



Securitizing Migration after 11 March

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Theme: This analysis draws on the recent experience of the United States to address perceived immigration risks since 9/11, and weighs the prospect of adopting similar approaches in Spain and the European Union following the 11 March terrorist attacks in Madrid.

Summary: Immigration can be a source of unease in the developed world today due, in part, to the supposed linkage between international migration and global terrorism. Recent trends point to an accelerated growth of migration worldwide, whose networks terrorists are known to exploit. Migration, however, has only in the last decade risen to be a high security issue as state struggles against terrorists and other criminals have been extended to new targets, most notably immigrants. This analysis appraises the 'problem' of immigration in the US shortly before and after 9/11, and assesses a range of possible responses to the Madrid attacks on 11 March that could affect how Spain and other EU states deal with immigration and associated risks. In the final analysis, immigration and border authorities are well positioned to contribute to risk prevention with measures that improve the ability to gather and share intelligence needed to detect and detain terrorists and obstruct their plans, but restrictive 'fortress' responses and sweeping immigrant surveillance appear to hinder rather facilitate cooperation with key immigrant, especially Muslim, communities.

Analysis

Introduction

September 11 dramatized and reinforced a 'publicly convenient link' between national security and immigration, which has been used in the US and the EU to justify a wide range of external border control and internal surveillance measures directed at non-citizens. Given the increasing likelihood that the 11 March attackers were foreign-born, national and European leaders will be forced to reassess immigration control and border management strategies. Now that Spain, like many EU countries, has become a popular immigrant destination, recent US experience in this area may provide important insight about different options for enhancing security. Do continuously expanding border obstacles and wider electronic surveillance protect us from would-be terrorists? What lessons does the US model suggest about the prospects and consequences of securitizing immigration to reduce the risks posed by would-be terrorists?

The end of the Cold War brought attention to 'new' threats that filled the security void after the evaporation of a powerful external (state) threat to the security of Western countries. Throughout the 1990s, aside from fulfilling labour and population needs of receiving countries, migration from the developing to the developed world has been associated with a range of risks that threaten jobs, incomes, cultural integrity and national security. The 'problem' of immigration has been magnified by the discovery that all of the 9/11 terrorists were foreigners of Middle Eastern origin, whose use of global migration networks and

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legitimate immigration channels made it easy for political leaders and the media to meld immigrants and terrorists into a single category often called 'terrorist aliens'. While legal immigration restriction, *per se*, has not been among the political fallout of the 9/11 attacks in the United States, the perceived need to securitize immigration and fortify national borders quickly became salient public policy responses to terrorism threats.

The Bigger Migration Picture

Human migration predates recorded history, as does, according to Hobbes, the natural right of self-preservation. The modern state arose, in part, to defend the security of territorially bound individuals who were otherwise prone to conflict and strife. The division of the world into a *system* of states, however, has produced the relatively new phenomenon known as international migration, whereby social, economic and political forces push and pull migrants in new ways that arguably threaten the security of the states themselves. Thus, states typically view immigration as an 'externally motivated event' that they are forced to respond to with a range of control measures. In other words, states seek to contain a force their borders, their economies, and their foreign policies have helped to produce.

Traditionally, the concept of sovereignty has given states ultimate control over a bounded territory and its population, and the discretion to select and exclude immigrants, though the EU is pushing member states to harmonize their immigration policies. The purpose of immigrant exclusion changes with the times. States have, for example, defined immigration as a problem in terms of the alleged threats immigrants pose to the purity and strength of national identity, population and environmental sustainability, governmental welfare and other support programmes, and national and international security, the last of which concerns us here.

While most modern democratic states uphold a generalized commitment to exit, they invariably set up a complex of barriers to entry. The contradiction between free exit and restricted entry has become even more pronounced since the demise of communism, especially as many traditional barriers to the movement of capital, goods and information have withered away with the emergence of regional trade regimes like NAFTA and the Euro zone. All through the 1990s, in fact, the more state borders have opened to international trade flows, the more restrictive illegal immigration policy in developed countries has become. In an age of 'denationalizing' globalization, the control of human entry is one of the few remaining domains where states can still exercise their strength by 'renationalizing' immigration policies, a move that has taken on renewed urgency since the 9/11 attacks as states have responded with stricter entry requirements and tighter border controls, and sweeping electronic surveillance.

