### 9.1.2  The Policy Incoherence of the Border Problem

Border management confronts, in the language of policy scholars, a messy, a 'wicked' policy problem. As the border has expanded globally and into multiple policy domains, IBM has ceased to deal with a coherent or simple policy problem. Rather, the variety of borders and the multiple and frequently inconsistent meanings of integration have led to a situation where there is not one nice and neat border problem that could be addressed by an integrated management policy. The border control problem is many problems, not all of which are interconnected.

Border control problems and issues in the EU (and probably elsewhere but not to the extent they appear in a regional setting) can be addressed effectively only in separate policy domains, such as information sharing, surveillance cooperation and technology; common training; regulations and codes; risk assessments; transborder cooperation; and inter-agency cooperation. Trying to create a complete, integrated system would lead to a monstrously massive organisation without focus, *esprit de corps*, common identity or effective and efficient administrative capacity.[61] It is also not clear why the EU would wish to become the promoter of such a system for the EU as a whole.

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[61]  The Department of Homeland Security in the USA is a splendid example of how not to integrate different agencies into one common organisation while leaving other important agencies and activities, such as intelligence agencies, outside the department. On paper this may have looked like a good idea; in reality is has turned into a giant organisational mess with different sub-agencies continuing to do their work as before without much integration into the larger formal organisation, nor does the secretary of the department exercise much managerial control over sub-units.

One way to suggest that the limits of integration for FRONTEX are close to being reached is simply to ask oneself what would a transition of FRONTEX to the earlier European border corps notion actually entail. For example, the current RABITs could become the border corps on a permanent basis rather than as a standby pool of prepared border guards who can be mobilised in cases of need and request. Resurrecting the border corps idea would also resurface numerous legal issues on the rights, responsibilities and immunities of corps members.

Even if a border corps is the ultimate end and outcome of rapid teams, maybe at a personnel strength of about 5,000, that number would be a small addition to the overall strength of MS border guards. The corps would simply be a glorified version of a RABIT. Nor is it clear what the corps guards would do while not deployed – sit around waiting to be asked, or deployable at the discretion of FRONTEX even when MSs do not request deployment? The most likely scenario is that the corps guards would be a larger standby pool, working in their member states until called up. The least likely future scenario is that the corps would be under the operational control of FRONTEX even against the wishes of MSs. That scenario is simply not on the cards given the current relations and division of competencies between the EU institutions and MSs. The notion that FRONTEX will become the central organising agency for integration is only possible if it expands into a massive bureaucracy whose work will be done by its own personnel rather than, as is the practice now, depend on the extensive support of MSs.

### 9.1.3 The Policy Domain Problem

Currently, under the Treaty of Lisbon, the work of the EU is divided into three policy domains: community, member states and a common foreign policy. IBM, even at a lower level on the integration ladder, automatically crosses over into all domains. The basic IBM notion in the EU argues for coordination and cooperation at the border, within member states and with third countries outside the EU. Coordination with domestic security organisations infringes on the policy domain of member states; working with third countries has to align with foreign policy goals and priorities set by the CEU. IBM requires crossing the domains, a sensitive matter for people working within different domains for which they have designated decision-making responsibilities. For example, before Lisbon, 'the field of irregular migration currently falls between the EC first pillar and the EU third pillar... In addition to the lack of transparency, efficacy and democratic/judicial accountability, there is also a high degree of inefficiency owing to the duality in the legal dimension (framework decisions are being used to develop third

pillar measures, and Council directives are used to develop first pillar ones).'
This 'obscure and ambiguous situation in which policies that deal with these
matters reside in both the EC first pillar and the EU third pillar needs to be
resolved as a matter of priority' (Balzacq and Carrera, 2005: 26, 60). In the
absence of the now removed pillar language, the underlying issues created by
the division of labour over general policy domains and competencies will
persist.[62]

Integrating the three policy domains will only be achieved informally and
through political negotiations leading to informal understandings and formal
decisions on how to distribute and organise the work of border control. In
short, the policy domains reflect the underlying reality that only limited
agreement exists on who has authority over what policy. That underlying
reality will not disappear, and will continue to limit the extent of possible
integration. What is likely is a patchwork of integrative mechanisms to lessen
the impacts of the existing division of labour and competencies among EU
institutions. The diversity of community versus MS interests will remain
built into the institutional structure of the EU, whether these are called
pillars or not.

### 9.1.4  The Multiplicity of Border Controls within MSs

One issue complicating integration at the EU level is the lack of integration
of border control agencies at the MS level. Member states have divergent
border agencies and policies. In some MSs one agency, normally a specialised
police force, is in charge of border control, such as the former
*Bundesgrenzschutz* in Germany. But even in Germany border control was
also exercised by *Länder* police in Bavaria, Bremen and Hamburg, as well as
by customs. In others, such as Italy or Spain, at least four agencies have a
share in border control activities. Leaving aside customs, which is part of the
control system but not included so far through horizontal integration into
FRONTEX activities, multiple border control agencies within one MS make
it difficult to coordinate their activities from the outside. If the MSs cannot
create an integrated border system within their own territory, FRONTEX is
far less likely to be able to do it for them.

This diversity of MS border systems affects all of FRONTEX's work.
Training cannot be the same for sea, land and airport police; requirements

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[62] One of the recommendations made by many observers, which makes lot of sense, is that all border control
personnel cooperate more than they do now, as agencies and as individuals, at crossing points. The legal and
organisational problem is that customs, by EU decisions, is still in the MS policy domain. FRONTEX set up a
pilot project for cooperation with customs at a border checkpoint, but the project did not work out as customs
wanted to be in charge (interview, FRONTEX).

for participation in RABITs are different; risk analyses must necessarily vary; lists of equipment are not interchangeable.

There is also the issue of what happens to border agencies and their personnel as a consequence of the creation of Schengenland. What are the compensatory activities of now 'irrelevant' border guards at internal Schengenland borders? It is not likely that guards can be dismissed easily because their job of controlling internal land borders has been eliminated. For example, Germany's blue, green and air borders continue to be controlled as they touch non-EU and non-Schengen space. The German *Bundesgrenzschutz* has been converted into the German Federal Police, the first time that normal police work is done at the federal as well as at the constituent *Länder* levels, with some officers assigned to increased sea and airport work, while others have been assigned to internal security investigations and crime control, mostly focused on transnational crime, trafficking in human beings, illegal overstayers and increased checks on the transport of illegal goods within the country, or been given responsibility for public order protection and riot control. One can suspect that internal mobility controls have grown tougher, since the former border guards need to have something to do. What is not known is how well 'demobilised' border police have adjusted to new work expectations, nor how conscientiously they are performing their new tasks. This is an issue not only for Germany but for all EU states.

### 9.1.5 A Crowded Reform Field

Border management and IBM are goals and tasks pursued not only by EU agencies but by numerous private, civic society and governmental actors. Non-EU actors offer training to police and border guards, provide equipment, advise on best ways to coordinate cooperation, act as catalysts for regional approaches to border control, conduct evaluations and organise joint operations. A lot of overlap, inconsistency and redundancy are introduced into integrative reforms by the multiplicity of actors.

These actors are driven by their own interests and priorities, which are sometimes in conflict with EU conceptions of IBM. The existence of parallel IBM elements outside the direct control of the EC and FRONTEX complicates notions and policies of how to integrate relevant actors into the border management system. More than one cook stirs the cauldron of change.

One policy area populated by many actors is formal academy training or the informal learning that occurs in twinning projects. Practically all EU member states, regional organisations (such as the OSCE), IGOs (such as the

IOM and UNCHR) and many private consultancy firms have undertaken training projects in former and current accession candidates. There is little coordination among these training efforts, each promoting a particular version of how best to do the work of border control and policing.[63]

Regional integration efforts parallel those by the EU and MSs. For example, the Swedish Migration Board (SMB) and the UN High Commissioner launched a 'pro-active initiative to promote dialogue on asylum and irregular immigration issues among the countries situated along the future EU eastern border... The strategic objective of the Söderköping process (named after the Swedish town where the first meeting was held) is to facilitate cross-border co-operation between new EU Member States, candidate countries and the Western NIS on asylum, immigration and border management issues.' Participating countries include Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia and Ukraine. The Söderköping process is supported, as well, 'by the EC, IOM, SMB and UNHCR' (Soderkoping Process, undated).

The Strategy Regional Programme (European Neighbourhood and Partnership Instrument, 2007: 13) notes that 'in the area of border management, activities have focused on supporting the efforts made by partner countries' [*sic*] to reform their national border management systems and turn them into modern organizations that are closer to EU standards and best practice through institution and capacity building projects and the supply of modern equipment'.

The goals of the process are remarkably similar to what the EC and FRONTEX are doing on cooperation across the EU borders. What is interesting is that when I mentioned the Söderköping process to two officials at FRONTEX, asking whether FRONTEX cooperates with this process, they had not heard of it.

