An overview of South African border control: 1994-2004

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INTRODUCTION

On January 12, 1997 the South African cabinet instructed a forum consisting of the ministers of Safety and Security, Justice, Home Affairs, Finance, Correctional Services and others, to draw up and implement with immediate effect a strategy to address the parlous state of South African border control. The cabinet noted that the primary obstacle to efficient border control appeared to be a lack of co-ordination, or the absence of a collective approach, between the various government departments responsible for border control.[1] Given the core definition of border control, the problem identified by the cabinet was very serious indeed. For border control is more than the simple sum of the departments that constitute it: border control is, or ought to be, a comprehensive process that ensures the seamless working together of all functions that set strategies for, regulate and manage the cross-border movement of goods and people.

In response to cabinet's instruction, the cluster of ministers duly established a National Interdepartmental Structure (NIDS) later that year with permanent office space and a fulltime secretariat. Its task was to guide the myriad agencies responsible for border control into an efficient and sustainable relationship.

Six years later, in February 1993, the authors of a *Code of Practice for Border Control Management* complained: 'Currently there is no uniformity between the different ports of entry and each of the departments involved at a border post works in isolation from the others.'[2] If the authors of the *Code of Practice* are to be believed, a cardinal problem identified in the mid-1990s was no closer to resolution in the mid-2000s: the agencies responsible for border control had still not found a collective approach to their work.

This paper takes the observations of the authors of the *Code of Practice* at its starting point. It would

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be mean-spirited and, indeed, incorrect, to say that South African border control has not progressed an inch since April 2004; as is evident in the pages that follow, some of the agencies responsible for border control have risen to meet the challenges of the democratic era with aplomb. It would nonetheless be accurate to say that border control has encountered a recurring problem over the last decade which it has not solved to this day: the effective integration of inter-departmental work. Some border control agencies have progressed in leaps and bounds. Others have not. But none appear to work to a common, overarching strategy. As a senior Customs official at a large commercial port put it when interviewed for this study:

> The police at this port report to the SAPS Provincial Commissioner and he is fighting a major drugs war. I report to the SARS Commissioner and he is interested primarily in textile importers who under-declare. I'm not interested in the Provincial Commissioner's war and he is not interested in my war. But we need each other's information and resources. So the result is that nobody's war is fought particularly well. The port needs a boss: someone to choose which war we are fighting and to order everyone to fight it.

This paper asks why the problem has not been solved in the last ten years and suggests several options for how it might be solved in the future. The themes raised resonate well beyond the sphere of border control. They talk to a perennial governance question: how to arrange the relationship between government departments and agencies in regard to projects and programmes of service delivery which require different departments to work in concert.

The apartheid inheritance

Border control before 1994 reflected the character and gave expression to the political exigencies of the

apartheid state. From the mid 1970s until its demise, apartheid South Africa was surrounded by hostile neighbours. It had to contend with the presence in the region of an exiled liberation movement dedicated to infiltrating South Africa's borders to fight guerrilla warfare and to engage in campaigns of armed propaganda. Unsurprisingly then, border control functions were highly militarised. The institutions primarily responsible for border control were the SADF and the quasi-military SAP.

Countries at peace with their neighbours characteristically assign Home Affairs the task of controlling the movement of people across borders; the statutory and regulatory environment is typically shaped by a national assessment of the human capital and developmental requirements of the domestic economy and the region. In apartheid South Africa, controlling the movement of people was assigned primarily to the police, and the exigency was to protect the country from infiltration by enemies.

Countries at peace with their neighbours characteristically assign Customs and Excise the task of regulating the movement of goods across borders; their task is to facilitate trade while enforcing national tariff regimes and trade tax regimes. In apartheid South Africa, Customs did have a presence at major ports of entry, but the dominant force was the SAP.

Finally, the apartheid state had another interest in borders. In the context of a hostile international community which had restricted trade in military and other industrial goods with South Africa, the state had a vital interest in facilitating the surreptitious movement of goods across borders and was extensively involved in illicit international trade. South Africa's covert intelligence agencies thus had a permanent and powerful presence in the sphere of borders.

In sum, the civilian agencies which customarily ran border control functions were relegated to a secondary role under apartheid as security concerns eclipsed customary concerns about efficient and lawful trade and human development.

Indeed, so accustomed was South Africa to the idea that border control is a security agency function, that the drafters of the 1993 interim constitution appear to have assumed that the police would be democratic South Africa's lead agency in regard to the movement of goods and people across borders. The interim constitution designated the National Police Commissioner responsible for "such functions relating to border control and the import and export

of goods as may be assigned to the [SAPS] by law". The document does not mention border control again. This clause was carried over to the final constitution and remains in force today.

Yet, in democratic market economies at peace with their neighbours, it is in fact highly eccentric for the national police force to take the lead in border control. In the United Kingdom, for instance, Customs and Excise and the Immigration section of the Home Office are the respective lead agencies at commercial ports. These are the agencies responsible for the movement of people and goods. The police play the auxiliary function of preventing, detecting, and investigating crime.

This is the first point to consider in understanding the last ten years of border control in South Africa; the democratic state has had to contend with managing the residues of the eccentric institutional arrangement we inherited from the apartheid era. Indeed, an important dynamic in the politics of South African border control over the last decade has consisted in the difficult process of police withdrawal from, and the civilian agencies' assumption of full responsibility for, various border control functions.

