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## **Transnational Migration – A National Security Risk? Securitization of Migration Policies in Germany, Spain and the United Kingdom**

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Securitization of Migration Policies in Germany, Spain and the United Kingdom**

***1. Introduction***

Today, our nationally bound societies are increasingly being confronted with diffuse threats associated with terrorism, drug and human trafficking or organized crime, many of which are related to transnational movements – to name but a few. In this context the traditional concept of security is expanded through the ‘securitization’ of policy areas previously alien to it, including human trafficking and irregular migration. This development has been subject to academic consideration first in the field of international relations. More recently migration researchers have started to analyze this process as well (Guiraudon and Joppke 2001; Faist 2002, 2005). Though securitization of migration policies has been undergoing quite some time, the events of September 11<sup>th</sup> reemphasized ‘security-migration-nexus’ (Faist 2005). Under this perspective the right to security of the collective becomes more important, while freedom rights for individuals are being restricted.

The control of migration is crucial to national sovereignty; it delimits territorial borders and boundaries of membership. Often there is a tension, if not a contradiction between human rights declaration and state’s sovereign claims to control their borders for security, but also many other reasons. Thus, transnational migration brings to the fore the constitutive dilemma of liberal democracies as Seyla Benhabib has pointed out (Benhabib 2004: 2). Whereas the principal of collective self-determination - including the determination over territorial borders and boundaries - applies to the political members only, universal human rights principals refer to every person. On the one side, there are immigrants, refugees and asylum seekers with legitimate claims for reception or protection. On the other side, there is the national constituency with a legitimate claim for deciding on these issues and for its own security. Most immigrants are non-citizens or non-members so they have no say in the decision that equally affects them. In some cases they might even be more affected as specific measures only apply to them, including the impossibility to enter a country and to stay there or the obligation to leave it.

Thus, the central concern of this paper is the growing securitization of migration policies. We can observe a tendency to link security aspects to migration policies to a growing extent during the last years. This runs at the expense of rights and freedom. In this paper I want to show the kind of linkages being established between migration and security, the way they are curtailing rights and freedoms for immigrants, refugees and asylum seekers and the challenges related to this liberal democracies are facing.

In order to do so, this paper is based on an analysis of three countries with rather different characteristics. Germany, Spain and the United Kingdom have very different traditions and features of policy decision-making enabling different ways the tension between collective decision-making and human rights plays out. Securitization is undergoing in all three countries, but at the same time, the three countries were differently affected by international terrorism in recent time and differently reacted to this. I will explain more in detail what this means later on. Though showing many different features, strong commonalities can be pointed out. The measures taken lead to a considerable limitation of rights and freedoms of migrants as I will show. These in turn are embedded in a more general trend of a redefinition of the relationship of freedom and security, as me and my colleagues have been arguing elsewhere (Ette, Fauser et al. 2006).

This sharply contrasts with a trend discussed in recent years namely the expansion of rights for immigrants. Transnational migration has brought about new rights based on universal human rights, laid down in international conventions and in cases protected by international courts (Soysal 1994) as well as they are integrated in national constitutions and legislations, protected by national jurisprudence (Joppke 2001). This reference to universal norms has led scholars to talk about post-national membership and rights (Soysal 1994). But as these rights are being granted by nation-states, there are also controlled by nation-states and in cases limited by states. And in this sense, September 11 strongly reminded us of state sovereignty.

To show and reflect on these recent developments the paper proceeds in three steps. First, the possible linking of migration and security will be spelled out and it will be outlined how the general opposition of collective self-determination, including the right to security, and universal human rights gets more critical concerning transnational migration. This tension, in turn, seems to be reinforced as new security concerns are apt to outweigh concerns for human rights. Thus, in this first section, I am addressing the central issues that lay at the heart of the security-migration-nexus. Second, evidence from the three European countries will be provided, showing a growing linkage between migration and security in recent policy making; here the focus will be on measures taken after September 11 as in its aftermath this process became even more pronounced, but started long before. Finally, in my conclusion I want to point out three challenges I see related to securitization, i.e. the limiting of rights which brought with them some considerable changes with respect to the rights of immigrants. Some of these consequences are unforeseeable at the moment; others might have immediately vital consequences for the immigrants concerned; the second challenge consists of the democratic requirements the procedures of collective self-determination have to meet, and ultimately I will pose the

question whether there are other solutions to a purely security-based perspective to at least part of the problems addressed.