Regional efforts at internal borders may also complicate further integration. The Treaty of Prüm, signed by seven member states in 2005, seeks to further cooperation by joint measures to control internal borders, prevent terrorist offences, deploy air marshals and second document advisers to third countries to control illegal migration. Critics have argued that this treaty, which did not include the (then) other 18 member states, violates EU law and obligations, undermines the authority of EU institutions and EU-wide integration efforts and 'bluntly ignores the EU's post-Amsterdam Treaty constitutions and appears as an unfriendly and disloyal act not only to fellow member states, but even more toward Europe' (Guild and Geyer, 2006a: 4;

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[63] Such efforts are not always appreciated by EC and FRONTEX officials. One EC official asked, 'How can the British teach the police and border guards when they do not accept the complete *acquis* or the Schengen Borders Code?'

also see Balzacq et al., 2006). The treaty has been partly incorporated into the *acquis,* but clearly not enough to satisfy the critics.

It is highly unlikely that all these agencies and competing processes will agree to be subsumed under an EU-led IBM effort, or that FRONTEX will have the administrative capacity or political leverage to bring all the actors into a common coordinated framework. Many of agencies and states have their own priorities which are not congruent with EU desires.

### 9.1.6  The Weakness of Community Accountability Mechanisms

A major weakness of current integration efforts is the absence of concrete and specific steps, or proposals, for efficient and democratic accountability and governance mechanisms at the EU level. Accountability and oversight for IBM is left to MS institutions and processes. In the absence of strong, visible and effective community mechanisms, legitimating the emerging institutional forms that IBM takes will be difficult. As it is, there is widespread scepticism among large segments of the public about how well the Brussels bureaucracy, the Eurocrats, the EC, look after the interests of all rather than their own preferences. Without transparent accountability, so outsiders can know what agencies do for them and on their behalf, new institutions will be suspected of acting in their own interests, but disguising these choices in their rhetoric as favouring the public good. The notion that Schengen evaluation committees will be sufficient to keep new policies aligned with the common good is not likely to work, since the workings of these committees and their impacts on performance are not widely available (if not secret), known or seemingly susceptible to accountability pressures from non-governmental groups.

A common criticism of EU and EC decisions and operations is that the process by which such decisions are made is opaque, beyond the knowledge of and impenetrable to outsiders. There are two ways in which transparency in the EU is foiled. Agencies simply claim a need for secrecy (by now well-known arguments) and refuse to tell outsiders. This is a likely possibility for security-and intelligence-based policies, including new border control agencies and powers. Or transparency may disappear by overwhelming outsiders with vast amounts of information delivered to them in formats and styles which are almost impossible to understand or analyse. This second option seems to be pursued by the EC. You want information? Well, here it is in thousands of incomprehensible pages and much inscrutable rhetoric. There is a commitment to transparency, but it is done in a manner that undermines the public's and even the experts' ability to figure out what has been going on.

The normative regulations, codes and the *acquis* in place within the EU do provide some constraints on the actions of border guards, but they need to be enforced. Right now, at the EU level, enforcement and oversight rest with institutions which are outside the IBM framework, and highly legalistic in their procedures. Appeals to them for redress are likely to be quite time-consuming.

One potential mechanism is the Schengen evaluation missions. Unfortunately, whether they function as effective accountability mechanisms is uncertain, as claims that they are effective largely reflect the views of the people doing the evaluations. The evaluation teams check on how closely existing regulations are followed, and forward recommendations for improvements to the member states, the CEU, the EC and FRONTEX. Yet what happens after that and how well member states and security agencies respond to critiques and recommendations are not known with any precision.[64]

### 9.1.7  Neglect of the Working Cultures of Border Guards

A fundamental gap in the thinking and policies of the EC and FRONTEX is the neglect of informal organisational dynamics and occupational cultures of border police.[65]

Policies are not self-executing. They are implemented by people hired for the job. Border guards are no exception. To understand how IBM will finally work at the borders (and elsewhere), one has to understand the occupational cultures of security workers. What reformers and managers describe as the organisation's working practices and goals, as stated in laws and regulations and taught in training, are not always what rank and file who are the implementers of plans do or wish to do. The actual work of controlling borders reflects not only what is written in regulations or conveyed in training, but what exists as practice and reality by the actions taken, or not, by the agents who do the work and have their own ideas of how to do it. Organisations and people are not machines which can be arranged and turned on at will and act on commands. One has to understand how border police think and act – their occupational cultures – to understand the possibilities and obstacles for implementing IBM (Marenin, 2006).

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[64] Having access to the reports of the evaluation teams and how their views are responded to would make for a fascinating research project.

[65] In my discussion of the occupational culture of border guards, I draw mainly on findings and arguments from studies of the police. For one, guards are police by their powers and authority; they work in hierarchically structured organisations, as do police; and I could not find any systematic studies of the occupational culture of border guards. If such studies are ever done, I expect them to arrive at similar findings that accord with studies of the occupational culture of conventional police forces.

Occupational cultures simplify meanings embedded in law and taught through formal training. The nuanced meanings of managerialist and legalistic wording will be adapted to the working world of border controllers and converted into shorthand 'rules for working'. It is unlikely that border guards will read the Schengen Borders Code in its entirety. The SBC has become part of national law for MSs and will be read by managers and administrators who organise the work of the border police.

But lower-echelon border police, most likely, will have that code interpreted for them in training, specifically through the new core curriculum developed by FRONTEX, and will receive additional interpretations and simplifications from managers and fellow workers. In the end, the 'recipe rules' that evolve will be connected to the SBC in spirit and by basic notions of what is required, what is forbidden and what is discretionary, but will have been fitted into the working world of the guards and the usual situations they encounter. Police and border guards at the coal-face do not think like bureaucrats or their managers.

The experts assigned to FRONTEX, being mainly experienced border guards and administrators themselves, should and do know how occupational cultures can distort directives, and their power to shape discretionary decisions, which all police at the ground level can make, but that knowledge has not been incorporated into the rules they develop nor the expectations they have that the rules will be complied with. The assumption seems to be that if the rules are there, and managers can point to them, they will work as designed. There is little discussion in the regulations on how to structure discretion and deal with the influence of informal cultures within the new integrated system and its parts.

For example, corruption is a temptation and a reality among security agencies, especially so at the borders where opportunities abound and much of the work by customs agents and border guards is discretionary and unobserved, and since the 'rewards for corruption can be especially high in this sector' (Organisation for Economic Co-operation and Development, 2007: 158). Having training sessions on how not to be corrupt or abuse one's powers is not likely to make much of an impact on the work of agents in the field, where the pressures for corruption are real, powerful and can be pursued with almost complete impunity. The potential for corruption will not be controlled by regulations which state 'you should not do this'. When, as happens in some areas, higher-ups in the organisation are also corrupt, the work of field agents will be corrupted even more.[66] Unless organisational

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[66] A Turkish police officer (interview) who had trained Albanian border guards once described his experience in such a situation. When he returned for a visit he decided to observe border guards to see what impact his training had made. To his dismay he saw guards, including some of his former students, taking bribes right and left. He talked to a couple of them afterwards. 'Don't you know what you are doing is wrong?' 'Of course we

mechanisms and administrative policies are developed and used consistently and fairly by managers, corruption will happen and will be pervasive (Morgan, 2005).[67]

The final border crossing of the real self leaves substantial room for discretion and malfeasance by border guards. The detection of illegal acts by people crossing over, when the virtual file has not alerted guards to control that person, depends on the skills, willingness, work habits and alertness of the profilers, guards and dogs. Anyone who has ever observed dogs being walked among luggage at an airport carousel understands that a dog 'alerting' – exhibiting behavioural signs that it has detected a substance it was trained for – can be guided in 'alerting', and that many 'alerting' behaviours are so subtle that only a trained dog handler can interpret the behaviour of the dog accurately.

At land crossings where large numbers of people and carriers cross each day, malfeasance through the discretionary exercise of work can be so subtle as to be undetectable. The large numbers passing a checkpoint severely limit the attention that can be given to any one person or car, allowing a corrupt border guard to let a truck carrying illegal goods pass without thereby attracting attention, since most trucks are passed through by a quick and perfunctory check of papers and a couple of questions. Not pulling a car into secondary for further inspection is not an unusual control activity.

The important point here is not that border guards are generally or inherently corrupt or abusive – they are not – but that guards who want to be corrupt, or possibly are threatened or forced to let illegal goods and people pass, can do so without being actively engaged in suspicious-looking behaviour at the border.

Even if documents and papers are properly issued and legal, even when all the required procedures have been followed, border guards if they are so

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do, you taught us that.' 'So why are you doing this?' 'Let me explain,' said one of them. 'At the end of the day, the sergeant will ask me for his share of the bribes I have collected, and so will the lieutenant and the captain. If I tell them that I did not collect bribes, they will not believe me. They will think I am holding out on them and demand their share. If I do not collect bribes I will have to pay them from my own pocket. What can I do?'

