Ethical Norms in Enforcing Border Controls

Presentation

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by

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Attention:
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Part I – The Context

1. Introduction

This paper is concerned with the ethics of borders as applied to refugees. It will use Australia as a primary reference point, though the experience and practices of other countries will be woven throughout the text. Australia is used because it is on the cusp of moving into a much more liberal approach to detention, the major focus for examining the ethics of borders because detention is the most extreme measure used in stopping the movement of persons across borders for detention runs absolutely contradictory to the efforts to facilitate free movement of peoples. After some initial background on international population flows, and some conceptual analysis of the role of borders, and further sketches on how flows are managed, the second part of the paper will try to extrapolate the ethical principles guiding the governance of those flows from various reports and papers, again with a major emphasis on Australia as a key reference point in dealing with the issue of detention, if only because Australia has moved from the extreme position of mandatory detention to minimal use in just about a decade. Finally, since the dynamics of flows are far more determinant of what happens and, in any case, norms have to be adjusted to different contexts and situations, the paper will end with a menu of alternatives to detention and indicate examples of how a selection of them might be utilized to get the best mixture of institutional factors to best live up to the norms.

2. Placing Detention within a Larger Framework of Global Migration Patterns

There has been a dramatic increase in the worldwide movement of peoples since WWII as part of globalization ranging from forced migration movements through labour migration to tourist travel. The latter constitutes the largest source of movement internationally and the second largest domestically. In 1950, there were 50 million tourists; by the end of next year, 2010, if the economic tsunami had not struck, that total

was expected to rise to almost a billion, a twentyfold increase in sixty years and up almost 50% from 2000 when the number of tourists traveling internationally totalled 700,000 million. The second largest mobile group internationally and the largest domestically consists of labour migration: low skill temporary labour migration, medium skilled labour migration, the relocation of highly skilled professionals and the movement of students who have come to a state to take courses to upgrade their skills. The third type of flow includes those who arrive on a state's territory who wish to remain but come as a matter of right or charity with little to do with the pleasure of travel or the quest for work or to improve their skills as the prime motive. These include people who relocate to reunite with family, refugees who have been granted or who are seeking asylum[1] and those who have humanitarian needs. All three flows include both regular and irregular patterns, irregular because they arrive or stay on the soil of a state by evading or ignoring regularized channels of migration. For example, some migrants who come as tourists, as temporary skilled workers or students overstay their permitted duration of stay while others arrive in a state without the required documentation. Fishers who cross an international boundary line in the water constitute a form of irregular movement in order to work, but have done so in the irregular channel. Thus, Australia with a population of about 21.6 million, almost half of whom participate in the work force, receives over 5 million arrivals a year, the vast majority tourists, while almost 6 million Australian departures are recorded.

I put these figures forward to make the point that population flows of many categories are very large. Population movement not stasis has become the norm. In establishing regular channels through which that population flows, a main objective is to facilitate the movement and offer minimum impediment. There are paper impediments and physical impediments varying from the issuance of visas (universal in Australia except for Kiwis), extraterritorial processing, interdiction abroad or on the high seas, to detention facilities, the most extreme method of impeding the flow. Those facilities affect a very minute portion of the population on the move but occupy an inordinate proportion of attention relative to the numbers on the move, partially because detention facilities are so explicitly an interference with the right to move but, just as importantly, because detention is so exceptional to the norm. Thus, although detention affects a very miniscule portion of the dynamic of population flows, detention is central to how that flow is perceived and facilitated.

Note I wrote "facilitated" and not "managed" and certainly not "controlled". States do not control population movements. Through visas and different classes of entry they try to manipulate the sluice gates. Detention is the rare exception to facilitating flows because detention stops the flow of a very tiny proportion of that dynamic movement. I put it this way to stress that a department of migration (in Australia's case, a

[1] In the first half of 2008, 165,100 asylum claims were made in 44 industrialized countries and about 330,000 to 360,000 are expected for the full year. The first three countries receiving the most asylum claims are the USA (25,400 or 15%), Canada (16,800 10%) France (15,600). Australia had only 2000 claims. (UNHCR 2008, Asylum Levels and Trends," 17 October 2008, 3-5) At the average EU rate of 60 asylum seekers per 100,000 citizens, Australia would have to receive 12,000 rather than 2000 asylum claimants per year to match the EU average.

movement. Managing that movement to the degree that it does, should facilitate not impede flows even as the migrants are shunted through different modes of entry and perhaps .001% of that flow is impeded in its movement.

Other jurisdictions, such as those in Europe (with some exceptions such as Ireland), have much higher degrees of detention because, while free movement is facilitated for members of states in the European Community, outsiders enter the European space in much larger numbers and may be apprehended by police, labelled and illegal migrant and deported or become an asylum applicant protected by refugee asylum laws.

Thus, although this paper is about norms governing the use of detention, and although my expertise is in international ethics and not the behaviour of migrant flows, the stress in this analysis begins with the functional dynamic rather than the normative because the primary frame for looking at detention is *not* one of ethics but of not interfering with a dynamic movement underway. Stressing detention as an exception, as a last resort to be imposed for the shortest length possible, is far more a matter of interfering with the dynamic of that flow as little as possible as it is about justice for the individual traveller. The normative and the normal are synergistic in this case.