## **2. *Transnational Migration, Security, and Rights***

### ***The Security-Migration-Nexus***

Myron Weiner (Weiner 1993) was the first one to address systematically the question of how international migration is creating a threat to states and citizens. In a transnational perspective, he distinguishes various relations between migration and security and shows how sending and receiving states are linked by a manifold of security challenges. In this perspective migrants can challenge the security of both their country of origin as well as the country of reception.

Weiner basically refers to four dimensions of the security-migration-nexus. Slightly modifying his categories, we can distinguish a political, a cultural, a socio-economic and a legal dimension.

Politically, transnational migration can be regarded as a threat to a country's security and stability when immigrants are opponents to the regime in their home country. Already the mere fact that a country accepts refugees from another country might provoke tensions or conflict because of the harming of the international reputation this recognition might entail. But also a contrary situation is possible. States might also gain security from their point when opponents leave the country, either voluntarily as political refugees or because they were expelled from their home country. This was an operation not so unusually practiced by the German Democratic Republic and other Eastern European socialist countries. To the receiving state, political refugees might constitute a risk when they make use of their exile to advocate for regime change in their home country. In this context, other immigrants in this receiving country, which did not come as refugees or political opponents to the regime in their home country, might become supporters of the dissidents and get more politicised through their activities. Moreover refugees or other groups might try to influence the policies of the receiving state in their favour or they might even launch terrorist attacks to do so. In this sense the Islamic terrorists in Germany, Spain, the United Kingdom and other European countries have used the possibilities in their host countries to organize and plan their attacks on USA, Spain, Britain and other parts of the world, while at the same time, connecting with each other around the world. And finally, governments might support activities of their nationals abroad for political reasons and thus create severe conflicts between the two states involved.

In cultural terms, migrants might be perceived as a threat to cultural identity. Depending on very different factors, a receiving society or part of it might see certain kinds of

newcomers as not easily to be incorporated. In this line Thomas Faist has argued that the reformulation of international migration in terms of security in the public discourse contributed to a 'clash of civilizations'. Cultural fears and clashes between citizens (of European countries) and foreigners (from 'non-Western', Muslim countries) are strengthened. This "helps to make culture an even more important marker between natives and migrants" (Faist 2002: 12). With this culturally alien immigrants are being stigmatized and the issue used in public discourse and electoral campaigns. The perception of immigrants as a threat seems especially pronounced when different charges come together. Concerning recent events, the terrorist bands and the immigrant groups potentially harbouring or supporting those terrorists and the Arab and Muslim characters of the immigrants, perceived as of irreconcilable with the Western immigration societies, are aspects that are mutually reinforcing one another, and they merge in public discourses and in policies (Gerstle 2004: 94).

Immigrants and asylum seekers might also constitute challenges to the economic and social systems. They may provide difficulties on the national labour market and contribute to welfare dependency. Migrant workers might threaten the domestic wages as they need to work for less money than domestic standards usually allow and open the way for employers to lower wages for certain branches. Also due to their often low skill profile, their weak position on the labour market but also due to discrimination, migrant workers lose their jobs more easily than nationals, especially in times of economic recession, and thus rely on welfare dependency which is perceived of as costly for the host society. On the other side, also for the home countries migration can be socio-economically costly. Emigration of qualified immigrants first reduces high skilled potential on the labour market and second, it constitutes general economic losses as the country usually already invested in their education and profession.

Finally immigration becomes more and more related to criminality and delinquency. Border-crossing crime limits the possibilities of prosecution by the state as criminals can more easily withdraw themselves from the authorities. Also within the context of immigration some offences are more likely to be committed or can only emerge in this context, like human smuggling. The same is true for offences which can be committed only by non-citizens by definition, because they have to do with the residence status. Additionally, immigrants are often said to show higher percentages in criminality rates than natives (Guiraudon and Joppke 2001: 17). Nevertheless, this as a general statement seems rather doubtful for the above mentioned reasons.