[67] The guidelines (European Union, 2004) suggest that 'border guards should have the power to refuse entry to persons, even if holders of a visa, with duly motivated reasons. A special training is needed for the officials in order to ensure the quality of their decisions in this' (ibid.: 33). This provision would grant substantial discretionary powers to border guards which are not likely to be exercised appropriately or consistently, even with training. Not only that, border guards, by their discretionary capacity to exclude people who fit suspicious profiles, will undermine the visa process itself, for visas are not good until the guards say they are and that is not what the visa process is supposed to be all about. This is a problem at all borders. As an example, I was talking to a Canadian who had accepted a position at a US university. When she arrived at the border with the USA, the border guard asked the normal questions about what job she had accepted. She told him. He said that is not a real job, as he had never heard of it. She showed him the written job offer. He declared that the offer contract was a fake. Fortunately for her she knew enough not to argue, and just turned around. Had she argued, the guard could have entered a note into the computer against her name that she had been refused entry to the USA. If she had then wanted to enter the USA at some other site or time, that note would have popped up and she would have been refused entry again. So she left, came back the next day, and crossed into the USA.

inclined can and will find something wrong with them in order to extract bribes or simply assert that the papers are fraudulent, the wrong ones or that another required form is missing. And there is little recourse at that time for travellers – they pay or they do not go on.

There is an additional difficulty in converting laws and regulations into meaningful rules for work, namely translation. The EU has 23 official languages. The basic working language of the EC and FRONTEX is English, and initial drafts of legislation and rules are normally written in English, and possibly French, and then translated into the official languages. Anyone who has ever translated from one language into another, even when completely fluent in both and precisely because they are completely fluent, knows how difficult it is to convey exactly the same meaning of the multiple nuances and connotations of specific words and phrases from one language into another. Words in the translated language will acquire colloquial meanings somewhat different than the meanings in the original language. This is especially a problem for legal words whose specific meanings are tied to the nature of the legal system in which they are interpreted and applied.[68] Any case argued in a court can substantiate that point. Lawyers working within the same legal system and framework will vehemently disagree on the meaning of legal words. If the meaning of legal words and phrases is an issue within one legal system, it will be a bigger issue when many legal systems are involved. The problem of identical meaning is not solved by employing teams of lawyers and translators. It would be interesting to back-translate the Schengen Borders Code, for example, to see how closely is matches the original versions.[69]

One of the critiques in the COWI (2009) report is that many border guards do not have sufficient command of English, even when working in joint operations or as rapid team members. Limited command of English necessitates extended explanations of tasks in order to have a decision or request understood and applied. That practically invites unclear understandings, misperceptions and discretionary interpretations of the language in the regulations.

Between those two difficulties – simplifying a complicated legalistic language into recipe rules, and the difficulties of translating not just words but meanings – it is not inconceivable that the harmonisation and implementation of laws will be inconsistent in practice.

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68  For example, the meaning and legal implications of 'rights' in a *Rechtsstaat* legal system such as Germany's is completely different from that of 'rights' in the common law system of the UK.
69  Back-translation is a conventional technique when conducting public surveys in different countries to ensure that the meaning of questions, even when very different words are used, is the same for all respondents no matter what country they live in or what language they speak. What happens routinely is that back-translations will not recreate the original wording of the question.

### 9.1.8 No Accurate Impact and Value-Added Assessments

The basic principle of 'subsidiarity' governs EU and EC policies in the community domain. The principle states that the 'Commission will propose action at the EU level only if it considers that a problem cannot be solved more efficiently by national, regional or local action' (European Commission, 2007: 23) or if EU policies 'add value' beyond what an individual MS or a group of them can achieve on their own. If no value is added by EU policies, and if actions at the lower levels produce greater benefits, policy decisions should remain with MSs.

The difficulties with this argument are threefold. What exactly is added value; how can it be measured; and how important is efficiency in judging the worth of added value?

The most common implied definition of added value in IBM is that some border control action was undertaken which could not have been done by MSs acting alone. Most of the work of FRONTEX is justified on that basis. Without the coordinating efforts of FRONTEX information-sharing agreements, common training or joint operations never would have happened. This conception is almost tautological and circular. FRONTEX and other IBM activities have been established as community policies, hence they must, by definition, add value or they would not have been pursued.

Far more important is the question of how to assess the extent of added value. What methodologies, indicators and statistics will yield accurate and valid assessments? The normal procedure of counting outputs, such a training courses delivered or illegal activities discovered during joint operations, does not lead to valid assessments. Take the example of joint operations. EC and FRONTEX websites and documents typically report on the result of joint operations by outputs. An example can make this point.

Gordius, a joint operation conducted in 2008 at the border of Moldova, led to the apprehension of 68 migrants and 192 refusals during its first phase (FRONTEX website). Officers from 16 MSs participated; the overall cost of the operation was 350,000 euros. The impression conveyed by these numbers (and this is true of all the statistics which accompany the descriptions of the numerous exercises and joint operations coordinated by FRONTEX) is that the operation was successful and the statistics (68 migrants and 192 refusals) presented portray the level of success, or the added value or impact of the operation. That is not the case.

The numbers of migrants apprehended, first of all, should go up when additional resources are added at a border. Assuming that border controls were being done before the operation began in that area, some level of

migrant apprehension must have existed (unless national border guards were completely incompetent, lazy or corrupt). It is unlikely that prior existing border controls never detected and apprehended any migrants or refused entry to others. We can call the prior level of detections and apprehensions the normal work effectiveness of border controls at that location. Joint operations merely add to that level; they do not start from zero, or no apprehensions. The number given, then – 68 migrants – combines two effects: the normal level (and numbers) and the additional level (and numbers) as the consequence of the joint operations. Using the total number to show the effectiveness of joint operations counts the normal level as if it had been produced by the joint operation. Properly done, the added value would be the difference between normal levels and the level of detection at the end of joint operations. To assess added value properly, one would have to know the normal level of work effectiveness, and that would require doing research and going through the existing data prior to the joint operations. But that is not how the data are presented. (The same argument and critique applies to every description of joint operations I read. It is the common pattern of how effectiveness is portrayed.[70]) In short, one cannot tell from the data given what was the level of impact or added value. Right now, any internal assessment basically says 'we are doing a good job even when we can't quantify added value'.

A third issue that complicates assessing added value is 'costing' the value of the outputs of the work done. In the Gordius case, the budget for the operation was 350,000 euros. But what is the value, or benefit, of apprehending 68 migrants and 192 refusals (minus 'normal' levels and numbers)? How much is an additional arrest worth in money spent? What is the value of the experience of working together with other border guards, or the social and organisational networks which may develop, or the lessons learned on how to set up, organise and run a joint operation? 'Costing' intangibles is not a science but a negotiated decision, or simply an avoidance of trying to cost out benefits. It is enough to know that some changes in personal networks, experience and lessons happened without trying to assess precisely and compare those gains against known costs. As noted by the EC (European Commission, 2008b: 3), 'results of joint operations cannot be

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[70]   The pattern of reporting outcomes is the same and subject to the same critique. Only the numbers reported differ. Joint operations at sea yield higher numbers. For example, Hera 2008, one of the largest and longest (from February to December) sea operations undertaken to intercept the flow of migrants from Senegal and Mauritania to the Canary Islands (which are Spanish territory), resulted in 9,615 arrivals in the islands, 5,969 migrants diverted, turned back or deterred, 360 facilitators (basically the crew of the boats) arrested and 1,785 interviews conducted by experts deployed by FRONTEX. What these numbers mean for impact beyond normal results and rates is not known. Operation Nautilus (2008), which sought to intercept migrants from Tunisia and Libya trying to reach Malta and the Italian islands of Lampedusa and Sicily, still resulted in a total number of irregular arrivals of about 2,300 in Malta and 16,098 in Italy; none was diverted or sent back, 15 facilitators were arrested and 793 interviews were conducted. The reason why none was sent back in the Nautilus operation is that the EU does not have an agreement with Tunisia and Libya on taking migrants back, but Spain does have such an agreement with Senegal and Mauritania. A Senegalese or Mauritanian law enforcement officer was present on all ships deployed in Hera. The agreement also allows EU ships to intercept migrants in national territorial waters (FRONTEX website).

summarized solely in quantifiable terms. There are other benefits such as exchanging best practices and information between Member States and stimulating day-to-day cooperation between national border guards authorities. Nevertheless the quantifiable results so far must be considered impressive.' Still, that leaves the question of what the other side benefits are worth.[71]

The same issue arises in every FRONTEX or IBM activity. Of course it is desirable that border guards apply similar norms and use common practices at the border. Common training, risk analyses and uniform regulations seek to accomplish that. Supposing those goals are achieved, what is their value?.

## 9.2    Challenges of SSR/IBM in the Western Balkans

In addition to the general challenges for IBM within the EU contexts, the SSR/IBM and FRONTEX models of IBM face their own and unique challenges. SSR/IBM has been pursued most diligently within the Balkans, and that region presents significant problems for implementing SRR/IBM. FRONTEX, on the other hand, is limited by its very establishment law, which sets out what its roles and tasks are.