To begin to address the security-migration nexus, it is important to look past staid realist assumptions that have been chiefly concerned with analysis of interstate issues. Fitting borders into emerging understandings of transnational networks associated with a global level of analysis, non-state actors and the spread of extreme Islamist terrorism, policymakers need to revise traditional understandings of borders as fixed, static entities that merely define the bounds of state sovereignty. Another approach is to recognize the global processes that territorial borders help produce in the first place, such as international migration, and the risks pertinent to those processes that highly restrictive border practices and exclusionary policies are not going to alleviate.

Broader Border Challenges

As the smoke clears from the Madrid attacks, policymakers will begin to rethink immigration policy and border control as they renew their search for effective ways to respond to the threat of international terrorism and the *Jihadist*. A decade of enhanced

border security and immigration control measures in the United States, however, has done little to reduce the risk of terrorism, as 9/11 tragically demonstrated.

In today's broader security environment, free trade coexists with global terrorism. External borders, especially in the US and EU boundary countries, are increasingly seen as 'conduits for terrorists'. Neoliberal trade regimes like the NAFTA and Schengen accords have both fostered and complicated associated security issues. The 'border securitization initiative' that began Operation Hold the Line and Operation Gatekeeper along the US-Mexico border during the early-1990s introduced a new policy regime of boundary security practices that have done little to make Americans safer and a lot to make border crossing for undocumented labour migrants more dangerous. The near simultaneous passage and implementation of NAFTA, however, highlight the contrary trends towards expanding regional economic integration, on the one hand, and a concurrent tightening of labour flows, on the other.

Proposals for a more open North America, though Janus-faced from the start, were brought to a sudden halt with the 9/11 terrorist attacks. In both discourse and practice, the US has turned the border itself –and anything that crosses it– into a security risk, even though none of the nineteen hijackers entered the US illegally from Mexico or Canada. One major US response to 9/11 has been to drastically increase federal presence on US boundaries, making themselves more visible through the expansion of the border security apparatus. Beyond visibility, however, the US has also intensified physical and virtual scrutiny of non-citizens.

The newly created Department of Homeland Security (DHS), which assumed and expanded the responsibilities of the disbanded INS, has strongly linked border control to the struggle against terrorism. DHS director Tom Ridge portrayed US borders as 'conduits for terrorists, weapons of mass destruction, [and] illegal migrants,' which was meant to underscore that 'the new threats and opportunities of the 21st century demand a new approach to border management' (2002). Furthermore, the DHS's ambitious 'Smart Border' initiative aims to create a 'seamless border' that electronically integrates and identifies immigrants based upon 'unfalsifiable' biological features through the use of biometric identification systems (1). Critics contend that neither heavy border fortification nor intrusive electronic surveillance will do much to combat determined would-be terrorists and may ultimately result in a return to complacency and a false sense of security.

While empirical links between restrictive border policies and national security remain inconclusive, it is a known fact that some terrorists have learned how to make legal immigration channels and legitimate immigrant communities serve their lethal *Jihadist* ends. International terrorism is a global problem that involves understanding complex transnational networks. Would-be terrorists no doubt exploit migration networks, flows, and communities, but it is important to distinguish that the terrorist –not the immigrant– constitutes the security risk. Nevertheless, attacks by foreign-born terrorists exacerbate an already growing tendency to view international migration through the myopic 'prism' of state security. In response to the Madrid attacks, for example, a leading spokesperson on domestic-security issues from the German opposition Christian Democratic Union (CDU), Wolfgang Bosbach, has promptly called on the government to 'close evident security gaps,' because the fight against terrorism 'is inseparable from discussions on the immigration law'. Narrowing the focus too much, however, will distract policymakers from the wider array of human and societal security concerns that inhibit full integration of key Muslim communities and their participation as critical sources of intelligence.

Post 9/11 US Domestic Security Practices to Avoid

Immigrants in the United States felt a strong backlash after the 11 September terrorist attacks. During the first weeks after the attacks, the media reported hundreds of

incidences across the nation where immigrants were being rounded up by the government just because they fit the 'profile' of suspected terrorists and their leaders. Attorney General John Ashcroft ordered the FBI to do a thorough investigation of all immigrants that had overstayed or otherwise violated their visas. The Justice Department had cultivated a 'pervasive intolerance' to any perspective that challenged government policy, and thus generalized an 'atmosphere of fear' where immigrants were afraid to speak out against alleged violations of their civil liberties by often overzealous law enforcement agencies bent more on revenge than justice. The bulk of the attention targeted Arab immigrants.