The potential risks transnational migration entails are manifold. It is essential to state sovereignty to react on security risks. At the same time, this brings to the forefront the

already existing tension of modern democracies, i.e. what has been called the democratic dilemma.

### ***The democratic dilemma***

Collective self-determination and universal individual rights are the basic legitimizing principles institutionalized in liberal democracies (Habermas 1992). These are in opposition as collective decision-making finds its limits in universally applicable rights and vice versa. These are elementary, for example, to any protection of minorities against the 'tyranny of majority' potentially articulated in democracy. Transnational migration adds a special challenge to this dilemma. Tensions and often outright contradictions arise when the states' sovereign claim to control their borders and the border-crossers confront human rights declarations (Benhabib 2004). This tension is especially salient as within liberal democratic states political membership defines the constituency to decide on all issues. As most immigrants are non-citizens they have no saying in this decision on their possibilities to enter and become a member.

Nevertheless, also non-members are protected through human rights norms, limiting the states discretionary power. Thus the states' interests to limit and control immigration for different reasons, including national security finds its limits in universal human rights principals articulated in national constitutions and legislations (Joppke 2001) and international conventions (Soysal 1994). These contradictory principles of state sovereignty and interest to control borders and boundaries and the human rights obligations have been called the 'liberal paradox' in migration research (Hollifield 1999; Hansen and Gibney 2003). In this sense, human rights limit the states possibilities and potentially its capacities to control and limit migration (Freeman 1998; Hollifield 1999).

What seems to be undergoing in the process of securitization, is the opening up of the space for action in favour of control and security interests at the detriment of rights. In the case of migration policies, i.e. policies dealing with 'the others', immigrants, asylum seekers and refugees, reevaluation of national security aspects easily leads to the curtailing of rights of those others. As the decision-making is on the side of the nationally bounded majority, outsiders are excluded from it. From a universalist moral standpoint however, this exclusion is not acceptable because the delimitation of membership does not include all those affected by the decision taken. At the same time this problem is rather difficult to solve. This is the reason why political theorists are emphasizing the need to a high commitment to democratic standards concerning the decision-making procedure. Only by carefully considering measures and consequences is there a chance of 'renegotiating' these two principals without easily giving away one of them (Benhabib 2004; Gusy 2004).

### **3. Securitization of Migration Policies**

The trend to reevaluate security concerns in migration policies is growing in many countries and in many respects. This paper draws on empirical evidence from three European countries, Germany, Spain and the United Kingdom.

The countries are characterized by rather different institutional features, in relation to power concentration in their political system and concerning the level of influence of other bodies like federal legislatures, a second, territorial chamber and constitutional courts (Lijphart 1999). So their institutional potential for dealing with the democratic dilemma is different and supposedly plays out differently. What is also important for securitization, as a single event the terrorist attacks on September 11, 2001 have brought security issues into migration policies with special strength in all countries, though the three countries show great differences in their reactions. Reactions were harsh and immediate in Germany and the UK, but not in Spain. Germany introduced two so called security packages including very diverse security measures of which many deal with immigration and immigrants; and also concerning the then discussed Immigration Law new aspects were included in the context of September 11. We will see what this means in the following. The United Kingdom introduced, on the basis of their already strong and recent anti-terrorism measures, a couple of emergency measures, including an anti-terrorism and an extradition bill. And also in the UK the issue influenced on two reforms of immigration laws. After the attacks on the London subway in July 2005, the UK reinforced its anti-terrorist measures once again. In Spain, though it was also directly affected by international terrorism in March 2004 when almost 200 people died at the train station of Atocha, comparable measures or legislation was not discussed, at least not concerning immigration. But the Spanish government made use of the situation on the national and international level in their combat against domestic terrorism of ETA (Gillespie 2002; Ortega 2002; Powell 2003). This is not to say, that in Spain there is no linkage between migration and security or to terrorism. But the measures taken are not as immediate and direct as in the United Kingdom and Germany. What is more, in all countries aspects of security like criminality, human trafficking, delinquency, mafias, irregular migration and so on have been related to immigration as we will see below.