### 9.2.1  Political Instability

The impetus for SSR in the region has come from international sources – countries, regional organisations, NGOs – as well as from domestic aspirations for more democratic forms of providing security, safety, stability and justice. Western Balkan countries have to deal with multiple expectations and demands placed on them from the outside on how to become more like 'democratic' Western European countries in all societal and political aspects. They often have little preparation or capacity to absorb international advice and assistance, especially if advice is conflicting or different goals, models and practices for reform are proposed. The absorption capacity for change is limited for most Balkan countries. In the end, international advice and pressures will only be sustained and legitimised if they become part of the political process within each country, if local politically connected stakeholders successfully champion needed reforms. But that likelihood only exists when politics and powers are institutionalised within stable and

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71    A FRONTEX official, from personal experience with joint operations at an airport, thought that numbers do not accurately reflect the added value. He had been involved in Operation Amazon, conducted at multiple airports to detect and control illegal migrants from South America. The presence of Spanish- and Portuguese-speaking border guards increased the efficiency of work significantly: interviews could be conducted more precisely and quickly in the local language, and personnel fluent in the local language could call local and national authorities, in their own language, to check on claims made by migrants. He also suggested that migrants, or their facilitators, knew that the operation was going on and sought other entry points – which, of course, lowered the number of apprehensions.

sustainable dynamics. It is difficult, if not impossible, to legitimate changes and reforms if local stakeholders cannot be identified (Donais, 2008).

Western Balkan countries have experienced, and continue to experience, episodes of violent political instability, beginning with the collapse of Yugoslavia into separate states, war among the emerging states, violent ethnic cleansing on a massive scale, the dissolution of Serbia into Serbia and Kosovo, political assassinations and continuing border conflicts over the control of territories with contested political histories and boundaries.

One consequence of the political collapse of Yugoslavia into separate states is the recency of borders, some still not yet 'completely agreed on' and all lacking 'proper infrastructures' (Gajić, 2007: 407). IBM in the Western Balkans is faced with an additional complication to the messy border control problem: the location and delineation of the borders themselves.

Creating effective and humane border control and internal security systems has proven to be a challenging task for national governments and the many external groups and agencies which have come to the region to assist. IBM will be difficult to implement when the political conditions themselves are in constant flux. Many of the security forces of the states in the region now are either under the hegemonic control of (well-meaning) outsiders (e.g. the OCED in Serbia) or heavily influenced in their restructuring and recreation by bilateral and regional external advice and assistance.

### 9.2.2  Criminalised Environments

Adding to the difficulties are the multiple border-related security problems endemic to the region. Risks and vulnerabilities come in different disguises. In the Western Balkans threats to security have arisen from such sources as:

- criminalised regimes working with organised crime groups to evade border controls on the importation and trafficking of goods, a traffic from which they skim massive profits;

- the normal smuggling activities by groups and people living in numerous border zones for profit or livelihood;

- the existence of the 'Balkan route', a collective label for trafficking routes used to transport people and goods illegally across the Balkans into Western Europe and Schengenland – extensive human trafficking occurs along the Balkan route and, of course, if people can be trafficked or smuggled for work or sex, so can terrorists and illegal goods;

- the trafficking of goods (cars, arms) from the EU into the Balkans;

- identity-group-based violence along borders which are artificial and still unsettled – violence is perceived as one means which can affect the final delimitation and demarcation of borders in the region, e.g. between Albania and Macedonia.

In practice, security threats in the Balkans are defined both by the needs of external actors and by the wishes of domestic political and security leaders. What matters and what should have priority in security policies may be perceived quite differently by all actors. For domestic actors and civic society, personal insecurities and protection against normal and organised crime and the corrupt depredations of security forces would rank high. For external actors, stopping the trafficking of threats into their countries or Schengenland is the primary concern; creating politically stable countries and effective IBM systems are means to achieve that goal.

Security and border control agencies in the region have been significant participants in criminal acts and organised crime, and have contributed to the political instability of states in the region. Corruption, abuses of power and doing the dirty work for regimes have been endemic. Good governance, oversight and commitment to the rule of law are essential prerequisites to deal with malfeasance by security agencies. Such efforts have been resisted by regimes and by the agencies; they do not want to lose their power, their control over scarce resources and their access to wealth.

### 9.2.3 Coordination of Policies with EU Standards

The Western Balkan states, with the exception of Slovenia, are outside the EU looking in, hoping that over time they can reform their security and border management systems to meet EU expectations. Change is happening, and all expect that eventually they will be allowed to join the EU. When that happens, IBM policies which have been implemented in the region, with the assistance of external actors, will have to be integrated into the EU IBM system being developed by the EC and FRONTEX. Some difficult adjustments may have to be made.

For example, the Vienna Police Convention, which exceeds in integrating border and domestic policing far beyond what has been achieved in the AFJS or the EC/IBM model, may have to be scaled down or adjusted. Conversely, developing innovative training methods, such as the virtual police academy, may be easily integrated into the EU IBM system. Gajić (ibid.: 405) makes the point that 'overdeveloping the border police service with the main purpose of implementing EU and Schengen regulations should be avoided.

This would then require huge personnel and infrastructure cuts once the Balkan Peninsula is integrated into the Schengen area.'

It is not clear whether and how far ahead planners and implementers have designed policies which will enable potential accession of the states of the region to enter the EU without complications.

## 9.3    Challenges for FRONTEX[72]

### 9.3.1  The Fundamental Paradox of Risk Analysis

A basic paradox afflicts the use of risk analysis as the basis for all operational and coordinating tasks and for arriving at strategic and tactical decisions in FRONTEX. The methodology and findings of risk analyses are secret, which violates the commitment to transparency and accountability espoused by the EC and FRONTEX.[73] It is impossible for an outsider to judge on what legitimate basis decisions were made or whether they are based on risk analysis. The most basic decisions of FRONTEX are hidden behind a shroud of secrecy.

It is not clear why secrecy matters to FRONTEX in the first place. With some minor exceptions – specific cases, methodologies which would reveal too much or prove embarrassing – secrecy is unnecessary and actually harms the image and efforts of FRONTEX. Secrecy seems to be an almost automatic reflex of intelligence gatherers and analysts. If it is intelligence, it must be kept secret; only secret knowledge is worthy to be called intelligence.

The more likely reason is that MS intelligence agencies and EU organisations insist on secrecy before they share intelligence with FRONTEX (interview, FRONTEX). And there may be situations where revealed or transparent intelligence could have an impact on specific operations.

For FRONTEX, which more by historical events than design has become identified with controlling illegal immigration, secrecy is completely unnecessary, almost irrelevant. Its risk analyses of illegal migration focus on the global picture to be able to assess where migration pressures might come from and reach the borders of the EU, and hence prepare for an effective response. Most of the information on global mobility, legal and illegal, can

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72    On a less important note, the logo for FRONTEX is not impressive, nor does it forcefully represent the idea of integration or cooperation. The logo consists of the capitalised word FRONTEX; below it are three Latin words, *Libertas, Securitas, Justitia*; and above a circle of 12 gold stars, a smaller blue circle superimposed on the edge of the gold stars and a wavy green line -symbolising the blue, green and air borders. It is, to say the least, not a very strong symbol of integration. There are no relationships among the circles, the line and the words that would indicate some cohesion of goals and policies. The elements of the logo exist in isolation from each other. Someone ought to design a more integrated logo.
73    The Public Relations Office is now called the Information and Transparency Unit.

be found in a vast number of publications and information systems. There are hundreds of border and migration studies by academic institutes, policy think-tanks, IGOs and NGOs which collect, sift and analyse migration patterns, the reasons why people move across the world, how they manage to do so, what happens when they get there and how and whether they return. All of this is known. It is highly unlikely that risk analysis of global migrations conducted by FRONTEX will add anything new to this picture. Put differently, any competent analyst could derive the same assessment of threat to EU borders by reading the extant literature.

For example, there is a Center for Migration Research at the University of Warsaw, whose website (www.migracje.uw.edu) lists numerous publications on illegal migration, mostly Polish migrants, and has numerous links to other border research centres, mainly in Eastern Europe. The researchers at the centre probably know more about Polish migrants, and how they migrate, than FRONTEX ever will. But it is not clear whether FRONTEX officials talk to researchers at the centre, read their publications or ask questions of them.

A liaison officer from the Warsaw UNCHR office is stationed within FRONTEX, to 'work with FRONTEX to ensure that border management is fully compliant with the Member States' international obligations' (UNCHR website). It is unclear how much the presence and work of the agent affect risk analyses and other operations.

The 2009 FRONTEX programme of action proposes two risk analyses of human trafficking. The patterns and reasons for human trafficking, for work or sex work, are well known in all parts of the globe (for example, DCAF, 2007a; Ehrenreich and Hochschild, 2002; Farr, 2005; OSCE, 2009; Spener, 2001; UNICRI/Minister deli Affair Ester, 2004; Urrea, 2004). This is an issue that has been studied extensively. If the focus of one or both FRONTEX studies is on the Balkan route, which has been a major highway for human traffickers into Western Europe, it is difficult to see what secret information might lead to a better picture than what is already known. One of the points made in an interview (FRONTEX official) is that risk analysis is not concerned or focused on individuals but looks for group-based patterns – what people, from where, are trafficked by what groups? That is exactly what other research depicts.