Meanwhile, the FBI conducted 'mass community sweeps' in Muslim immigrant communities around the country with little measure of accountability or oversight. The scope of racial profiling and its tacit acceptance by the public produced an uncomfortable political climate, especially for Arab immigrants, whose mere presence seemed to be cause enough for suspicion. Moreover, the USA Patriot Act, which Congress hastily passed on 25 October 2001 granted new and unprecedented detention authority to the Attorney General based on vague and unspecified predictions of threats to national security. Specifically, the law permits the detention of non-citizens facing deportation merely based on the Attorney General's certification that he has 'reasonable grounds to believe' the immigrant endangers national security. Although immigration or criminal charges must be filed within seven days, these charges need not have anything to do with terrorism, and could be minor visa violations of the kind that in the past would not result in detention at all.

What is more, non-citizens ordered removed on visa violations could be indefinitely detained if they are stateless, their country of origin refuses to accept them or they are granted relief from deportation because they would be tortured if they were returned to their country of origin. It is very rare that once the United States has suspected one of its foreign nationals of terrorist involvement that the country of origin will agree to take him or her back. One of the most far-reaching and controversial implications of the USA Patriot Act has been the widened discretion to indefinitely detain non-citizens who have never been convicted of a crime but whose political beliefs and associations are sufficient cause to consider a foreign national a threat under the bill's expanded definition of terrorism.

The Act outlines an extraordinarily broad definition of terrorism that covers virtually any violent activity taken by a group, which allows for non-citizens to be detained and deported based upon their association with that group. The onus then falls on the non-citizen to prove that his or her association was not intended to further terrorism. Immigrants who provide assistance to such groups, such as paying membership dues, run the risk of detention and deportation. After 9/11, the government detained more than 1,200 people and has refused to say who they were or what happened to all of them. Acting on tips, sweeps and profiling, however, has failed to produce terrorism-related convictions against the detainees apprehended using these techniques, but has succeeded in further alienating the Muslim community as a key player in the struggle against Islamist terrorism.

Acting out of political expediency, the US government embarked on far reaching and intrusive immigration initiatives that, as far as antiterrorism measures are concerned, have not made Americans any safer. On the contrary, drastic measures taken against non-citizens may communicate an image of security that does little to detect and detain would-be terrorists. Government action against immigrants also undermines fundamental civil liberty principles through violations of due process of law, denied access to legal counsel and by often subjecting detainees to closed hearings for 'national security' reasons. Moreover, the US government has relied heavily on the use of national origins in their risk assessments of individuals, rather than on intelligence-driven criteria.

Profiling stigmatizes, intimidates and alienates targeted immigrant communities by discriminating against individuals on the basis of religion or national origin instead of patterns of individual conduct. Besides undermining civic values, profiling hampers cooperation with targeted communities, compromising behaviour-based law enforcement practices and intelligence gathering, which has proved far more successful than profiling for apprehending suspected terrorists. In short, fear and victimization accurately characterize the post-9/11 reality for many Arabs and Muslims residing in the United States, a situation that Spain and the European Union, with roughly 500,000 and 12 million Muslims, respectively, would do well to avoid.

Spain's New Immigration

Immigration was a backburner issue in Spain during the second half of the 1980s and into the early-1990s; meanwhile a demographic shift from an immigrant sending to immigrant receiving country was occurring. The early 2000s point to even more dramatic migration inflows and extended media coverage, thus raising immigration high on the list of public concerns and the political agenda. Immigration had finally come of age in Spain, even as constructive public policy and open attitudes to address immigration issues continued to lag behind. Then came modern Spain's day of infamy: 11 March 2004.

It is especially important to note the demographic dimensions of migratory flows to Spain, especially in light of the national origins of the initial suspects of the 11-M attacks and the increasing evidence that points to al-Qaeda involvement. In general terms, while still relatively low compared to traditional immigrant receiving countries, the change in foreign stock in Spain as a percent of total population from 1.3% in 1995 to 3.1% by 2002 is significant in absolute terms, and in terms of the 'visibility' of immigrants (see Trends in International Migration, 2003).

Moreover, just looking at the gross number of resident immigrants indicates important changes as well. How political leaders and the media report these changes has already had a negative effect on public perceptions of immigration, which could be exacerbated in the likely event that investigators find conclusive evidence that links Islamist terrorists to the Madrid attacks. Between 1995 and 2001, for instance, the resident immigration population increased from 499,773 to 1,109,060, more than a 110% increase in six years according to the Spanish Ministry of Home Affairs. Importantly, the proportion of resident immigrants from non-EU countries increased substantially during the period, from 53.59% in 1996 to 70.55% in 2001.