Though showing some differences in the conception of new security aspects in immigration policies, there are many commonalities between the three countries. What they have in common is that in all three countries we observe an ever closer link between migration and security, consisting of a curtailing of rights for the elevation of security. The following remarks will thus concentrate on common aspects of securitization, and not so much on existing differences.

Manifold measures were taken in the three countries during the last years. Here the focus will be on policies and instruments that were brought in after September 11, though not all of these measures can or should be related to this event. But the general climate in the aftermath of September 11 gave high priority to security and its defence, even in areas alien to international terrorism. Some of those measures are based on legal reforms, others constitute an enforcement of existing norms or executive possibilities, some were praxis before already but have now been elevated as a legal norm.

Though the categories overlap, the measures include:

- Facilitation of Data Communication between authorities
- Extension of the definition of infringements, possibilities for prosecution and punishments
- Facilitation of deportation for illegal immigrants and for long-term residents
- Withdrawal of citizenship or residence permission
- Strengthening of controls on access to the territory and to membership

In the following some developments will be presented in each of the categories previously mentioned. As there are so many aspects to these issues, only a few examples can be provided from each of the countries.<sup>1</sup> One can see these domestic developments integrated in a general European trend – a context that can not be considered within the limits of this paper. But one might see the emerging common European policy-making as a catalyst to the domestic developments in the European countries. After September 11, 2001 the European Council met in a in an extraordinary session only ten days after the attacks in order t analyse the international situation. During this session and following meetings the European agenda focused on multiple aspects and measures to combat international terrorism but also other security-related aspects. Thereby immigration is more and more linked to domestic and international security. But this is not a new issue on the European level. Right from its start, intergovernmental cooperation in Europe took place in the context of fighting international crime and terrorism as well as to protect the external borders (Guiraudon and Joppke 2001: 15). The little saying of the European parliament but also of the European Court of Justice on these matters makes consideration of human rights principals and rights of immigrants even more difficult. On this basis some scholars have put their argument, that national government and state officials from interior and security branches used the European level as ´venue´ or a shift

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<sup>1</sup> For a more detailed analysis of the measures taken in each country see Ette, A., M. Fauser, et al. (2006). Migration Control, Security and Immigrant Rights in Europe. [TransState Workingpaper](#). Bremen. I am relying here in parts on empirical analysis provided by Andreas Ette (on the UK) and Kathrin Prümm (on Germany) and myself (on Spain) within a research project on the ´Democratic Legitimation of Migration Control´, conducted within the Collaborative Research Center 597, Transformations of the State´ and funded by the German Research Foundation, DFG.



or 'escape to Europe' in order to circumvent national constituencies and political and social actors that could have brought in human rights considerations against their plans (Guiraudon 2000; Geddes 2001). In this context we might also see the domestic developments, this paper concentrates on.

### ***Facilitation of Data Communication between Authorities***

Most of the measures introduced include the communication of data collected by one authority for the purposes of another when severe reasons underscore the suspecting of unlawful or unconstitutional activities, depending on the cases and the countries. So for example in Germany the visa database was expanded and now contains the possibility to gather information for the purpose of law enforcement by giving special agencies access to these data. This goes along with new competences on the side of the authorities and especially the intelligence services. These cover among many other things possibilities to gather information on financial transactions, post and telecommunication and on booked flights from the respective companies (Lepsius 2004: 75).

In Spain the reform of the immigration legislation in 2003 gave access to municipal registration to other authorities and to the police in case of suspected foreigners in order to combat irregular migration and guarantee public security. This is an issue highly sensible in Spain because irregular migrants usually register at the municipalities to get access to health care, education and so on which are legally guaranteed rights conditioned to municipal registration. The justifications and restriction to this potential access are rather vaguely defined in the law. According to many political and social actors this runs against data protection and limits the execution of legally guaranteed rights for immigrants.

### ***Extension of definition of infringements, possibilities of prosecution and punishment***

Penalties have been elevated in all countries for different offences and new offences have been introduced or made more explicit. Possibilities for prosecution have been expanded in this context. Stemming from a European agreement from 1998, foreign terrorist organizations can now be prosecuted in the three countries independently from the place where their centre is situated or where the activities are executed.

