Extraterritorial Immigration Control in the 21st Century: The Individual and the State Transformed

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1. Introduction

While practices of extraterritorial immigration control have been increasingly employed by States around the world in the past two decades, the 21st century saw a transformation of such controls. A key factor behind this transformation has been the growing securitisation of migration and mobility in the post-9/11 world, intensified in the light of the impact of globalisation on population flows. Focusing on the US, the UK and the European Union, this chapter will aim to map these changes in extraterritorial immigration control exercised in the West, stressing in particular the links and convergence between models of extraterritorial immigration control globally. In this light, the chapter will assess the consequences of these changes for both the exercise of immigration control by the State and for the position of the individuals affected.

2. Extraterritorial Immigration Control and Security

The use by States of mechanisms of extraterritorial immigration control such as visas and the imposition of obligations on carriers has been increasingly visible world-wide since the 1990s and its impact on shifting the border, in particular at the level of the European Union, has been well documented.1 However, the turn of the century and the post-9/11 security agenda introduced a number of new features in immigration control, including a renewed focus on extraterritoriality and an increasing move from the control of migration to the surveillance of movement. In this new context of ‘border security’, the preventative aim of

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1 See in this context the seminal work of Elspeth Guild and Didier Bigo: in particular Guild’s 2001 inaugural lecture at the University of Nijmegen, *Moving the Borders of Europe* (downloadable from http://cmr.jur.ru.nl/cmr/docs/oratie.eg.pdf); and more recently the contributions in Didier Bigo and Elspeth Guild (eds), *Controlling Frontiers. Free Movement into and within Europe*, (Aldershot and Burlington: Ashgate, 2005).
extraterritorial immigration control has become even more central, and has been linked with an increased emphasis on identification: by widening (via the collection of a wide range of personal data related to everyday activities such as travel) and deepening (by collecting biometrics) the collection of personal data of those who move, and allowing access to such data to a wide range of authorities (beyond the field of authorities responsible for immigration and border control), the new systems have led to a model of globalised, generalised surveillance of movement. This part will examine these developments in a comparative perspective, looking at border security measures in the US, the UK and the EU. The collection and transfer of passenger data, a key aspect of this strategy, will be analysed further in the next part on extraterritorial immigration control, security and globalisation.

The US

The manner in which the 9/11 attacks took place signalled an emphasis on border security, and prompted discussions on the issue of entry to the US of those who could execute such attacks. The 9/11 Commission Report devoted a section to ‘terrorist travel’. In this context, the Report stressed the shortcomings of the pre-9/11 US system, asserted that “targeting travel is at least as powerful a weapon against terrorists as targeting their money”, and recommended that the US “should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility”. This approach was also reflected in the US strategy for ‘homeland security’. The latter, put forward by the Bush Administration in 2002, included a whole chapter on ‘border and transportation security’, and another on information sharing for homeland security. Great emphasis was placed on the widening and deepening of information collection and sharing (including of biometrics) from a variety of sources. The Strategy calls for the establishment of a ‘border of the future’ (smart borders) and of a ‘system of systems’ which will provide “the right information to the right people at all times”.

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3 Ibid., p. 385.
5 Ibid.