The first few years

In the immediate period following the installation of a new government in May 1994, several agencies and departments undertook separate assessments of the state of South African border control. For the sake of convenience I will summarise the contents of one of them – an assessment conducted by the U.S. Immigration and Naturalization Service in 1996 and handed to the South African government in 1997. The choice of this report over others is simply a matter of convenience: its findings are neither controversial nor at odds with the views of South African agencies. In brief, the U.S. assessment found the following:

- South Africa had far too many international airports (32), and at smaller ones, no border control capacity was in place; international traffic could come and go at will. At large international airports, security measures were in place, but there was an absence of uniform national standards.
- At sea ports, the only border control agency with a permanent presence was the police. Customs, in particular, usually the lead agency at commercial sea ports, was not physically situated in the harbour. Perimeter and asset security was found to be negligible; members of the public could walk through the harbour premises, including sections

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in which cargo was handled and transported, at will.

- The overwhelming presence of uniformed SANDF soldiers at land border posts created an unduly militaristic atmosphere at border posts and created negative public opinion.
- All ports and border posts were understaffed
- Ports and border posts were poorly designed. The flow of human and freight traffic was not propitious to effective border control. Incoming passengers could mingle with outgoing passengers before reaching border control points. Cargo could easily be diverted before reaching border control points.
- Border control was not valued as a specialised field and did not possess its own professional identity. Personnel were not recruited in line with rigorous integrity criteria in a field prone to corruption.
- Above all, border control exhibited a disjointed structure. The lines demarcating the division of labour between the SAPS, Customs and Home Affairs were not clear. Duties were duplicated. There were conflicts of interest between departments. The report recommended the creation of a unified command structure.[3]

During the first two or three years of democracy, every agency with an interest in border control was acutely aware of the parlous state of affairs and all attempted to address themselves to the problem in their respective spheres. In August 1995, the SAPS launched a specialised border function called the Border Police, divided into land border, harbour and airport sections. In 1996, Customs and Excise merged with the revenue service, a large-scale project of institutional convergence in its own right. The new institution exhibited a great deal of energy and motivation, and began to gear itself to take its place as a core agency in the sphere of border control. Indeed, it rightly insisted on taking up a permanent presence at all commercial border posts and ports. Similarly, the Department of Home Affairs began to prepare itself to take its rightful place as a primary agency in regulating the movement of people in and out of South Africa.

Yet the very disjointedness of the manner in which the agencies prepared themselves only punctuated the problem the American report had highlighted: a lack of a unified approach to border control. To be fair, a number of piecemeal co-ordination initiatives were tried in the mid 1990s. The Border Police established a Border Affairs Co-ordinating Committee to encourage the various agencies in the field to develop common policy. Customs set up a Customs Law Enforcement Task Group with the purpose of inter-agency information sharing. And Business Against Crime became permanently involved in attempting to establish project-specific relationships between border control agencies.[4]

Nonetheless, in retrospect, the manner in which each department geared itself for the new order was a clear presage of some of the problems to come. SARS and Home Affairs began moving onto turf historically occupied by the SAPS. No overall command structure existed to map out a single strategic plan for border control or to draw clear lines between the functions of the various departments. In the absence of a strong centre, the departments would have to beat out a *modus vivendi* with one another.

NIDS

It was against this backdrop that in January 1997 the cabinet instructed the cluster of ministers that constituted the National Crime Prevention Strategy (NCPS) to develop a national border control strategy. The perspective and orientation of the NCPS is itself of interest here. The NCPS was launched in May 1996 to much fanfare. It was held up as the beacon of the new government's approach to crime. The document itself contained a long and eloquent account of the deep causes of crime in South Africa, emphasising the systemic violence that had stitched together this country's development over the last century and more. The policy programme it announced echoed the tone and spirit of its analysis of the causes of crime. It identified crime prevention as the work of all government agencies, not just the security cluster. It spoke of reducing crime through environmental design, and of the importance of reworking community values and education. As far as the justice system itself was concerned, the NCPS's emphasis was on making it work smarter rather than more aggressively. It also brought to policing a philosophy which stressed that anticipatory problem-solving was far more elegant and productive than reactive crime-fighting.[5]

The fourth pillar of the NCPS recognised the need to address transnational crime. Thus, border control, which deals with the cross-border nature of crime, had a specific place in the NCPS. The document stated that the overarching task of border control was to balance two functions: the facilitation of trade and the flow of goods and people across borders on the one hand; and the need to prevent transnational crime on the other.

In response to the cabinet's February 1997 instruction, the NCPS ministers proposed the formation of NIDS – a National Interdepartmental Structure on which the

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key government departments and agencies involved in border control would be represented. Its task would be to guide the myriad agencies responsible for border control into an efficient and sustainable relationship. Its lifespan would be approximately five years and its final project would be to recommend a permanent, unified governance structure for border control. It would be given office space and a small, fulltime secretariat. NIDS was duly formed in mid-1997. How did it fare?

In regard to specific and urgent projects, NIDS had visible success. The international airport environment it inherited was chaotic: 32 international airports, most of which did not have a working border control function to speak of. One of its first projects was to reduce the number of international airports to ten, and to facilitate the introduction of functional border control at those airports which did not have it. The process was a gruelling one: two airport licence holders took civil action against the initiative, and NIDS officials spent a great deal of their time fighting court cases. The process was eventually successfully completed in 1999.