Declarations of sympathy for terrorist activities or other unlawful actions now constitute offences to be prosecuted and punished including deportation in all three countries. At the moment, as a reaction to the London attacks in July 2005, in the United Kingdom the introduction of a new criminal offence of "glorifying terrorist acts" is being discussed. Due to the strong criticism from parliamentarians from the Human Rights Committee because

of the wide definition of the expression, it might not be introduced into British legislation though.

In Germany as part of the so called security package as a reaction to September 11, the religious privilege governing the legislation on associations was abolished. Before this, religious communities, unlike other kinds of associations, were granted special protection to their activities. Thus there were no legal possibilities to prohibit religious communities no matter what their ideology was like, including religious extremism. This has been changed so as if an organisation articulates itself against the Constitution, principals of international understanding or follows goals that run against German law, these can be prohibited. On that basis several extremist-Islamic communities have already been prohibited like the 'califat state' in Cologne among others. Many of these new offences are closely linked to the granting of residence status or citizenship and to possibilities for deportation.

#### ***Facilitation of deportation for illegal immigrants and for long-term residents***

In all three countries deportation procedures were facilitated during the past years. In Germany the new Immigration Act which went into force in January 2005 contains the possibility to expel a person when he or she constitutes a special risk to national security. This expulsion is based on a facts-based prognosis of threat, as the law literally sustains. This works directly with the expulsion notice (Abschiebungsanordnung), i.e. without a previous expulsion order (Ausweisung). Expulsion is explicitly possible in Germany when religious or other leaders preach against German constitutional principals, i.e. when accused of being a 'geistiger Brandstifter' (intellectual arsonist) or a 'preacher of hate'. Thus these newly introduced offences allow for easier deportation.

One famous example is the Turkish citizen Metin Kaplan, the self-appointed Calif of Cologne. In the year 2000 he was convicted to four years of imprisonment because he had called for the assassination of an opponent who was later on killed in Berlin. In 2001 his organisation was prohibited on the basis of religious extremism, possible due to the abolition of the religious privilege in the associations' regime. After his release from jail in 2003, Metin's asylum status was withdrawn by the German authorities and finally he was deported to Turkey. For a long time already, Turkey demanded his extradition as he was accused of high treason. The deportation was finally executed though a legal appeal at the Higher Administrative Courts (Oberverwaltungsgericht) was still pending. Altogether, it is difficult to tell how many religious extremist have been expelled and where to, because deportations are often organized and executed by the German Länder. But following newspaper reports quite some supposed extremist have already been deported on the basis of these new possibilities.

Obviously, also in Spain it is possible to deport suspected terrorists, though no new law was necessary here. According to the Interior Ministry a Moroccan citizen was deported in 2004 on the ground that the person constituted a risk to national security. Interestingly the information sustains, that he was deported because there was not enough substantiated evidence to bring the case before the Spanish courts. Though this possibility legally existed for a long time in Spain, this seems to be the first case it has been applied.

Moreover, a new law on public security in Spain introduced 'automatic expulsions' when an irregular migrant is penalized for offences leading up to six years of imprisonment. In cases of penalties superior to six years, expulsion is exercised when two thirds of the punishment is accomplished. Additionally the law introduced the possibility to detain a person in an Internment Camp, when he or she is subject to a trial that could lead to expulsion, i.e. when related to irregular residence, support for clandestine migration, activities against the public order or the constitution of a security risk. With this, the person can be detained before the decision has been taken whether she or he will be expelled.

In the United Kingdom the Terrorism-Act also brought the possibility to deny any further stay and allow for deportation for suspected international terrorists. But the most striking measure and also the most controversial the UK took, was the so called 'indefinite detention'. A person, when being a suspected terrorist, who could not be deported for different reasons should be kept in detention for as long as necessary. This caused severe conflicts with the European Charta of Human Rights, and the British law explicitly derogates parts of it. In December 2004 the UK's Highest Court ruled that detaining foreign terrorist suspects without a trial broke human rights law. They ruled in favour of nine appeals of detainees which had to be released.