In any case, whatever risks FRONTEX perceives and delineates will have to draw extensively from published sources or national and regional databases. Of the total budget of about 70 million euros in 2008, only about 2 per cent are allocated to the Risk Analysis Unit. This seems a small amount for a crucial activity. It does limit what the RAU can do, and what databases and

software and hardware it can buy from commercial and governmental sources (interview, FRONTEX).

There are major drawbacks to this secrecy besides the seeming violation of the official commitment to transparency. It is impossible to check on the accuracy of the information in the datasets used for the analysis. It is not unheard of that intelligence files contain errors, rumours passed on as facts, speculations or unsubstantiated data.

Secrecy undermines trust and limits the legitimacy of new EU institutions and their work. If the public or political leaders have suspicions about the intents and practices of border management, keeping the reasons for decisions secret will only fuel suspicions further. 'Trust us, we are only doing this to protect you' is not a legitimating strategy. Secrecy limits oversight and accountability, raising questions about 'what are they hiding?' 'By applying the secrecy rule the very source of legitimizing the operation can not be at all contested, reviewed and in the end made democratically accountable' (Carrera, 2007: 14).

### 9.3.2  The Operational Limitations of Risk Analysis

Risk analysis as now done, as far as one can determine, has limited practical utility for border management. It is not 'actionable'. Risk analysis sets the outline and framework for policy, but says little about how to handle illegal migrants or transnational criminals arriving at border checkpoints or trying to cross the green and blue borders. Risk analysis focuses on group mobility, not individuals. Hence the specific interrogation, detection and control decisions will have to be made using the skills and hunches of border guards. Those skills are not learned from analysing intelligence.

The absence of personal, individual data in the intelligence collected by FRONTEX is puzzling. Suppose officials associated with the agency learn of specific criminally involved or inclined individuals who will arrive at the borders. They will share that information with national police or Europol, who then will input that information into data systems available to the border police and attach it to or include it in virtual files. If the virtual person is not sent to the border police by a data system, that intelligence is wasted. So why would FRONTEX not gather and include specific information in its collection efforts? It is essential information to guide the work of border police and protect the safety of the community.

As far as one can determine, it is unknown how well risk analysis done by the RAU unit pays attention to all three essential aspects of effective risk analysis: threats, vulnerabilities and criticality. Not only should risk analysis

depict the threats faced, in some order of seriousness, and the vulnerabilities of people, institutions and properties to threats, but some measure of criticality is crucial. How important are vulnerable targets to the well-being and security of a state, its population or its institutions. Unless some ranking of importance or criticality can be agreed, risk analysis simply points out that there are many vulnerable targets in any state and society, but does not direct resources towards the protection of the most important ones. Without criticality assessments, security policies are aimless. There are resource limits (personnel, knowledge, time, money) to protecting vulnerable targets in all states. Not every vulnerable target can or should be protected. There have to be priorities, and that requires a political decision. Are dams more important, or critical, than power stations; planes more than computer servers; military bases more than shopping malls?

Given that risks are faced by a community comprising 27 states, one would think that agreement on what is critical will be hard to achieve, since it is likely that every state has criticality issues of its own. What is seen as critical to one MS may not be so perceived by other MSs, nor is it clear what community interests should trump MS interests.

Lastly, risk analysis does not look at many aspects of threats: cyberspace threats, the problems of organised crime, overstayers within the EU or normal transborder criminal activity, all of which are security problems at the borders.

### 9.3.3 Limited Resources

FRONTEX is a small agency, one might even say a tiny one within the context of the EU, in terms of budget, personnel and other resources. It has a large remit and has grown quickly, but still depends in most of its work on the voluntary support and resources from MSs. It is truly a coordinating body, but what it coordinates is the utilisation of national resources and actions. It would be incapable of doing its work without support from member states.[74]

### 9.3.4 No Executive Authority

MSs are in control whether they want to participate in FRONTEX coordinating efforts or not, with the possible slight exception of RABIT pools. FRONTEX cannot tell any national border guard agency what to do or how to do it. It can cajole, convince, offer reasons why coordinated efforts

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[74] An official at FRONTEX drew me a pie chart which had a narrow line, not even a small slice, descending from the top of the circle to the centre. That represents the contribution of the EU, through the EBF and FRONTEX. The rest of the finances needed to fund activities come from member states.

would be in the interests of member states, but it is up to MSs to decide whether the reasons are convincing or not. The EC and other EU institutions are much more important for negotiating with MSs than is FRONTEX, which has to depend on prior negotiations and political agreements to set the stage for its coordinating efforts. It is highly unlikely that MSs will ever agree to turn over substantial executive authority for border management to FRONTEX.

Even when cooperation is agreed to by MSs, the implementation of agreements and policies still rests with the member states. Joint operations and RABITs (if they ever are called upon) work under the control and supervision of national authorities and officers; implementing the core curriculum depends on agreement by national authorities and academies; the selection of who will attend specialised courses offered by FRONTEX is made by member states; and information needed for risk analyses is given to FRONTEX by national as well as regional and international intelligence agencies.

### 9.3.5  The Inherent Difficulties of Conducting Policy Evaluations

As noted earlier, conducting proper assessments and evaluations of the impact of IBM policies is difficult at best. Trying to sort out what effects are caused by designed policies and what by other events is the basis problem, and requires some pretty sophisticated research design, data-analysis skills and complicated software packages to sort out. At this time, FRONTEX lacks those capacities, and nor does it have the resources to acquire the needed software and hardware nor the monies to hire research analysts who can effectively and accurately perform the social science data-collection and analysis tasks which good policy evaluations require.

### 9.3.6  Critique and Protests

IBM, and specifically FRONTEX as the coordinating institution for IBM, has not been without its critics – external observers, human rights groups, watch groups and political activists.

Rhetorical critiques of IBM have focused largely on what is seen as the imbalance in IBM policies which favour security over rights, hence are seen as a betrayal of basic notions of justice and freedom enshrined in the *acquis*, and have been expressed mainly in counterwritings and website commentaries. Watch groups behind such websites as Statewatch and FRONTEXwatch keep a close eye on what the EC and FRONTEX are doing and planning to do.

Policy think-tanks do likewise, with CEPS (located in Brussels) in the forefront. One of the impressions gained reading its publications is that CEPS thinks of itself as the conscience of Europe or a shadow EC. Its slogan is 'Thinking Ahead for Europe'. Whenever the EC publishes a proposal or draft on border management or any security development, CEPS will publish an analysis and critique almost immediately suggesting that the EC has the balance between justice and control wrong. EC officials are of this view: CEPS always 'tells us how we should be doing our job' (interview, EC; said with a smile).

FRONTEX has attracted much criticism and political protest, basically for its support for sea border interceptions and migration control, as this is the most visible manifestation of IBM. FRONTEX is accused of being implicated in the large number of deaths of illegal migrants who try to reach Europe by sea routes, as these migrants take increasingly more desperate measures to avoid detection, using longer routes or trying to reach outposts of European countries, such as the Canary Islands, in the most unseaworthy and overloaded craft. Estimates are hard to come by, but one calculation estimates that about 100,000–120,000 migrants and asylum seekers cross the Mediterranean each year and that about 10,000 immigrants have died or drowned crossing the Mediterranean over the ten years 1998–2008 (estimates by the International Centre on Migration Policy Development, cited in Rechtsgutachten zu FRONTEX, 2009). Illegal migrants who are intercepted and arrested may be taken to facilities which are below decent standards, or to countries not likely to spend much money on their maintenance. For example, Spain paid Mauritania 655,000 euros in 2007 to hold 100 Africans (of 400 who had been discovered drifting in a boat off the West African shore) in an old, decrepit, unsanitary fish market while waiting to be returned to their home country. The reporter comments further that 'on what legal basis armed Spanish police can hold peoples in Mauritania is unclear' (Streck, 2007). Protests against FRONTEX were staged outside their building in 2008 (FRONTEXwatch, undated: 'Actionday').[75]

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[75] The language calling for protest is incendiary but not unusual for the organisers of political protests. 'FRONTEX represents a militarized security-regime in which police, border control, migration authorities, army and secret services are forming a more and more integrated complex of repression, dividing the world along hierarchies between rich and poor, between (western) Europe and "the others", between those who have rights, those who have less rights and those who have no rights' (FRONTEXwatch, undated: 'Actionday').

## 10. Building Integrative Capacity in the European Union

### 10.1 Focusing on the Core Tasks

The core task of border control is filtering out the illegal and threatening from the vast masses of people and goods crossing borders legitimately. FRONTEX may be beginning to lose focus on that task, as it has entered into numerous working agreements and MOUs with third countries, with many others planned. It is not clear at all, given the small number of personnel who are not seconded agents, what such agreements will lead to and who will do the work that is mentioned in the agreements. Most of them deal with information sharing, and if that is all that follows from signing MOUs, that is doable. But if the idea is to include third countries in some ways in the core activities of FRONTEX – risk analyses, training, joint operations, RABITs – there simply are no resources within FRONTEX to do so.

It would be far better if other EU institutions in the foreign policy domain negotiated such agreements, leaving FRONTEX free to do what it has done pretty well so far – coordinate and harmonise. If the mandate of FRONTEX were to change, that would be another matter, but only if significantly more resources were given to FRONTEX.