NIDS was also allocated and spent a budget for infrastructure upgrading at various ports of entry. This provided an opportunity to lay down uniform national principles for port and border post design, particularly in regard to the flow of goods and people, perimeter design, the physical character of sterile areas, and the placement of various border control agencies throughout the border control process.

Perhaps the heart of NIDS's work was the establishment of a Logical Organisational Process (LOP) – essentially a set of principles for the design of the journey a passenger or a piece of freight takes through the various border control functions at a port or border post. I say this was the heart of NIDS's work for implicit in the LOP is a clear division of labour and an allocation of roles between border control agencies. Implicit, too, then, is a conception of who runs a port and who doesn't, and who determines strategy and who doesn't.

In its final, refined version, NIDS's position on this question proved somewhat controversial. It argued that since the principal functions at ports of entry are the movement of goods and people, the primary role players should be Customs and Immigration. It relegated the SAPS to a secondary role: "Their function is not to be part of the routine border control process but to maintain a presence at border posts for policing which includes the investigation of complaints received."[6]

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In a broader, international context, this position was hardly controversial. Yet in the South African context, where the SAPS was still the lead agency at the majority of ports of entry, and Customs and Immigration were only beginning to take up their natural functions, it was very controversial indeed. NIDS became the site of bitter and acrimonious exchanges. An inter-agency committee established to co-ordinate joint anti-smuggling operations became a *de facto* rival to NIDS and a vehicle to sidestep it. Individuals associated with NIDS were accused of a host of unpleasantries from corruption to attempting to shape border control policy around their own personal career interests. In short, some of the work of the structure was stymied by bad blood.

In retrospect, the task of NIDS was essentially one of fitting a square peg in a round hole. Its overarching job was to facilitate the emergence of a unified governance structure for border control. Yet its own structure – a multi-departmental body of equals – was a symptom of the very problem it had been mandated to solve, namely, a disjointed command structure. Such was the paradox that marked the formation of NIDS, and from which it never entirely extricated itself.

Indeed, the cardinal problem was glaringly evident even before NIDS was formally instituted. In April 1997, in a letter responding to the document proposing basic principles for a collective approach to border control, the Department of Home Affairs had this too say: "It appears as if the general approach," the letter reads, "is that an agency be created which will be housed in one building and consisting of all the personnel involved in migration matters, from the three departments [ie SAPS, SARS and Home Affairs], under a Chief Director from each department." The letter went on to express grave concerns with this proposed arrangement. "It is simply not possible for Home Affairs to consider depriving the department of total representation, with regard to its Home Affairs functions, of the Chief Director of Migration. Interaction between the functionaries of the department cannot be compromised to this extent."

This brief sample of bureaucratic disquiet succinctly exemplifies the central problem of post-apartheid border control. Border control requires departments to work in concert. Yet departments have corporate identities, and reflexively protect their integrity and their independence. The centrifugal forces are very powerful indeed. As one veteran border official interviewed for this study put it: "Different departments simply can't co-ordinate their work. If I am from Home Affairs and you are from the Department of Transport, and we need to go to Beit

Bridge together to oversee a project, you will find that I can't travel in your car or that you can't travel in mine. Or my boss simply says I can't go because I'm needed for real Home Affairs business, and then I just can't go."

So, in the end, NIDS' achievement was to develop a philosophy of border control which was incompletely implemented. Some of its thinking around infrastructure, port design, information-sharing and the division of labour found expression at some border posts. Indeed, interdepartmental Operational Committees were established at many ports of entry and Implementation Committees were established at provincial level. Some departments involved in border control internalised some of its thinking and embedded this thinking in their own institutional memories. But the overarching objective of finding a unified governance structure remained elusive. And the turf wars that characterised the final years of NIDS underscored the extreme difficulty of this challenge.

NIDS closed its doors in the second half of 2001. As an official associated with its work summated: "NIDS died a natural death. It had got to the point where it had done all it could do within the existing structure. Without a single command driving a single border strategy, it could go no further."

Life since NIDS

As with all areas of governance, the degree of attention border control commands in the upper echelons of government waxes and wanes. It spends a period near the top of the agendas of political principals, and then disappears for a while. Every government has its nerve centres, and every nerve centre has a limited attention span, and is required to respond to emerging priorities within the limits of its capacity at any one time. It is also true that successes result in the extension of energy and focus. Successes in the NIDS had been largely confined to individual departmental functions; progress regarding the overarching issue of a consolidated approach had, at best, struggled along. The result was that departments focussed energy on internal improvements, rather than on their relations with each other.

The period following the dissolution of NIDS was one in which the question of border control ebbed in the nerve centres of co-operative government. Indeed, it spent the period up until late 2004 idling, its fundamental questions unresolved. Interdepartmental relations on border control did not dissolve entirely. Collective border control matters such as border post infrastructure development,

the continued development of common policy and common principles, and the co-ordination of joint national operations, fell to a committee called the Border Control Operational Co-ordinating Committee (BCOCC). Its predecessor had been a committee established at the behest of the SAPS to co-ordinate joint border control operations. It took over NIDS' budget (a sum of a little over R100 mil) and was later allocated a R10.1 billion budget from the Department of Public Works to spend on infrastructure for land border posts over a decade.