### ***Withdrawal of citizenship or residence permission***

The British Nationality, Immigration and Asylum Act from 2002 contains the possibility to take away British Citizenship if a person has done anything seriously prejudicial to the vital interest of the UK. In Germany as part of the security packages in 2002 new reasons for the denial of the granting or renovation of residence permissions has been introduced. If a person constitutes a risk to national security, participates in unconstitutional or violent activities or publicly calls for them or is member of an organisation that support international terrorism, permission for residence will be denied. Additionally, persons which have been denied residence permission on that basis will be automatically deported, which also includes those, who made wrong reports on these questions before the German authorities.

### ***Strengthening controls on access to the territory and to membership***

Many new rules have been introduced as to strengthen control on access to the territory, to the crossing of borders and concerning requirements for visa as well as citizenship and residence permissions. These include many technical improvements concerning the detection of false documents or unauthorized border crossings at airports, harbours, land and coastal borders. Carriers are increasingly obliged to take care for the completeness and correctness of the documents of their passengers and transmit data on these matters. These measures are partly deriving from the European level and partly from national legislations. In some cases measures were previously part of national legislation in one country and later elevated to the European framework in order to make them applicable in all other European Union member countries.

In Germany a regularly applied check for anti-constitutional activities at the intelligence services is now required before permission for residence or for naturalisation is given. This has been introduced as part of the Immigration Law 2005. Furthermore, when applying for naturalisation the applicant has to give notice of his criminal record in other countries.

### ***4. Conclusion***

What are the conclusions that can be drawn from the developments here analyzed? In order to sum up and point to crucial challenges deriving from recent securitization of migration policies, I want to address three issues. First, there is the fact that limitations of rights are occurring in the name of security demands which have to be looked upon from their consequences as well. Second, as human rights principals are constitutive to liberal democracies, the limitation of rights has to be treated as a highly sensible issue using the broadest procedural legitimation possible. And third, I want to pose the question whether we might not need more refinement as regards to the solutions suggested. In the overall climate of threats and security demands, security measures are at least to some problems not the only or maybe not even the best answer after all.

Thus, my three points are to look at the consequences of limitations of rights, to look at the democratic procedures of those limitations, and to look at alternatives to a purely security-based approach.

### ***Looking at the consequences of limitations of rights***

In this section I want to discuss briefly the possible way in which the above described security measures might affect the rights of immigrants. The consequences of the newly introduced security measures on immigration and individual immigrants are naturally

diverse. Many people might not even be affected by them. Nevertheless in terms of principals they constitute limitations to rights potentially granted to immigrants on the basis of universal human rights.

The extensions in the realm of data communication and exchange are not easily foreseeable in their consequences; especially when different mechanisms might be merged when applied to an individual person. When somebody becomes suspect in one case, then other mechanisms might contribute to his or her overall consideration via different categories. For example belonging to a certain religious group which is under surveillance might uncover the irregular residence status of a person, thus allowing for his or her deportation which under different circumstances would not be executed, but as appeal rights are limited as well, the deportation might be executed before the procedure is closed.

More directly visible and also most existential are effects that directly endanger the living conditions of a person, i.e. non-refoulement and the right to live in a family.

Non-refoulement is one - if not the - basic principal of the Geneva Convention of 1951 and also of the European Charta of Human Rights. It prohibits sending people back to their country of origin when they are threatened with violence there or their life would be in danger. Once procedures are speed up and appeal rights cut back this principal might get harmed, especially when the emphasis is on the risk this person may constitute rather than on the rights applicable to every human being. Also other rights that serve as a protection to the person might not unfold their strength as they can not appropriately brought in during these procedures. In some cases new measures or the more straightforward application of existing ones, has led to the deportation of people to countries were they have never been before, on the basis that they are citizens of these countries. This happened mainly with second generation immigrant youngster which participated or were involved in criminal activities. The latest call in Europe to expel these young criminals has been voiced by the French Minister Sarkozy. He demanded to expel those who participated in the recent riots in the French banlieus. Germany already did expel a young Turkish man who was convicted for numerous offences, born in Germany, with a regular residence status. And a recent example from the Netherlands shows that at least in the case of dual nationals, the citizenship of the host country, the Dutch in that case, can be withdrawn, in order to expel a person to the country he or she comes from, which for an exclusive Dutch citizen would have been impossible. In Spain and probably in other countries, people suspected of having relations to terrorist networks and organizations have been deported on the mere basis of this suspicion. Though even if being convicted criminals those persons also have rights, related to their living-context, their identity, the right to life in a family, even when being in jail. Though there are at the