Another activity which seems somewhat tangential to IBM is joint returns. Returns are a task allocated to FRONTEX by the EC, but why is not clear. Returning or deporting people crosses borders, but border control has already failed when returns have to be organised. This task is a diversion from the core tasks of FRONTEX.

The suggestion by the COWI (2009) report that FRONTEX's mandate should be expanded needs a lot of clarification. After the expansion of the EU to 27 members, it has reached a plateau and entered a settling-down period to see how things will work out. The same notion applies to FRONTEX. It needs to have breathing spell to assess where it is and what it can do effectively and with value added. Expanding its mandate now would severely dilute its focus, disperse limited resources and divert energies.

### 10.2 Enhancing Learning Capacity in FRONTEX

Organisations always face a changing environment in the policy domains they are engaged in. That holds true for FRONTEX. Organisations which prosper, as FRONTEX seeks to do, are able to adjust to changing contexts. They develop an organisational learning capacity.

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### 10.2.1 Improve Assessment Capabilities

FRONTEX, or the EC for that matter,76 has little capacity to conduct valid impact assessments. None of the units in the current structure is oriented towards collecting, analysing and interpreting, in a scientifically valid manner, the information that comes FRONTEX's way. Assessments, in effect, are done by practitioners and implementers who collect the output data form JOs and other operations, which FRONTEX reports without further refinement or analysis.

Lacking the capacity to asses the consequences of work done in a systematic and scientifically valid manner leads to a situation in which FRONTEX, and the MSs which participate in FRONTEX-organised operational coordination, base policies and practices on episodic knowledge gained from prior national and jointly organised work experiences. This is not to argue that knowledge gained from work is useless, far from it. Practitioners are good at what they do, but they are not researchers. Data collected or analysed by practitioners do not lead to systematic assessments of impacts or added value, nor can FRONTEX reasonably distinguish and argue the relative contributions of different forms of cooperation to the overall goal of IBM. Persuasive answers to the normal policy evaluation questions – what works and why – are beyond its reach.

FRONTEX would benefit from creating a research unit, staffed by trained researchers, within its capacity-building section.

### 10.2.2 Lessons Learned

The largest share of the budget and attention is devoted to joint operations and RABITs/FJSTs, of which FRONTEX has organised over 100. Surely the successes or partial failures of JOs could be analysed for lessons learned on what types of organising lead to better integrated performance, what obstacles hinder working well and efficiently together, how the coherence of multiple agencies and agents may be improved or what specific tactics in deployment of personnel or technological surveillance yield better results. Some FRONTEX publications hint that this is being done, but if so the results are not available to the public. The information would be useful to know and there is little reason to keep such lessons hidden. Such assessment should be made public. Informed public comments might actually be helpful for policy development.

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76  In an interview a DCAF official told me that they took the lessons learned from the various working groups established in the Western Balkans to Brussels to see if the EC had an interest in evaluating their utility for EU IBM decisions. DCAF was told that the EC could not assess the lessons offered since it had not yet decided on how IBM should be structured or by what criteria progress towards IBM should be evaluated.

FRONTEX may be doing this already, but secrecy and organisational domain protection may stand in the way of sharing this knowledge. One of the most promising developments in SSR and police reform programmes has been the development of handbooks on how to do elements of SSR and reform and what to avoid (e.g. Organisation for Economic Co-operation and Development, 2007). FRONTEX would be well advised to think about creating such handbooks on specific aspects of border guarding and IBM. The handbooks written by FRONTEX (e.g. FRONTEX, 2008b) are not really handbooks in the conventional sense. Generally, handbooks are advice books on how to do an activity, what obstacles will arise and what policies can circumvent them, based on best practice and lessons learned. The FRONTEX handbook (ibid.) is basically a well-done description of the criteria and regulations FRONTEX will use to determine how and when to deploy a RABIT.

### 10.2.3 Avoiding Insularity

One of the most striking aspects of reading EC and FRONTEX documents is the almost complete absence of any references to work done by research institutions, scholars and think-tanks. As noted earlier, there are vast amounts of information on many of the issues and problems associated with IBM, transnational crime, illegal migration, organisational change strategies and principles associated with adult learning. FRONTEX and EC publications read as if written on islands of knowledge, without connections to other islands.

This is not a trait found in FRONTEX alone. Even more surprising is reading CEPS publications. CEPS is a think-tank, and researchers there are well informed about knowledge gathered and published outside government documents. But there is hardly ever any mention in CEPS publications of the scholarly and widely available literature, and if there are such references they tend to be to scholarly writings by researchers associated with CEPS.

Why people who do the work or those who study the issues do not use existing knowledge which is easily available is unclear. It cannot be that such knowledge is considered useless for policy analysis and evaluation. In FRONTEX's case, the more likely explanation is that resources are so limited that reaching beyond the nearest official sources of information is not doable, given other work. (I did not gain the impression from my interviews that FRONTEX staff were biased against non-practitioners and their knowledge.) Why researchers at CEPS do not reach out to the extant scholarly literature is just surprising.

The situation is different for think-tanks and research and policy centres. For example, the vast number of DCAF publications incorporate existing scholarly and public knowledge into its policy designs, planning and suggestions for implementation.

FRONTEX would benefit from including existing knowledge in its own work, specifically in risk analyses, evaluation methodologies and training models. Building bridges connecting islands of knowledge would be helpful to its work.


## 10.3 Creating a European Occupational Border Guard Culture

### 10.3.1 Organisational Dynamics

There is little awareness in the rhetoric and documents published by the EC and FRONTEX of the human and organisational dynamics of border management. It is a well-established finding that all organisations develop dichotomous formal and informal cultures which structure the work and attention of managers and lower echelons.

One important dynamic arises from the ethnic and gender composition of personnel who will do the work. An argument that figures prominently in the literature on how to reform security organisations is that if the composition of personnel deviates significantly from salient political and social identities within society, an agency will have a hard time gaining support and legitimacy (Independent Commission on Policing in Northern Ireland, 1999). No matter how good its performance, members of the public who think people like them are excluded from working for a police agency will construe any personal slight, malfeasance or abuse as an expression of discrimination that tars the image of all workers in that agency.

Gender is, of course, a salient identity and always stressed in police and security sector reform efforts (Mackay, 2008), but also one that is often resisted by managers and practitioners of security agencies who feel that women should not and cannot do the work required. Frequently, security agencies are supported in this belief and argument by stereotypes widely held in society. The point is this: if women or any other formerly excluded social group are to find their way into security agencies and border guards, it will take more than pointing to sections in the *acquis* or personnel regulations which prohibit discrimination. It will take serious political and administrative efforts. But one does not find much attention to this issue in the pronouncements and regulations that structure IBM in the EU.

This is basically a recruitment issue. Unless border control agencies make a conscious or affirmative effort to create a diverse pool of candidates and select and recruit to reflect some approximation in the composition of their personnel to salient social identities, not much will happen to change who now works in security agencies. Not recruiting across and from the population spectrum of identities will be seen as engaging in discrimination and a violation of *acquis* norms.

Another dynamic is the tension between formal and informal organisational and occupational cultures. The biggest impact on occupational cultures is not formal training but administrative policies, work experiences and peer advice. All occupations have their cultures, police more so than others. Occupational cultures incorporate the practical wisdom of workers and lower echelons on how the job should be done, what works and what does not, what keeps you safe and what threatens you, and how to balance the demands to protect human rights with the organisational demands to be productive and effective. Such working rules are not created by top-down commands, but arise from the bottom of the organisation and are passed on to newcomers through advice and suggestions from experienced officers. Again, as with gender, there is practically nothing in the EC and FRONTEX regulations that deals with how formal internal rule-making and managerial training can confront and overcome or neutralise informal 'recipe rules' for working. This lack of attention paid to how organisations actually work is somewhat surprising, since the people at FRONTEX who write and develop the procedures for training, deployment and work are experienced border guards and customs officials.[77] They have worked and lived in security organisations and know how they function in real life, and not just as depicted on paper.

The only mention of changing organisational cultures is in the training handbook (FRONTEX, 2009), with mentions that FRONTEX will develop a graduate-level course for mid-level managers. Similarly, DCAF has developed a mid-level manager course taught through both conventional course delivery and the virtual academy. This matters, since most of the literature on police and organisational reforms shows that mid-level managers are the main obstacles to change and can, if convinced, become the engines for reform. Policies aimed at the top or bottom levels of the hierarchy typically do not have much impact on existing occupational cultures.

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[77] Block (2007: 367) concluded in his study of police relations programmes between the EU and Russia that 'the impression emerges that in daily practice EU policy instruments show insufficient understanding of police reality, and are of little relevance to EU-RF police co-operation'. This conclusion is likely to be valid for border guards as well.

Creating a common European approach and culture to IBM requires regulations, laws and common training, but these activities are only the first step. Combining multiple existing national border police cultures into a common approach and set of 'working rules' is a much more complicated next step that cannot be ignored and has to be seriously addressed.

