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The GCSP policy brief series publishes papers in order to assess policy challenges, dilemmas, and policy recommendations in *all aspects* of transnational security and globalization. The series was created and is edited by Dr. Nayef R.F. Al-Rodhan, Senior Scholar in Geostrategy and Director of the Program on the Geopolitical Implications of Globalization and Transnational Security.

Editorial of GCSP Policy Brief No. 10 Ethics, Civil Liberties, Globalization, and Global Security

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Review and Critique

Since it became known that the United States (US) National Security Agency (NSA) was monitoring both US citizens and communications with individuals from around the world in order to better prepare themselves for future attacks in the “war on terror,”¹ the world has re-focused itself on the debates between civil liberties, ethics, and transnational security. At what level can states monitor citizens within its own borders? What types of information are they able to acquire and hold about their own citizens residing in other countries as well as individuals communicating with contacts in the US, regardless of their country of origin? The debate stems from the role that various legal institutions must play in these circumstances and where governments must be accountable for the level of surveillance that they pursue in their quest for national security.²

While this issue can be understood in a number of contexts, it has been raised most recently due to the global war on terror. Dr. Andreas Busch³ centers his arguments, therefore, quite correctly, around this very issue. As Dr. Busch notes, governmental justification for this level of monitoring stems directly from the type of threat that transnational terrorism poses. It is not a threat that is concentrated in its targets; rather, it is very global in its reach and target zones, making it very difficult to track. In addition, transnational terrorists aim to spread fear through civilian populations by indiscriminately targeting them in their daily lives. Consequently, responses have developed both on the national and international levels.⁴

It is, therefore, not surprising that a number of policy dilemmas have surfaced at the state level. Although it has always been critical for states to monitor the activities of proven or potential criminals discreetly, today’s issues center around governments (in this case the US, although it is not the only country to implement these types of measures) avoiding proper judicial oversight channels, excusing their flouting of law with claims of new executive powers and unprecedented requirements for speed and efficiency. The Bush administration, by ordering these surveillance techniques, overstepped the legal requirements of the Foreign Intelligence Surveillance Act (FISA) of 1978, which was designed to protect citizens from unlawful warrantless surveillance.⁵ Despite laws such as FISA, in reality, the current *modus operandi* of some governments, particularly the US, in this case, has been to arrest individuals who fall largely under the prosecution threshold. Consequently, these individuals find themselves under arrest in places such as the detention facility in Guantánamo Bay, Cuba, without a constitutionally-mandated due process, such as being officially charged with a crime or being given access to legal representation.

The resulting questions center around what type of operations governments should be allowed to conduct in this manner and under what conditions and with what judicial oversight exceptions should be allowed. How should states be held accountable when they cross the

line? To what authoritative body or bodies should states be accountable and from whence will the support (both financial and political legitimacy) for these bodies be derived?

Dilemmas and Recommendations

It is important to note that in the development of these dilemmas and recommendations, some of the seeming dilemmas may not appear as such. In fact, part of what makes each of these dilemmas gain such a status is the way that the problem is perceived and, therefore, handled in the state apparatus, rather than through the presented statement itself. Keeping this point in mind, we present the following challenges and recommendations as the means for states to pursue their national security objectives, but in a way that preserves basic liberties and civil rights.



The protection of the state versus the protection of the individual is a dilemma which has been more recently debated, also in terms of civil liberties and ethics. The term "ethical states" seems like a concept that could never be used in today's modern discourse. However, it is a

concept and a norm that is vital and must be maintained if there is to be credible stability and security within the international system.

In most cases, elected officials and policymakers would like to protect their populace and democracies. Too often, initial attempts to protect the populace are not well thought out; over-reactions, scapegoating and anti-democratic, “quick fix” approaches are not uncommon in a state that perceives itself as under attack. Unfortunately, this is costly in terms of democratic values in a pluralistic society. This also becomes problematic when political leaders would like to (or have to) identify various suspects and maintain this group without subjecting large numbers of people from being alienated, tracked unnecessarily, and treated as suspect, purely on the basis of their appearance, culture, ethnicity, or religious affiliation. The state has at all times a clear responsibility to protect the larger, unfairly targeted group, despite the possibility that a small minority of criminal suspects may hide within this larger but innocent group.

Human security must take precedence at every level, because without security on the individual level, there can never be true state security, at least not in a democratic state. States should encourage and therefore promote integration and transnational and transcultural cooperation. This could be supported by respectful and inclusive political statements on the part of the state. Statements such as, “If you are not with us, then you are with the terrorists”⁶ do little to promote further cooperative efforts toward understanding. The state should encourage assimilation of these groups and cooperative efforts at the local level within the relevant communities.