moment not so many cases all together, this still constitutes a severe problem on the principals of rights and it is a strong discourse in Western Europe, which's final outcome remains unclear. The space for counterbalancing fundamental rights has been narrowed considerably with the manifold measures and individual treatment has been limited. In Spain for example, the substitution of punishment by deportation was possible before the 2003 reforms, but this belonged to the competences of a judge, giving more space for considerations on circumstances, specific conditions and countervailing rights. Now it is an automatic application.

### ***Looking at the democratic procedures of limitations of rights***

The restriction of fundamental rights is a sensible issue. They can only be restricted in favour of other fundamental or constitutionally guaranteed rights or values. Therefore political philosophers demand a highly sensible treatment of these issues. The limitations of rights have to be carefully considered and backed up by the highest procedural standards possible. This is due to the need to give consideration to as much positions and potential consequences as possible. One difficulty with the newly perceived threats of transnational terrorism, organized crime etc. is that they are more diffuse and more risk-related than conventional policy issues were. It is part of their nature, that certain consequences can not be foreseen with certainty. This adds to the need to careful treatment (Gusy 2004). Furthermore in relation to transnational migration non-members are affected. As these are formally not represented in the parliamentary discourse, the deliberation process must allow for potential arguments in their favour, giving political and social actors the possibility to voice their arguments (Benhabib 2004). From these three factors, the importance of fundamental rights for democracy, the uncertainty new security issues carry and the fact that these measures apply to non-members, follows that there must be extensive parliamentary discussion and participation of different political as well as social actors.

One of the problems of the security measures we observed empirically is the way they have been treated. Especially the security measures taken as immediate responses to September 11 show a poor record of democratic quality; many voices demanding more comprehensive and more balanced treatment have been marginalized giving parliaments hardly any time to consider and prepare for responses. Additionally the climate of fear limits areas of contest.

### ***Looking at alternatives to security***

Looking from a speech act perspective Ole Weaver (Waever 1995) demands to ask for the characteristics of security as compared to other terms. He asks for the particularities of addressing a specific problem in terms of security and to consider whether other modes of dealing with it would be more appropriate. The fact of security personnel addressing more and more issues within their institutions and thus providing a specific vocabulary, specific solutions and instruments has been considered by IR-scholars and by migration researchers and alike. These situations seem to limit the possibilities to address an issue from another angle (Waever 1995; Bigo 2001; Guiraudon and Joppke 2001).

For the European migration policy this has been the main argument to explain why in the early phase of its development the focus was on control. Security officials were dominant in the fora where European migration policy took shape, starting outside the EC/EU-framework. There the focus was on international crime, terrorism and the protection of external borders. This shaped very much the perspective and solutions of migration policy on the European level and it still has its influence (Lavenex 2001; Guiraudon 2003).

Thus it is necessary to remind, that there are other perspectives certain problems can be addressed from (Cholewinski 2000; Bigo 2001). With the shift to securitization in a climate of generalized fear many things merge into this perspective or move into its shadow, not leaving any alternative to differentiate or address problems in other terms. Still for many issues a different, more rights based focus might be more adequate. Concerning irregular migration which is now very much under the focus from a security angle, many international conventions and communications from the UN, ILO or the European Parliament on the protection of the human rights of irregular migrants have not been implemented or even ratified. But looking on irregular migration from a security perspective only leaves many people without necessary protection and it might not lead to the goal in focus, i.e. preventing and combating irregular migration. Thus for example an emphasis on voluntary return instead of expulsions is widely regarded as the “most dignified and least costly return option” (Cholewinski 2000: 399). Thus the process of democratic deliberation must also include the consideration of the specific approach taken to individual issues, i.e. whether a security-based focus is the most appropriate at all.

As we can see, the threats to security, but also the measures taken provide many challenges to modern democracies. The national democratic constituency has any right new problems and look for new solutions. But it has to do so in legitimate ways and in respect for the principals for human rights, which are equally constitutive to them.

## **References**

Benhabib, S. (2004). *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge, UK, Cambridge University Press.