In reality, the BCOCC represented something of a cooling off period after the bitter fighting that characterised the latter days of NIDS. It was, until late 2004, chaired by the head of the Border Police, who has the relatively junior status of director. Senior decision-makers were thus absent. Nor did it report to a committee of Directors-General dedicated to border control, as NIDS did. Instead it reported to the "Joints", a broad forum of Directors-General in the security cluster where border control takes it place on the agenda along with many other areas of interdepartmental governance. The fundamental questions of the strategic direction of border control, the division of labour between departments and the character of a command structure were held in abeyance, or, at any rate, dropped off the agenda for a time.

In the meantime, BCOCC functioned as well as can be expected given the absence of high-level attention to border control. As one official who spent some time observing the workings of the BCOCC put it:

> Getting five departments to decide how to spend a budget is not easy under the best of circumstances. And these weren't the best of circumstances. There were no decision-makers represented. The committee barely had the authority to spend its budget. So the committee sat there with its budget and it knew that 'if you don't use it, you lose it'. It wasn't pleasant.

Or, as a blunt senior Customs official put it:

> We never missed a single BCOCC meeting. We always sent someone there. But much of it was going through the motions. We never took much from BCOCC and we never gave much to it. We just sat there. It was something that had to be done.

Indeed, it would not be too unfair to say that border control in the early 2000s played itself out according to the logic of the survival of the fittest. Departments

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that were flourishing and motivated began investing in themselves, rather than in their relations with others, and began taking care of their own internally-devised priorities. Less resourced departments were gradually pushed to the margins of border control.

The result is that border control has evolved, guided more by internal departmental imperatives than by a centralised border control strategy, into a very different beast from its pre-1994 forebear. The strongest and most efficient department at commercial ports is undoubtedly Customs, and it has stamped its own character on the border control environment as a whole. Its main priority is the facilitation of international trade through the streamlining of the border control supply chain. Attached to this are the priorities of revenue collection and the enforcement of compliant trade. Home Affairs, whose primary function in the sphere of border control is to craft a progressive, developmental approach to human migration, has had a topsy-turvy political history and has battled to settle on a cogent policy agenda. As for the SAPS, of the three departments integrally involved in this sphere of governance, border control is the furthest from its core business. The Border Police is one cog in the very large bureaucratic machine that it is the SAPS, and it suffers from the all uncertainties of being a small player in a large department.

Much changed in the course of a decade. In 1994, border control was a defensive security function in a lonely and threatened pariah state. By 2004, it had become, above all else, a mechanism of trade facilitation in the commercial economy. Yet its character was still marked by the haphazard journey it had taken. Border control priorities emerged largely from the internal agendas of the pillar departments. The question posed by the January 1997 cabinet instruction – how best to get the various functions of border control to work in concert to a single strategic plan – had, in essence, been held in abeyance for more than seven years.

The deleterious effects of this eternal postponement should not be underestimated. As late as February 2003, the authors of the *Code of Practice for Border Control Management* cited earlier felt compelled to comment that:

> The lack of collective management at ports of entry was identified as the most important shortcoming in South Africa's desire to attain world-class standards in border control. This has resulted in the lack of uniform standards, duplication of, for example, functions, and hostility due to encroachment of functions.

Furthermore, collective budgeting and general maintenance of ports of entry have been neglected to such an extent that millions have to be spent to rectify these problems. Departments at ports of entry have carried out their functions independently and in isolation from one another. Co-operation between departments is often done on a voluntary basis, which is dependent on the goodwill of individuals.[7]

Later in the *Code of Practice*, the authors complain that "there are only a few links between the existing [border control information] systems, which means that no border control authorities have access to all the information necessary for fully effective operations".[8] Indeed, the authors argue that the fragmentation of information is so severe that South Africa is not in a position to undertake a global border control risk assessment and thus cannot allocate its border control resources rationally. "South Africa faces real risks because of shortcomings in its border control," the authors argue. "Despite numerous attempts to quantify the risks, very little has been achieved. This is largely due to fragmented responsibilities for border control."[9]

Waxing again

Towards the end of 2004, the question of border control once again began to find its way onto the agendas of the South African state's political principals. For the first time since the closure of NIDS in 2001, interdepartmental border control governance functions are to be staffed by senior bureaucratic personnel. From the beginning of 2005 (which is the time at which this paper is being written), the BCOCC is no longer to be chaired by the head of SAPS Border Police, but by a Deputy Director-General in the Department of Home Affairs. That means every department will scale up its representation to a more senior level. And the BCOCC will no longer report to the Joints, but to an interdepartmental committee of Directors-General dedicated exclusively to border control.

There have, simultaneously, been developments within departments involved in border control. In the SAPS, for instance, a new division, the Protection and Security Services Division (an expanded reincarnation of the VIP protection service) is to take responsibility for policing key strategic installations in South Africa. Among these are certain ports of entry. During the course of 2004, pilot projects at Johannesburg International Airport, Durban Harbour and Beit Bridge border post saw Protection and Security Services take command of policing at these ports.

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There is discussion about the division taking charge of policing at all land border posts. There is thus a new player in the border control arena, one that will in all likelihood be keen to make its presence felt.