Naturally, there are times when a state has correctly identified a suspect and consequently needs to monitor activities in order to document and, one hopes, prevent potential or actual criminal activity. There is certainly justification at this juncture for surveillance and the creation of watch lists. However, there should be a legal check of all of these activities. Security services should be monitored and must be required to adhere to strict oversight regulations in order to ensure that fair and legal processes are reliably practiced.

Another looming problem for states has been the accuracy of their watch lists and the resources required to properly maintain them. This requires that states must consistently and constantly update and verify their lists in order to ensure that these lists remain accurate.⁷ States must also provide mechanisms that innocent citizens mistakenly placed on these lists may use to refute false or mistaken claims against them and regain their right to travel without needless harassment, unnecessary delays, and embarrassment.

While the prisoners in the detention facility in Guantánamo await their day in court, legal experts outside Cuba have adamantly opposed the Bush administration’s designation of

these prisoners as “enemy combatants” rather than prisoners of war. There is also much consternation about long detentions without, in many cases, any official charges or access to an attorney. While it is understood that these cases quite often involve individuals whose lives are at stake should they provide critical information for the prosecution, it does not eliminate the constitutional requirement for due process or excuse the need for the government to use proper judicial channels and procedures. Timely and special courts (provided that they are still monitored properly) should be created to ensure secrecy where necessary, but these courts should also guarantee legality and impartiality. No state is above the widely accepted international norms and conventions; it is imperative that each state vigorously apply, without exception, these standards in order to ensure the civil liberties and human rights of all individuals.

The state has an important role to play in providing security to its populace, but it must be regulated to ensure that the state itself does not become a threat. Responsible and thorough educational systems, responsible and accountable media services, and inclusive political statements should work to separate the guilty few from the innocent majorities. When the line between a possibly guilty minority and an innocent majority becomes blurred due to a lack of clarity on the part of the state system, a dangerous situation develops. Instead of targeting all individuals in an ethnic or religious group that may indeed contain legitimate criminal suspects, the state should encourage acceptance, tolerance, and assimilation of that group into the larger population. In so doing, the state increases its ability to enlist that community's cooperation in keeping its members law abiding. The objective of such efforts should be to engender the new group's loyalty to its host country. Unless efforts to simultaneously promote assimilation and decrease alienation are undertaken, it becomes more difficult to separate those who wish no harm to the state from those that are potentially and actually dangerous.

Conclusion

Today, perhaps more than at any time in decades, states still find it difficult to properly balance required civil liberties and ethics against national and international security; too often, these concepts appear to exist in competition with one another. Policy makers and state officials must work harder to maintain those liberties that democratic societies hold in such high esteem in order to maintain the hearts of the people. Once people feel that even their own states consider them to be suspects – suspects no longer able to expect the due process required by their own country's laws and constitution – that state has started to slide down a slippery slope, a tendency that will be difficult to reverse. States must incorporate discipline into their systems and enforce rigorous checks and balances of each sector of their governmental apparatus in order to ensure security on all levels. Security checks and guarantees must also occur for those citizens who wish to visit certain countries; random checks should only be conducted fairly and respectfully, when appropriate. When this is required, states should maintain a professionalism and a level of respect that is in conjunction

with international norms and conventions. This way, states will build the respect and trust of those living within their borders and therefore work towards an even greater level of security along with the protection of civil liberties for all law-abiding citizens.

References

¹ For a look at the debates surrounding the leak of the NSA program and the Bush administration involvement, please see <http://www.cnn.com/2005/POLITICS/12/17/bush.nsa/> in addition to the related articles also listed.

² This became a public debate when it was revealed that President Bush had authorized the unwarranted monitoring of citizens shortly after September 11. For more information, please see J. Risen and E. Lichtblau, "Bush Lets U.S. Spy on Callers Without Courts," *The New York Times*, December 16, 2005, <http://www.nytimes.com/2005/12/16/politics/16program.html?ei=5090&en=e32072d786623ac1&ex=1292389200>.

³ For the brief in its entirety, please see, <http://www.gcsp.ch/e/publications/Globalisation/Publications/index.htm>.

⁴ *Ibid*, these arguments also appear in this publication by A. Busch.

⁵ For a review of FISA and the way in which the Bush administration has operated its wiretapping without warrants, including the justification for doing so, please see, "National Security Department: Listening In," *The New Yorker*, "Talk of the Town," May 22, 2006, at http://www.newyorker.com/talk/content/articles/060529ta_talk_hersh.

⁶ See "Address to a Joint Session of Congress and the American People – President Declares "Freedom at War with Fear," September 20, 2001, <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.

⁷ In 2004, innocent individuals were detained as a result of their names appearing on terror watch lists as they tried to enter the United States, raising concerns about these lists and their accuracy. See G. Taylor, "U.S. Terror Watch List Keeps Eyes on All Groups," *The Washington Times*, February 22, 2004, <http://www.washingtontimes.com/national/20040222-122717-6118r.htm>.