### 10.3.2 Andragogy[78]

Police training generally tends to stress content over styles of delivery. In police reforms the goal is to create courses and training modules which will contain and convey the skills, knowledge and attitudes needed for effective work. But quite often, in practice, the criteria for what is good training reflect the views of trainers rather than the needs of learners. The real question is not how do trainers teach but how do learners learn. How do border guards, who are adults by the time they are exposed to training, learn the needed working skills, attitudes and habits?

The basic findings from studies of adult learning show that styles of delivery – how teaching is organised and delivered in the classroom or wherever it takes place – matter as much, if not more, than do the substance and content of training. Conventional training for police and border guards tends to favour class lectures and tests – this is what you need to know and this is how we, the trainers, will find out whether you do. This style of delivery, labelled pedagogy, leads to limited learning and has little long-term impact on the performance of students.

A different style and underlying set of assumptions on how learning happens – andragogy – involve the trainer and learner in problem-solving and reciprocal interactions, and are based on mutual respect (the assumption that intelligence and capacity for knowledge creation are widely distributed and not the monopoly of trainers). That style of teaching has a far greater and longer-lasting impact on learners and their performance than does the conventional style of sitting in classrooms, taking notes and repeating what is learned in exams. When students learn by doing and problem-solving they remember. When they pass tests they tend to forget, or their learning is overridden by the informal pressures of work (Marenin, 2008).

The core curriculum developed by FRONTEX and national experts is an impressive achievement. It contains the right content – the skills and knowledge needed for effective border control. But, and this is a big but, the core curriculum will not have much of a long-term impact on learners unless the conventional style of teaching at national academies is changed from

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[78] Andragogy, from the Greek root 'man-learning', refers to adult as compared to child learning (pedagogy). It is the process of engaging adult learners in structuring their own learning experiences.

pedagogy to andragogy. This is especially true for attitudes required for good work. Teaching how to fly a helicopter is probably quite easy and will be learned. It is a question of competent performance which can be tested and observed, and there is little reason to think that the interest of students has to be incited and maintained. They want to learn this skill. Teaching respect for human rights in the performance of work is a far different issue. It is not clear to students why they should learn these rights, why they should remember where they are stated in codes of conduct and international agreements. When students start work, convert from learners to doers, it becomes clear very quickly that this is not what the organisation judges their performance by. In the normal working environments of security agents, human rights are perceived by lower ranks as associated with negative sanctions rather than positive rewards. Doing human rights right does not help their individual performance evaluations, and doing things wrong can lead to severe reprimands. If human rights are taught in a pedagogical style, this is practically a guarantee that they will be learned as long as the class is in session but will not be retained or guide decisions once working.

Skills and knowledge can be conveyed in training, and competence to apply these in situations can be tested and observed. Attitudes, though, are a far different matter. These can be mentioned and encouraged as important in training, but can only be assessed in the real working world of border guards. For example, to respect rights requires an attitude that such rights are important and need to be protected. Telling students that is fine, but whether they actually respect rights is only seen in their work. In short, some follow-up observations and consistent managerial attention will be needed to see the longer-range impacts of training in the work of border guards. Unless systematically reinforced by managerial policies, formal learning will dissipate.

### 10.3.3   Taking Corruption Control Seriously

Corruption will happen, and when it does it destroys border controls and undermines the operational integrity of the organisation. Corruption and other forms of unprofessional conduct must be addressed through multiple policies: training, management and external oversight. The argument made that operative norms in the *acquis* and SBC will limit corruption is much too simple, if not simplistic, but can create a false sense that unprofessional conduct is being taken care of. The SBC and the rapid team regulation have sections on liability, but these are focused on criminal misconduct and civil liability, on serious legal abuses of power and corruption, not on violations of organisational rules or neglect of due process or human rights when at work.

Corruption control and professional norms have to be tightly and extensively integrated into the training courses being developed. There is much discussion among police trainers and reform advocates over whether ethics and professional norms should be taught as separate courses or whether they should be integrated into each course, no matter what the topic. Research suggests that integration into all courses is by far the more effective option, especially as it can be shown that concern for human rights is not antithetical to effective policing work. There are good arguments to be made that fair policing is good and effective policing (Bayley, 2002).

The new mid-level courses being created are crucial to the development of management policies that address unprofessional conduct. If mid-level managers do not insist on effective responses to allegations of corruption through internal investigations, and sanction and rewards, corruption will become tolerated and entrenched in any security organisation. Courses which target mid-level administrators, or those who want to move up, need to include a solid dose of ethics and stress managerial responsibility for ensuring proper conduct of the officers they will supervise.

Corruption is obviously a sensitive topic. Discussing whether it occurs and how to deal with allegations may convey to agents being trained that they are under an umbrella of suspicion. They will resent the perceived slights. But if not addressed directly and head-on in training, corruption will be dismissed as done by 'bad apples' or as a rare occurrence which does not merit expending managerial energies to control it (O'Rawe, 2005). Trainers, risk analysts and experts working with national contingents may not be prepared to raise the topic either.[79] As a result, corruption control falls in between organisational cracks and is not a salient target for coordinated supervision and control policies.

Transparency and oversight are essential for effective and humane performance. Security agencies cannot be allowed to insulate themselves against questions, critiques or mere requests for information. A crucial aspect of training and management practices is the insistence by trainers and managers that the need for accountability is a democratic obligation on all security forces, and that the right of outsiders to hold security agents responsible for their actions is a legitimate right. Both values – the legitimacy of requests and the obligation to be transparent – have to be inculcated into the occupational culture of border guards.

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[79]    One FRONTEX official said to me, 'when you are promoting other changes it may not be the time to raise such unpleasant topics'. Another official suggested that joint operations can actually help control corruption when members of JO teams observe and correct a non-legal or non-professional practice. The argument has merit. Police tend to listen more to other police than to 'liberal' activists, which is what they perceive human rights advocates to be. Peer advice carries weight.

### 10.3.4  IBM at the Coal-face

An important step towards practical horizontal integration should focus on checkpoints. Right now, there is no working agreement between FRONTEX and customs agencies. Checkpoints are staffed by guards to check on people and vehicles, and customs officials to control goods and people transporting them. It would seem logical that guards and customs officers, as well as other border control agents (transportation inspectors to check the roadworthiness of vehicles, health inspectors to notice health risks among border crossers, agricultural inspectors to check for plant diseases), should work together, should present an integrated local border system at the places where integration ultimately comes to life, where changes in the cultures and working habits of border agents can be found. What happens at the coal-face constitutes the experience and fairness, or not, of controls which are imposed on crossers at the borders.

One would expect that border control agents talk to each other while they work at the same location. It is almost inconceivable that they would not. The reality of IBM as it happens each day at each location is found in the formal interactions (which are limited) and the informal relations of agents. But experiences gained from working together are experiences at specific locations doing particular work assignments, and are unlikely to be coherently integrated into attempts to shape the occupational cultures of border control personnel.

One of the impressions one gains from reading case descriptions of joint operations is how few illegal incidents are detected and caught by the large number of agents deployed. This is especially true for land and airport checkpoints. Either there are few illegal activities going on, or agents are not working very effectively. If the first interpretation is correct, joint operations are really inefficient and wasteful. If the second is correct, one needs to find out what border agents actually do with their time.

### 10.4  Building Networks with Collateral Border Control Agencies

A number of EU agencies and numerous IGOs and NGOs deal with similar issues as FRONTEX and the EC. IBM and FRONTEX would benefit from establishing stronger relationships with other agencies, drawing more extensively on their data systems and knowledge, lessons learned and best practices, and avoiding duplicating work already done by other agencies. The outreach efforts of FRONTEX are basically limited to information-sharing agencies and networks and research on available border control technologies.

FRONTEX is not an executive agency. It does not do the work of border control. It is a catalyst for changes in how national border control systems work. It has to rely on the work of others to be effective. Building stronger relationships with agencies and civic society organisations that have similar interests and do work in the same domain field as FRONTEX would seem to be a no-brainer. One of the important and useful points made in the COWI (2009) report is that FRONTEX should reach out in a more structured way to other actors in the IBM field. Examples of likely connections and networking opportunities are easily accumulated.

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) collects a massive amount of information on the drug problem within the EU, assesses the ability of accession countries such as Croatia and Turkey to institute effective domestic drug control policies, conducts risk assessments and analyses trafficking routes which will reach the EU (EMCDDA website). Clearly drug trafficking is a border control problem, and much of the international work done by EMCDDA would seem to overlap and replicate work done by FRONTEX. It seems a natural partner for some of FRONTEX's work, but does not appear to be on FRONTEX's radar screen as a useful partner.[80]

Another example is the European Police College (CEPOL), recognised as an EU independent agency in 2005, which trains mid- and higher-level officials in the police forces of member states on special topics. Some of the topics clearly overlap the subjects covered by FRONTEX training modules, especially the planned mid-level training course. The FRONTEX website states that it 'actively cooperates' with CEPOL, but does not state in what activities.