The Department of Home Affairs is also in a process of change. With the appointment of an ANC minister in May 2004, it is no longer host to a paralysing party political tussle. A number of senior personnel have entered the department laterally from other government agencies, injecting new blood and a new sense of purpose. The Department of Home Affairs that sits on the beefed-up BCOCC will thus exert a very different presence compared to its previous incarnation in NIDS.

This flurry of activity should not be seen as the beginning of a resolution to the deferred question of how to optimise border control functions. More likely is that the debate, which has been dormant for a time, will start again. It will not simply be a question of shoring up the lessons learned from the last decade. Many key questions, debated over and again during the NIDS period, will have to be tackled from scratch. And some of these questions have no simple answers. What, for instance, is the role of the police at border posts? Are they to be the lead agency in preventing contraband smuggling and human trafficking? Or are these functions extensions of Customs' and Immigration's core business, which is to manage the movement of goods and people respectively? Who is to take charge of perimeter and asset security at ports? The port licence holder? SAPS? Or is this too an extension of the Customs' and Immigrations' core functions? And, perhaps most important of all, how is the relationship between departments to be structured? Is it either desirable or politically feasible to "deprive departments of total representation," as the anxious Home Affairs official quoted earlier put it? Or should each department maintain absolute autonomy and relate to one another as equal partners?

The new, rejuvenated structures of interdepartmental co-operation – the reconstituted BCOCC and the committee of Directors-General – will face these questions head-on. One of the first matters they are to deal with will be the question of appointing a port manager at each port and determining his or her powers and responsibilities. Determining from which department each port manager will be drawn and delimiting his or her functions will force these interdepartmental structures to deal with some of the fundamental questions of border control directly. No doubt, decisions made will emerge in part from a lengthy period of negotiations between departments.

They will in part reflect the bargaining power of each department, and the will and determination of each department to play a vital role in border control.

But one hopes that these factors are only partly decisive. For above and beyond the process of inter-departmental bargaining, the matter ought to be examined and acted upon from a vantage point of relative neutrality. Indeed, one hopes that the arrangement that finally comes to pass emerges from sober and dispassionate answers to three questions. What are the primary strategic functions of South African border control? Who is best equipped to perform these functions? And what sort of governance structure is best equipped to oversee the performance of these functions? On the question of structural arrangements, we believe that there are three alternatives. We run through each of them in turn. The aim is not to advocate one in particular, but to describe the strengths and weaknesses of all three.

Interdepartmental co-ordination

This would be a version of the status quo. Each department would retain its own discrete and autonomous line functions at South African border posts and would relate to one another as members of a partnership of equals. The crucial questions of the strategic priorities of border control in general and at specific points of entry, points of interface between role players, and the delineation of responsibilities for common functions, would be worked out through mutually co-operative agreements.

Given the experience of the last decade, this would probably be the least propitious path to take. It was precisely over the delicate question of the delineation of common or potentially common departmental functions that the co-ordination relationship, in the form of NIDS, hit a brick wall. Departments retreated into defensive postures and protected what they perceived to be departmental interests. And it is not just a question of past experience. At a purely conceptual level, this structure leaves unanswered the question of how strategic border control targets are to be formulated and executed. In this regard, it is worth quoting at length the observations of a senior border control official interviewed for this project. He began by describing a hypothetical scenario, one distilled from his own experience, of a weekly co-ordination meeting at a large commercial port:

> I walk into the meeting as a person who has received a mandate from my boss in Pretoria. I am accountable to him, not to anyone

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attending the meeting I have just walked into. Let's say I am from Home Affairs. My boss's big worry about this port of entry is people coming in without visas. I sit down in the meeting and I look around. I see the fellow from Customs. His job is to collect revenue and to facilitate trade. Does his mandate coincide with mine? Not really; my working with him will not help me fulfil my obligations to my boss in Pretoria. I then look at the fellow from the army. What is his major concern? Maybe at the moment it is terrorism. Does this interest me? Maybe a little. Maybe he thinks terrorists will try to get through ports of entry without visas, so he might help me do my job. I can work with him a little, so long as I take more than I give, otherwise there is no point to the relationship.

In other words, there are maybe eight people sitting around this table, each is looking at the border, but each is looking at it from a different perspective. And we will only help each other to the extent that our perspectives coincide. So, the fellow from the SAPS will come to me and tell me he needs my manpower. But what if giving him my manpower will not help me with my own mandate? What if his concerns don't interest me at all? I will give him one person so that I say I have complied.

And then the SANDF comes to me and says I must set up this and that database to help monitor the movement of terrorists. But this database they want takes too much of the time of my people. So what happens when I refuse to co-operate? What happens when I show him the statute which says I am not bound to provide him with information?

So the central question is this: is it possible to get everyone around that table to see the border from the same perspective? The answer is simple. At the end of the day, somebody must decide. There must be somebody whose head rises and falls with border control. That is the only we way can possibly all aim at the same target. Without a central command, there is no target. There are eight different targets and no overall strategy.

This is a cogent argument against inter-departmental co-ordination and historical experience has shown it to be largely correct. Yet strident arguments for a unified command structure, like the one above, come with potential pitfalls. One is that the virtues of a

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unified structure are idealised, and all border control problems are blamed on structural fragmentation. It is important to point out that the problems experienced by a fragmented structure do not disappear with the dissolution of the fragmented structure. Whatever the structural arrangement within which it is housed, border control is intrinsically an arena of, for want of a better phrase, strategic pluralism. The priorities of border control are always diverse, and some will always conflict with others. Trade efficiency and security, for instance, will tug against one another from time to time; however well the art of integrating them may be practised, one will at some point be favoured over the other. The toughness of such strategic decisions do not dissolve when a unified structure takes over from a fragmented structure.