Bigo, D. (2001). *Migration and Security. Controlling a New Migration World*. V. Guiraudon and C. Joppke. London, Routledge: 121-149.

Cholewinski, R. (2000). "The EU Acquis on Irregular Migration: Reinforcing Security at the Expense of Rights." *European Journal of Migration and Law* 2: 361-405.

Ette, A., M. Fauser, et al. (2006). *Migration Control, Security and Immigrant Rights in Europe*. TransState Workingpaper. Bremen.

Faist, T. (2002). "´Extension du domain de la lutte´: International Migration and Security before and after September 11, 2001." *International Migration Review* 35(1): 7-14.

Faist, T. (2005). *The Migration-Security Nexus: International Migration and Security before and after 9/11. Migration, Citizenship and Ethnos: Incorporation Regimes in Germany, Western Europe and North America*. M. Y. Bodemann and G. Yurdakul, Palgrave Macmillan.

Freeman, G. P. (1998). *The decline of sovereignty? Politics and immigration restriction in liberal states. Challenge to the nation-state: Immigration in Western Europe and the United States*. C. Joppke. Oxford, Oxford University Press: 86-108.

Geddes, A. (2001). "The Shift to Europe: Explanations for and Implications of the Development of EU Migration Policy." *Swiss Political Science Review* 7(3): 106-113.

Gerstle, G. (2004). *The Immigrant as Threat to American Society: A Historical Perspective. The Maze of Fear. Security and Migration after 9/11*. J. Tirman. New York, The New Press: 87-108.

Gillespie, R. (2002). *Política exterior y de seguridad de España. Anuario Internacional CIDOB 2001*. CIDOB. Barcelona, Spain, CIDOB.



Guiraudon, V. (2000). "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping." *Journal of Common Market Studies* 38(2): 251-271.

Guiraudon, V. (2003). "The constitution of a European immigration policy domain: a political sociology approach." *Journal of European Public Policy* 10(2): 263-282.

Guiraudon, V. and C. Joppke, Eds. (2001). *Controlling a New Migration World*. London, Routledge.

Guiraudon, V. and C. Joppke (2001). *Controlling a New Migration World*. *Controlling a New Migration World*. V. Guiraudon and C. Joppke. London, Routledge: 1-27.

Gusy, C. (2004). "Geheimdienstliche Aufklärung und Grundrechtsschutz." *Aus Politik und Zeitgeschichte*(44): 14-20.

Habermas, J. (1992). *Faktizität und Geltung*. Frankfurt a.M., Suhrkamp Verlag.

Hansen, R. and M. J. Gibney (2003). "Asylum Policy in the West: Past Trends, Future Possibilities." Discussion Paper 2003.

Hollifield, J. F. (1999). *Ideas, Institutions, and Civil Society. On the Limits of Immigration Control in Liberal Democracies*. 13: 59-94.

Joppke, C. (2001). "The Legal-Domestic Sources of Immigrant Rights. The United States, Germany and the European Union." *Comparative Political Studies* 34(4): 339-366.

Lavenex, S. (2001). *The Europeanisation of Refugee Policies: between Human Rights and Internal Security*. Aldershot, Ashgate Publishing Limited.

Lepsius, O. (2004). "Freiheit, Sicherheit und Terror: Die Rechtslage in Deutschland." *Leviathan. Zeitschrift für Sozialwissenschaften* 32(1): 64-88.

Lijphart, A. (1999). *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*. New Haven, London, Yale University Press.

Ortega, A. (2002). "Una presidencia alterada." *Política Exterior. Estudios de Política Exterior* XVI(88): 63-75.

Powell, C. (2003). Política exterior y seguridad de España. Anuario Internacional CIDOB 2002 (Online Version). CIDOB. Barcelona, Spain.

Soysal, Y. N. (1994). Limits of Citizenship. Migrants and Postnational Membership in Europe. Chicago, America, University of Chicago Press.

Waever, O. (1995). Securitization and Desecuritization. On Security. R. D. Lipschutz. New York, Colombia University Press: 46-86.

Weiner, M. (1993). "Security, Stability, and International Migration." International Security 17(3): 91-126.

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