



Immigration and Security European Challenges and International Perspectives

Panel II

Migrants, Minorities and the National Security State

Panelists: Salma Bava, Jawaharlal Nehru University, India

Margaret Stock, US Military Academy, Washington, USA

Aziz Huq, Brennan Center, New York University, New York/USA

Moderator: Belinda Cooper, World Policy Institute

Aziz Huq

Mr. Huq focused on the largely American issue of counter-terrorism through the prism of the separation of powers set out in the US Constitution and addressed the use of immigration law as a tool of counter-terrorism. The Patriot Act, enacted six weeks after 9/11, represents the biggest expansion of police powers in American history. It had a major impact on immigration law, by profoundly expanding the powers of the then-INS, for example in the area of detention. But many extensions of immigrant enforcement have little to do with new laws or even counter-terrorism; they have occurred through executive fiat, with an increasing shift from criminal to military law and a focus on the enemy combatant paradigm.

Several measures in the Patriot Act are predicated on improved immigration exclusions as a route to better counter-terrorism. But the emphasis is on deportations for fairly trivial civil and criminal offenses, unconnected to counter-terrorism. Section 411 of the Patriot Act allows immigrants to be deported without legal process if they offer material support to a terrorist organization, however defined by the US government. This is a very broad definition, since a violent minority in any group may act in ways that lead it to be labeled terrorist. The Act places the procedural burden on the immigrant to show she or he did not know a group was

terrorist. The Patriot Act undermines asylum claims, even if the immigrant got unwillingly mixed up with local groups labeled terrorist.

The Executive Branch has expanded on the Patriot Act, including through the 2005 Real Identity Act. In unilateral acts by the US administration after only 3 months, limited detention was put aside to move to a system of open-ended detention without judicial oversight. This move sidestepped the limits of the Patriot Act and let government agencies carry out generalized sweeps and detentions. Some individuals were detained as material witnesses; some were criminally charged, while most were held on immigration violations.

The INS was allowed to arrest suspects without a warrant, with suspects held for 48 hours, while some could be held much longer under a policy that allowed people to be held until cleared by the FBI. Many of these activities were carried out in total secrecy after 9/11, with closed proceedings in all cases of suspects who were labeled as being of "special interest."

The executive branch continues to lean towards indefinite detention, on the model adopted in dealing with enemy combatants, with unlimited and unsupervised detention no longer restricted to the battlefield, but now applied much more broadly. The cost to immigrants of such policies and attitudes is huge, as is the impact on society as a whole. This cost is out of all proportion to gains. The activities carried on at Guantanamo and the policies and attitudes that underpin the prison's existence have been widely derided by the international community. In the final analysis, in the fever of the global war on terrorism, law has buckled and torn, largely at the expense of the innocent.

Salma Bava

There is a pressing need for a substantive dialogue. Are we hearing and listening to and from each other? Citizenship and security are seen largely as territorial and local issues. This presentation will therefore be a little unusual, because it is an Indian national presenting an assessment of the European situation.

The thread that runs through all of human history is one of migration, integration and assimilation. All identity is constructed, not intrinsic. Europe has long been an important immigrant destination, but it has also traditionally been an unwelcoming one to non-OECD citizens. This remains the case, despite demographic imperatives that drive the need for more labor, a skill deficit in the work force in a number of key economic sectors, and intense job shopping by a native population that has become increasingly choosy about employment opportunities. But despite this

pressing economic need, immigrants are still seen mainly as unwelcome interlopers. The result of such attitudes is that migrants are only valued for their economic potential, and they are not seen as having other benefits, such as in the area of cultural diversity. Migrants are also increasingly seen as a security threat and all are viewed, almost regardless of their point of origin, as potential terrorists in a world where states are seen as being unable to provide total security, and the outsider is seen as a Trojan horse.

The challenge is how to maintain a reasonable level of security, while maintaining an inflow of essential workers. The option of controlling migration has to be balanced against the need to maintain the rights of migrants who are already on the Continent, and those with a legitimate expectation of being able to contribute their skills and labor to its economic development.

The conundrum for Europe post 9/11 has become the issue of the integration and assimilation of its existing minorities and newly arrived immigrants. At the EU level, much is being done. As a result of the Maastricht Process, progress is being made on the key issues that underpin migration and integration. But a great deal of divergence remains on these issues at the national level. The American approach is based on the expulsion of suspect or problem migrants. Europe is more focused on achieving integration based on migrants living up to the values of the host society. But what are these values? There is a pressing need to define what the social contract between host and migrant communities actually consists of. It will be an evolving process, one that must build on the basics and expand to embrace different national nuances. The legal process will not be very useful in this process, as it is not flexible enough. Migration is about people and carving out spaces for each individual. And while Europe as a whole is striving to be post-modern, the individual countries that compose the EU are still mired in their individual national priorities and concerns.

Margaret Stock

The theme of Dr. Stock's presentation was the close connection perceived after 9/11 between immigration and security. Pre-9/11 in the United States, security was not really an issue in immigration policy and enforcement. The INS was seen as an incompetent policing agency that no one wanted to cooperate or share information with. Other Federal agencies considered it untrustworthy and prone to leak intelligence to criminals. It was also believed to be poorly enforcing what were admittedly incomprehensible laws.

Post 9/11, suddenly on immigration issues, security was all, especially as monitoring and controlling immigrants was seen as a key factor in combating the evolving terrorist threat. So a host of new regulations were introduced, including biometrics for visitors, stricter monitoring of

student visas, etc. But much of this was activity substituting for progress. The attempt was to cover everything using a "grandma's nightshirt" of broad measures, with everything now seen through the prism of national security.

Post 9/11, immigration laws have come to be used to fight all types of crimes, not only terrorism, and have also been aimed against American citizens. Huge amounts of data are being collected, but many problems have arisen in handling it. Congress wanted everyone to have access to raw intelligence, and therefore mandated data sharing. The system was called Chimera and was designed as a giant database containing all the government's key tracking information. In practice, however, the security of this data was not well protected. The danger that computer hacking posed to Chimera was barely addressed. There were also revelations that some police officials were stealing data and selling it to ordinary criminals for large sums of money. Because of these serious operational issues, and the question they raised regarding the integrity of the database, the overall value of the system has been reassessed and interest in its use has declined.

The underlying idea after 9/11 was to gather as much data as possible to give reasons to exclude as many people as possible from the United States, because "outsiders" were seen as a key source of the terrorist threat. But this is a very narrow definition. A more realistic approach would view national security as a concept that needs to be stretched to cover all likely contingencies. Protection needs to be provided not only against physical threats, but the more essential threats to security such as lost economic opportunities, for example from excluding or expelling illegal immigrants, a very diverse group of 10-20 million. Some are Mexican gardeners, but many blue and white-collar jobs are held by people who are or were illegal immigrants. Americans tend to think that they should all get legal, but this is very hard for many immigrants, especially the poor and non-English speaking, as the naturalization process is extremely complex. The choices when it comes to illegal immigrants are very simple; if we cannot deport them, and many are already fully integrated into American society and life, and are anyway too important to the economy, the main remaining option is to take the steps necessary to let them participate fully in US society through an amnesty program. A well thought out and carefully implemented approach would isolate the really dangerous illegals from the vast sea of ordinary immigrants, legal and illegal, they hide amongst.

The lesson that US policy since 9/11 has highlighted is that building walls at the intersection of immigration and security don't work.