A Ministry of Border Control

This is the most radical antidote to disjointedness and fragmentation. Quite simply, every border control function is welded together into a single department under one cabinet minister and a single Director-General. The idea of a Ministry of Border Control was briefly on the agenda in the late 1990s and early 2000s. With the current resurgence of political interest in solving South Africa's border control problems, it is probable that the idea will come under discussion once more.

A brief glance at the sheer number of government departments directly involved in border control through their respective enabling legislation illustrates simultaneously why the proposition of a single ministry is both a cogent idea and a formidable task to accomplish. What follows is a list of the departments involved in border control on a daily basis and a very compressed description their respective functions:

- Immigration – regulates the movement of people across South African borders
- Customs – regulates the movement of goods across borders, including the collection of duties and taxes
- SAPS – prevents, detects and investigates cross-border crimes and is in the process of taking over border line control responsibilities
- SANDF – plays a support role in crime prevention and, for the moment, monitors and patrols border lines
- Health – controls communicable diseases in and out of South Africa as well as all other health risks associated with cross-border movement
- Agriculture – regulates the movement livestock and plant products across borders

- Transport – issues port operator's and aerodome licences, regulates the flow of air and sea traffic in out of the country and deals with aviation security
- Postal Services – handles all international postal items on behalf of SARS
- Trade and Industry – formulates export and import policy
- Department of Environmental Affairs and Tourism – enforces legislation on marine conservation in South African territorial waters
- Intelligence Services – collect and dispense information on security threats posed by movement across international borders

Creating a border control ministry would not necessarily entail absorbing each one of the functions listed above. One of the tasks of designing the new ministry would be to decide where its boundaries lie.

The majority of departments listed above play a secondary or tertiary role in the sphere of border control; moreover, border control functions are located at the periphery of their core business. To take an obvious example: the core business of the Department of Health is to provide primary and tertiary healthcare services throughout South Africa. Controlling health risks associated with cross-border movement is a specialised function within a much broader mandate. So, for the majority of departments listed above, the creation of the Border Control Ministry would entail a fairly peripheral mandate being hived off and located elsewhere. The only agency cited above whose single core business is border control is Customs. As such, the entire Customs organisation would presumably be absorbed into a new ministry.

There are several ideas behind the proposition of a single ministry. We pick up on three of them. One is that government departments do not perform peripheral mandates and as competently as core mandates. Those who control line functions on the outer edges of an organisation are often either in a hurry to get closer to the centre or have fallen out of favour at the centre. Their budgets are often the first to be skimmed and their problems the last to be considered. Gathering all the components of border control in a single institution, the argument goes, is take them all seriously and to do them all well.

A second motivation, closely linked to the first, is that border control, like any other specialised function, requires its own corporate identity, its own canons of pride, and its own distinctive vocational mission.

Putting everybody in the same uniform, having them identify with the same brand, training them all under the same rubric, will create a corps of border control agents with a clear understanding of, and a deep commitment to, their work. So, for example, the middle-ranking agriculture official who once found herself in a minor deputy-directorate detached from the heartland of her department, will find her work redefined as that of a border control agent with a career and a vocation.

The third motivation concerns the central theme that has threaded its way through this paper. A single institution will be able to integrate the myriad information-gathering systems that litter the border control environment and conduct a comprehensive and accurate risk assessment for the first time. And since all line functions will converge on a single centre, the institution will be able to act on its information by devising and executing a single global border control strategy. Stated in this way, a Ministry of Border Control is surely the curative magic wand dreamt of by border control agents who have spent the last decade unable to execute ideas because of the overcrowded, overly complex, institutional environment.

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Is it a magic wand? The exposition above describes its virtues, but what are its potential pitfalls? Fortunately, there is a fresh and current exemplar of a project to integrate all national border control functions into a single department, in the form of the U.S. Department of Homeland Security which was formed in early 2003. The impetus for its creation was the terrorist attacks on New York and Washington on September 11, 2001. The attacks prompted the most urgent examination of border control in American history. Some of the results of this examination can be found in a blunt, lucid and damning report by the congressional 9/11 Commission, which climbed to the top of U.S. bestseller lists shortly after its publication in paperback.[10]

The description of the border control environment that emerged in the wake of the terrorist attacks rings a familiar note for anyone involved in South African border control: a lack of co-ordination, of information-sharing, internecine turf battles, the impossibility of devising coherent strategy in an institutionally convoluted environment. As veteran U.S. Coast Guard commander Stephen Flynn explained to a Senate committee which met in the wake of the 9/11 attack:

If the 9/11 attacks had come by sea instead of air, only dumb luck would have prevented a ship with a

shady past, carrying a suspect cargo, and manned by a questionable crew, from entered a U.S. port. This was because it was impossible for multiple red flags to be viewed simultaneously. The Coast Guard might have known something about the ship. Customs may have had the cargo-manifest information if it was submitted in advance… Immigration officers may have known something about the crew. Moreover, none of the frontline inspectors in these agencies had access to national security intelligence…[11]