CEPOL, through its Euromed II programme, trains high-level police officers in Mediterranean countries (almost the same countries as participate in MEDA, a joint operations programme coordinated by FRONTEX), with a focus on transitional crime topics (human trafficking, drug smuggling). More interesting are two programmes which would seem to be of great interest to FRONTEX's Training Unit: a common core curriculum unit on ethics and corruption which is targeted, among others, at border police and guards. Training emphasises andragogical teaching and learning principles, on the argument that adults will not retain or use what they were told by the conventional pedagogical methods of teaching common in most police academies.

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[80] A word of caution on this argument. FRONTEX and/or the EC may actually be partnering or have an agreement with the drug agency, but none is mentioned in the public documents and websites available. The EMCDDA website only says that it is working with Europol. When I mentioned this agency to an official at FRONTEX during an interview, the suggestion of working with the agency was dismissed with the comment that 'they have not even produced one report'.

Another partner in developing training and integrative methodologies and policies could be NGOs and IGOs such as DCAF, which has created an innovative system of training the police, mainly low- and mid-level officials, in the Western Balkan states.

Establishing stronger relations will ease some of the burdens on FRONTEX, since existing resources can be incorporated into the programmes done by FRONTEX at lesser expenditures of resources. Plus, doing so would be further integration, another step towards IBM.

## 10.5 Building Democratic Governance Capacity

### 10.5.1 The Utility of Oversight

A useful summary of the idea of democratic (not civilian, which can be quite undemocratic) oversight, accountability and governance and the variety of mechanisms available for oversight can be found in Caparini and Cole (2008). Democratic governance, at the minimum, means that agencies which have the power to control and potentially coerce people should be watched and held accountable for the proper exercise of their authority and powers by civil society and the state through legally established and legitimate means and regulations. Conversely, security and associated agencies (such as data providers) need to accept that oversight is a legitimate demand on them, that they need to explain what they did and why when challenged or asked (unless specific legitimate reasons exist, not just claims that secrecy protects such ambiguous and malleable goals as national interests, which prohibit the release of information), that transparency of their operations and practices is a requirement for continued support for their operations and even existence, and that procedures are in place within security organisations to create the necessary organisational culture and reward/sanction mechanisms to ensure that all members of the organisation abide by the demands for external accountability.

Currently, there is little in the way of a community-based system of accountability for agencies involved in IBM. Ensuring accountability is the prerogative of member states acting within their own laws and under the aegis of EU *acquis* norms.

There is, as well, the 'untested belief shared by some EU officials that this logic of acceleration into people's lives [through IBM] should take precedence over its implications for fundamental rights, and particularly that of data protection' (Guild et al., 2008b: 3). The authors discuss EU proposals for creating ever more complete databases and information systems on third-country visitors to the EU. They do not argue that EU officials wish to

violate rights; rather, the EU almost automatically weighs the balance of privacy rights versus effectiveness in favour of greater control, since they are, after all, doing this for the common, the community, good. Democratic governance is not an issue, as their intentions are pure and their policies respond to the democratic demands enshrined in the *acquis*.[81]

## 10.5.2 The Politics of Legitimating IBM

In the end, IBM and its specific manifestations are the outcomes of political processes and decisions which are routinised through regulations and bureaucratic implementation practices. Routines have to be legitimised to be sustainable in the long run. Trust by the public and MSs is not enhanced by work done in secrecy or in an opaque manner, and hence outside the purview and experience of citizens for whom such policies are nominally enacted.

The EC and FRONTEX would benefit significantly if the latter vetted its secret activities and kept only those secrets which truly require that label, and disclosed all else. This is not likely to be done by someone in FRONTEX, but would require an external process, an independent declassifier, to sift through what is secret and what not, using criteria enunciated in the *acquis* and accepted by both the public and practitioners in FRONTEX and other agencies.

I suspect that this suggestion will be greeted with horror and incomprehension that I, or any other evaluator, could be so silly and unaware of its insecurity implications. Well, maybe so. But secrecy is power, hence well protected by those who have it. So a critical reception of the idea of an external declassifier would not be unexpected. What security and intelligence agencies have to balance out are the gains and drawbacks from protecting their power (and the claimed security that power provides to the public and states) versus the gains and drawbacks from legitimising their practices through less secrecy. That balance sheet might not work out, if properly assessed, as security agencies tend to think.

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[81] In an interview with a FRONTEX official I brought up the possibility that profiling at borders could be conducted using ethnic and potentially discriminatory criteria, which I noted has been done at the borders of the USA, especially airports. He thought that was a personally troubling activity and a violation of *acquis* norms, but also that properly trained guards would not engage in such practices.

## 10.6 Planning for the Ends of IBM

At some point, when European expansion ceases and no more potential member states remain to be brought up to standards, IBM will reach the final territorial boundary of the EU where control policies have to be implemented. The expansion of the EU will be complete. But there seems to be little thought given to what optimal IBM in the EU would look like at that point. It is pretty clear on what will not happen at the final boundary. There will be no single and monstrously complicated EU-controlled organisational entity with a monopoly on border controls. Member states would not agree, unless there is a major shift in political sentiments within MSs. From a purely efficiency and effectiveness standpoint, such an organisational entity makes no sense at all. What, then, is the ultimate goal of IBM which will satisfy all MSs and EU institutions?

At some point in time and place, the balance between effectiveness in allowing different activities constituting IBM to proceed at diverse speeds versus an overly integrated IBM system will have to be assessed systematically. Too much diversity and too much integration will both lead to inefficiencies and breakdowns. There ought to be some thinking on where that balance should lie. At some point, someone will have to say this is far enough, this is as good as it gets, the effective limits of integrating all aspects of border control and management, while also protecting fundamental human rights and dignities, have been reached. But is anyone doing such thinking?

## 11. Appendix: Methodological Note

The information for this paper comes from published scholarly sources, articles and books on transnational migration, crime and border studies; from reports published by think-tanks and research institutes on the problems of migration, crime, security and borders; and from official documents of EU institutions. While many publications on borders, integration, IBM and the EU exist, I use and refer to documents and writings which specifically refer to IBM and FRONTEX. I have also referred to websites for the EC and FRONTEX.

I also conducted a small number of interviews with members of the EC in Brussels, the JHA section (two), FRONTEX in Warsaw (eight) and DCAF (four) in late February and early March 2009. All persons interviewed preferred to be cited according to their institutional affiliation only. I arranged interviews from a distance and through e-mails where possible, and spent one week each in Brussels, Warsaw and Geneva. The interviews lasted from one to two-and-a-half hours, and the persons I talked with showed no reluctance to discuss their work.

I also draw on earlier writings by myself and co-authors on the problems of border management, specifically the co-edited book with Marina Caparini (2005) on border management in the EU and NAFTA, and an article on border management in NAFTA written with Martha Cottam (2005). I need to acknowledge my intellectual debts to both. I also have gained insight into the dynamics of police reforms from participation in numerous international conferences and workshops, being able to talk with practitioners and scholars.

Detailed histories of how IBM came to be as it is now have been recorded by EU agencies, think-tanks devoted to the study of the EU and individual scholars. I decided to focus on general themes of integration and control as these developed within the larger political and economic integration processes of the EU, and on the implementation of regulations and tasks. Much of my approach, analysis and recommendations is based on work and research done by me on security sector reform and governance, border controls, police reforms within countries and the problems of coordination and cooperation among diverse police forces deployed in peacekeeping and peace-building operations.

My emphasis on occupational cultures as a crucial determinant of discretion and work habits, the need to look at organisational dynamics when analysing reforms and awareness of the importance of political and societal contexts in

which reforms are attempted is based on this research and writings. There exist no systematic descriptions of the occupational culture of border guards, nor of the organisational and cultural consequences of having worked together, such as in joint operations organised by FRONTEX or states. But one can suspect that border guards will have developed their specific culture, either within an MS or through participation in joint operations.[82] If not, border guards would be the only policing occupation which has failed to develop basic and experience-derived rules for how to do the work.

No matter how one wishes to label their work – guarding, policing, protecting, securing, controlling, filtering the illegal from the legal – border guards are a police force. And as a police force and as individual agents they will have discretion. As the policing literature points out, discretion has multiple determinations for any police, with occupational culture a major factor. To argue that the knowledge and findings from studies of conventional civil policing are relevant for border policing or guarding is not a big assumption. In the absence of systematic research, the arguments made in this paper about the power of organisational dynamics and occupational cultures of border police in shaping the exercise of their authority are taken from the literature on conventional police forces. This may be a proxy for knowing the culture of border guards, but is likely to be a very valid and accurate one.

One basic goal of IBM, to create similar forms of actions by any border guard at any border, presumes the development of a common occupational culture. Simply having a legal framework in place, promoting professionalism (Hills, 2002) or coordinating training is not enough to create such a culture. It will only come into existence through the commonalities of work and the slow incorporation of practical lessons, experiences and normative judgements into the working culture of border police. Any analysis of policies and implementation must place the human element at centre stage in the analysis of policies. People's mentalities, their values and hopes, their understandings of the job or their desire to be acknowledged as actors who know how to exercise their skills and knowledge cannot be ignored in the analysis of how social policies are ultimately implemented.

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[82] Research on how the various participants in joint operations work together on a day-to-day basis, how they deal with and reconcile national differences and approaches to border policing, would be fascinating and is needed.

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