Another important demographic factor to bear in mind is the rising number of immigrants coming from developing countries. The ratio of resident immigrants coming from developing and developed countries has shifted from virtual parity in 1999 to 63.04% in 2001 by factoring in the Human Development Index (HDI) of the sending countries. Most significant to the current situation, however, is the fact that among the non-EU developing countries, Morocco has by far the greatest number of resident immigrants living in Spain, with almost a quarter of a million in 2001.

Alternative Frameworks

How does the EU meet 'new' security demands while ensuring the protection of civil liberties, immigrant rights and cooperation among member states? Immigration policy may supplement counterterrorism measures, but we have learned from the US case that knee-jerk responses that try to 'seal' borders and intimidate immigrants are not only costly, ineffective and damaging, but promote an exclusionary 'fortress' image that does little to reduce the risk of terrorism.

One of the fallouts from the Madrid attacks will likely be renewed and concerted efforts to securitize migration. With some one million undocumented foreign nationals currently living in Spain without work contracts, whose low cost labour is a structural necessity of the Spanish and larger EU economy, emphasis would be better placed on regularizing their status and improving employer compliance with immigration laws. This would have the dual effect of, first, allowing immigration authorities to collect valuable information about who is residing in the country, which, when appropriate, could aid counterterrorism efforts and, second, protecting immigrant rights.

Policymakers in EU member countries should bear in mind two general principles as they consider specific policy solutions to reduce the risk of terrorism. First, in an increasingly interconnected and networked world, unilateral approaches to international migration will leave a mismatch of contradictory national policies that are inconsistent with the consolidation of a single European market and susceptible to entry shopping and lax management. An integrated Europe against global terrorism must start by managing migration multilaterally at the European level in conjunction with EU counterterrorism efforts pursued by the EU Justice of Home Affairs (see JHA MEMO/04/59). The EU could also work productively with the UN's International Organization for Migration (IOM), the endpoint being a new migration regime that elevates the status of global migration above the terrorist and criminal elements that exploit international migration networks and national immigration policies.

The second general tenet is that policies to securitize migration towards the goal of reducing terrorism risks should go hand-in-hand with measures to ensure human and societal security. The goal here is to recognize that, in addition to the scores of immigrants that were killed and hundreds injured in the 11 March attacks, Muslim third-country nationals will likely suffer the next round of repercussions. It will take sustained educational and public information campaigns to counter the heightened fear and expression of Muslim 'otherness' that will follow growing evidence that the Madrid bombers were tied to a Moroccan terrorist group, with alleged links to al-Qaeda, which is also thought to have been responsible for the terrorist attacks in Casablanca last year. In other words, it is important for lawmakers to remember that the migration-security nexus includes xenophobia, racism and a generalized fear of the other, which are expected to intensify following the Madrid attacks.

Conclusion: In sum, key to an alternative framework is a refocusing from physical border management to concentrate more resources on the strategic use of information, intelligence and multilateral cooperation. Immediately following the 9/11 attacks, US law enforcement authorities executed a policy based on racial/ethnic profiling and border militarization to capture would-be terrorists. Profiling has proved a crude and inadequate measure that leads to discrimination and less rigorous scrutiny of individuals, according to many law enforcement experts. Rigid border security practices will not stop determined terrorists either, and diverts valuable resources away from more effective options like enhanced pre-clearance entry programmes, better intelligence-gathering, greater coordination of multidisciplinary information-sharing and operational law enforcement cooperation at the EU level. Finally, the 11 March terrorism attacks should compel EU policymakers and national governments to speed up the harmonization of immigration policies and shore up public education and integration programmes. As Europe looks to securitize migration after the Madrid attacks of 11 March, we may be wise to consider the words of political philosopher Seyla Benhabib: 'Whether the dream of the Euro-federalists to establish a multifaith, multinational, and multicultural Europe becomes a reality depends in large measure on the treatment of the foreigners in its midst' (2).

Notes:

- (1) For an extended discussion about biometric identification technologies, see Ross (2003) at <http://www.realinstitutoelcano.org/analisis/imprimir/407imp.asp>.
- (2) Seyla Benhabib, 'In Search of Europe's Borders: The Politics of Migration in the European Union', *Dissent* (Fall 2002).

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