The central purpose behind the creation of the Department of Homeland Security was to tackle this fragmentation, opaqueness and lack of strategic coherence. How has the new department fared? The jury is still out on whether the project will ultimately be successful, but two years down the line it is safe to say that the creation of the new department was considerably more difficult than anticipated. In particular, it is clear that the task of integrating people, skills and infrastructure will take a generation to accomplish. On the department's first anniversary in March 2004, Zoe Lotgren, a despairing member of the Congressional Committee that oversees the Department of Homeland Security, lamented that "we are arguably in worse shape than we were before [the creation of the department]".[12]

As Flynn comments in regard to the problems faced in forming the new department: "Private-sector management consultants know, from long experience in dealing with mergers, that for the first 18 months after a reorganization effort begins, costs generally go up, performance declines, and experienced people leave. The public-sector hurdles for achieving quick results are even greater."[13]

Among the hurdles the new department has to scale, the following three appear to be among the largest:

- the department has had to retrain its personnel to perform new integrated functions. Immigration agents, for instance, must be cross-trained in customs laws and inspection protocols. The agency personnel systems the department inherited have struggled to implement new training standards
- the department inherited an eclectic array of information gathering systems. They are not only difficult to integrate: some are simply inappropriate to the tasks of managing data.
- The creation of a single department does not solve once and for all the problems of turf disputes and co-ordination. No matter how diverse the array of agencies the new department gathers together, there will always be agencies with a significant investment in border control left outside the

> If the 9/11 attacks had come by sea, only dumb luck would have prevented a ship with a shady past, carrying suspect cargo, from entering a U.S. port.

department's ambit. In the U.S., the largest of these are the Department of Defence, the Central Intelligence Agency and Federal Bureau of Investigation.[14]

None of this suggests that creating a Ministry of Border Control in South Africa is necessarily a bad idea. But the following questions ought to be asked. Can the South African fiscus afford the cost? Does the South African state have the institutional capacity to successfully manage a very difficult process of integration? More specifically, can it produce the human capital and information technology required for integration to work? Are there less far-reaching and less risk-prone projects of institutional integration available? And what is the cost to border control of not attempting wholesale integration?

Finally, it should be said that there are times when the decision to integrate is simply misjudged. We said earlier that one of the motivations for the establishment of a single ministry was the creation of a corporate identity. Yet integration can also break down existing corporate identities and replace them only with resentment. The centrifugal forces that characterise the border control environment could simply be internalised by the department. Each of its components strains against integration in a struggle for greater autonomy.[15] The department inherits, rather than dissolves, turf wars.

Lead agency model

This model is premised on the dual assessment that inter-departmental co-ordination does not allow effectiveness or efficiency to be easily addressed, but that wholesale integration is too severe. In the broadest terms, it argues that each of South Africa's 10 airports, seven harbours and 52 land border posts be managed by a single department. So, for instance, a large commercial harbour would probably be managed by Customs, while a land border that sees a great deal of human but no commercial traffic might be managed by Home Affairs or the SAPS. The lead agency at each port would be given the responsibility of managing it and the power to manage it effectively. In certain instances, the lead agency could, via an agreement, perform services at the port of entry on behalf of other interested departments.[16]

How would relations between departments be conducted? There are several alternatives. The first would model itself on the primary contractor relationship typical of complex private sector projects. As one border control official interviewed for this project put it:

On a construction site, for instance, several businesses come together: engineers, architects, plumbers, electricians, bricklayers. The relationship between them isn't one of co-ordination between equals. There is a senior partner who is contracted to do the job. He sub-contracts everyone else. He has the final responsibility, and thus authority.

Each department involved in border control would thus maintain its organisational integrity. Each would keep control over its own line functions. But each would take its instructions from the lead agency at each port.

There is a sharper and probably cleaner extension of this model. The line functions of subordinate departments at any particular port collapse, and the lead agency takes responsibly for all infrastructure and personnel. Here is how a senior border control manager at a large international airport sees it:

This airport is declared a Customs-controlled zone. That means every other department must make their staff and their infrastructure available to the lead agency. Customs will be responsible for training and deploying that staff, for using and maintaining that equipment. From asset and perimeter security to searching passengers for drugs, one person is in charge of the airport. The personnel from the other departments still go their departments to apply for sick leave and to make queries about their pensions. But Customs must be the one to tell him he is not doing his job properly.

That is the only way the buck can stop with somebody. That way, no Customs manager can say that it is not his fault when cargo disappears on the way from the aircraft to the transit shed on the grounds that he does not control access to sterile areas. He can't say that because it is his job to control everything.

One of the virtues of this model is the uniformity it creates across ports of entry. All ports of entry controlled by Home Affairs, for instance, will be run according to the dictates of one national border control strategy regarding the movement of people. At a non-commercial land border post, the Home Affairs officials could be given powers to control non-commercial goods and to take action if non-compliance with customs requirements is determined. Another virtue is the creation of uniformity within ports of entry. Each port will be furnished with operational capacity to execute its fundamental objectives.

This model does leave some problems unsolved. For instance, determining who should run each port is not an easy matter, and something may be lost either way. Take, for instance, a hypothetical land border that sees a great deal of human and commercial traffic, and is also a hub for contraband smuggling. Who is to run this port? The SAPS, Home Affairs, or Customs? The danger is the emergence of a cookie-cutter approach to ports of entry, and thus, ironically, the persistence of a lack of integration. The traffic passing through particular ports will not always fit neatly into the pattern carved by the cookie-cutter.

Indeed, the problem of cookie-cutting extends to the relationship between ports. It is all very well to put Home Affairs in charge of border posts which see large volumes of undocumented immigrants. What happens when undocumented immigrants begin to skirt the Home Affairs-controlled post and move through the border line? Similarly, it is all very well placing Customs in charge of commercial border posts, but who deals with goods that move through posts designated as non-commercial. No matter how carefully the cookie is cut, goods and people will always refuse to abide by the division of labour invented by and for bureaucrats.

Conclusion

The perfect scenario, of course, is one in which every border control official is comprehensively multi-skilled, and every function perfectly integrated with the next. The border official who reads a cargo manifest with expert knowledge in the morning will interpret the information in a passport with equal incisiveness in the afternoon, and detect a human drug courier in the evening. She will favour none of these functions over the rest, and she will share every piece of operational information that comes her way with whoever needs it.

If border control design were starting from a blank slate it might do to think of manufacturing such an official. But there is never a blank slate. Institutions are never designed on drawing boards. We always inherit particular divisions of labour, banks of knowledge and institutional memories. The purpose of this paper was to provide a brief overview of the border control structures and resources post-apartheid South Africa inherited, what it has done with them until now, and what the alternatives might be for the future. At the risk of ending with an unhelpful platitude, it remains to be said that the problem of integration is intrinsic to border control, is suffered in every country on the planet, and will never be fully resolved. The three structures briefly sketched above are best viewed as rival strategies to manage an eternal problem, rather than to solve it once and for all.

The perfect scenario, is one in which every border control official is multi-skilled, and every function perfectly integrated with the next.

Notes

1 For a record of the cabinet instruction, see Operational Working Team on Border Control *Border Control: Collective Approach, Implementation Plan*, document prepared for the heads of the National Interdepartmental Structure (NIDS), 1997.

2 Inter-Departmental Committee *Code of Practice for Border Control Management at South African Ports of Entry*, Butterworths/LexisNexis, 2003, v.

3 Immigration and Naturalization Service, Office of Inspections, *South Africa Border Assessment*, 1997. The report is not publicly available, but a summary of its findings can be found at <www.queensu.ca/samp/ sampresources/ migrationdocuments/documents/1998/ border.htm> – 101k

4 See A Minnaar, *Policing the Ports: reducing illicit trafficking in South Africa*, Pretoria; Institute for Security Studies, 2003, p 24.

5 Government of the Republic of South Africa, *National Crime Prevention Strategy*, May 1996, at <http://www. polity.org.za/html/govdocs/policy/crime1.html>

6 Inter-Departmental Committee *Code of Practice for Border Control*, pp 1-4. While this document was published after the closure of NIDS, its task, as described in the preface, is to translate the LOP NIDS had developed into rules for border control agencies to follow at points of entry.

7 Inter-Departmental Committee *Code of Practice for Border Control*, pp 2-10.

8 Inter-Departmental Committee *Code of Practice for Border Control*, pp 2-19.

9 Inter-Departmental Committee *Code of Practice for Border Control*, pp 5-10.

10 National Commission on Terrorist Attacks upon the United States *The 9/11 Commission Report*, authorised edition, New York & London, Norton, 2004.

11 S Flynn, *America the Vulnerable: How Our Government is Failing to Protect Us from Terrorism,* New York, HarperCollins, 2004, p 136.

12 Cited in M Crowley "Bush's Disastrous Homeland Security Department," in *The New Republic*, 15 March 2004.

13 Flynn, *America the Vulnerable*, op cit, p 140.

14 The travails of the Department of Homeland Security have been well-documented in the U.S. press. For a lively and critical chronicles of its inception and brief history, see both the *The New Republic* and *Slate Magazine* from late 2002 onwards.

15 For a fascinating discussion on some of the damage created within the SAPS by attempts to integrate the work of the detective service with that of the uniformed branch, see A. Altbeker "A funny thing happened on the way to an integrated justice system," in *Society in Transition*, forthcoming.

16 This concept is operative already where SAPS officials do passport control at many smaller land border posts. The principle could be extended to other functions such as health and agriculture, and could include agency agreements with Customs as well as Immigration.

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About this paper

In the last ten years, border control in South Africa has attempted to respond to a change from a security focus to one of the facilitation of trade and freer movement of people. In response to these changes and the need for more government departments to become more proactive in this regard, tensions in terms of collective efficiency and effectiveness of border control have become more acute. This paper provides a brief history of the attempts of South African border control over the last decade to find an optimal structure of co-operative governance. Finally, we map three alternative models of how to structure border control in the future.

About the author

Jonny Steinberg is a freelance journalist and researcher. His work in the fields of crime and criminal justice includes two books, *Midlands* (2002) and *The Number* (2004), an edited collection of essays, *Crime Wave* (2001), and several monographs and papers. He has worked as a senior consultant at the Centre for the Study of Violence and Reconciliation in Johannesburg, and as a senior writer at Business Day. He has an MA in political studies from the University of the Witwatersrand and a doctorate in politics from Oxford University.

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