3. History

During the 1980s, western states experienced a tremendous increase in spontaneous arrivals of migrants who avoided the regular channels for entering a country, many to make refugee claims under the Refugee Convention. Among these irregular migrants were those who were not considered Convention Refugees, that is, those with a well-founded fear of persecution who had a right not to be sent back to their countries of origin. A number of countries introduced detention as a means of managing the influx. In Australia in 1992, a policy of mandatory detention was introduced for boat arrivals that ended in practice in July of 2008, but the law has yet to be repealed. Between 19 November 1989 and 1 September 1994, detention was limited to 273 days, but that time limit was removed in 1994. In Australia, the numbers of non-citizens held in detention declined after 2002. This decrease correlated with a decline in unauthorised arrivals both in absolute numbers and as a proportion of those held in detention. For in addition to irregular arrivals, detention was used for visa overstayers and those for whom their visas were cancelled subsequent to arrival. Unauthorized arrivals by air claimed refugee status at the port of entry. Unauthorized arrivals by sea consisted of two very distinct groups, illegal foreign fishers who strayed into Australian territorial waters deliberately or inadvertently and became short term cases, and "refugee" unauthorized boat arrivals who sought sanctuary in Australia for the long term.

The process of mandatory detention came into disrepute when misinformation was distributed that the Navy had intercepted long term "refugee" unauthorized boat arrivals in international waters, when Australian residents were mistaken for non-citizens

(Cornelia Rau and Vivian Solon[2]) and detained, and when non-citizens were detained for prolonged periods with no justification or explanation.

4. Facilities

States provide different types of facilities for detaining non-citizen migrants (NCMs) .[3] These include:

- Immigration Detention Centres (IDCs)
- ImmigrationTransit Accommodation (ITA)[4]
- Community Detention facilities (CDF)
- Immigration Residential Housing.(IRH)

In Australia, they include the following:
Immigration Detention Centres:

- Maribyrmong Immigration Detention Centre
- Villawood Immigration Detention Centre in Sydney[5]
- Northern Immigration Detention Centre
- Perth Immigration Detention Centre
- Three detention facilities on Christmas Island, Phosphate Hill currently empty (Christmas Island is located in the Indian Ocean very close to the Indonesian archipelago and relatively distant from the north-west tip of Australia)
- A new $400 million Immigration Detention Centre at North-West Point on Christmas Island[6]

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[2] Cornelia Rau, a German citizen and landed resident in Australia diagnosed with schizophrenia, received $2.6 million in February 2008 in compensation for wrongful detention for ten months in 2004-2005 first in the Brisbane Women's Correctional Centre and then the Baxter Detention Centre as a suspected illegal migrant; Vivian Alvarez Solon,, an Australian citizen who was forcefully deported to the Philippines in July 2001, and whom the department recognized as having illegally deported her in 2003 but did not inform her family at the time, received $4.5 million. Cf. Palmer (2005) and Comrie (2005).

[3] For example, Italy has 10 detention centres called Centri di Identificazione ed Espulsione: Lombardia (112), Piemonte (92), Fruili V. Giulia (136), Emilia Romagna Bologne (95) , Emilia Romagna Modena (60), Lazio (300 + 60), Puglia (196), Calabria (75) Sicilia Trapani Milo (120), Sicilia Trapani Serraino Vulpitta (57) and Sicilia Caltanissetta Pian dei Lago (96) for a total of over 1200 places.

[4] In Europe they are called CETIs, (Immigrants Temporary Holding Centre) and are often located on extraterritorialized national soil as in Ceuta and Melilla in Spanish territory next to Morocco but designated as non-state territory. Melilla has a capacity for 480 (but held 1650 on 6 October 2005) and Ceuta a capacity for 700. The vast majority of detainees are irregular economic migrants Cf. EU Parliament 2006.

[5] The Australian Human Rights Commission has repeatedly recommended the demolition of Villawood. Cf. AHRC 2008 immigration detention report, 4.
http://www.hreoc.gov.au/Human_Rights/immigration/idc2008.html

[6] The AHHRC 2008 report described the new facility as "a formidable high-security facility that the Commission believes should not be used to hold immigration detainees." (p. 4) The *Sydney Morning Herald* on 28 December 2008 reported a dramatic increase in Christmas Island detainees as the new Detention Centre prepared to receive 70 more boat people, almost doubling those detained in 2008. In the previous week, 37 detainees were taken to the island and the week before 44 were transported there so that what was once an unused facility in one month held 113 people, with the balance made up of 28 allowed to move freely on the island – holdovers from 2007 – while 29 "refugees" and 1 boat crew member lived in the construction camp for the North-West Point Detention facility. The 151 seized in December represented the entire number of irregular migrants intercepted at sea in three boat arrivals in 2008, on 30 September, 6

Transit Facilities

- Immigration Transit Accommodation Facility in Melbourne[7]

Community Detention Facilities

- Motel facilities in Darwin to house juvenile non-citizen fishers found in Australian territorial waters
- A home in Perth used for community detention

Residential Housing

- Residential housing in Sydney adjacent to Villawood
- Perth residential housing units

5. Rationale

Detention facilities are utilized for a number of purposes; as a segregated facility to assess health risks from serious communicable diseases, to house security risks and as a retention facility while health checks are undertaken, identity issues settled and security and criminal risks ascertained. Given the mixture of Afghans, Iranians, Iraqis, Sri Lankans and Indonesians on Christmas Island, this is no easy task, especially when some of the detained non-citizens suppress information or provide contradictory or fraudulent information. The decline in unauthorised boat arrivals between 2002 and 2008 with a sudden upsurge at the end of 2008 may either indicate that the Howard government deterrence strategies worked when combined with increased surveillance and interdiction as well as cooperation with the Indonesian government.[8] Organized smugglers and the use of Indonesia as a transit and stepping off point may increase if Australia is viewed as relaxing its conditions for illegal arrivals.[9]

6. Numbers

In a three year period between 2005 stretching into 2008, an average of 4,650 persons released each year from detention were removed from Australia while an average of 419 annually were granted substantive visas while an average of 356 were granted bridging visas and released from detention effectively on their own recognisance. The most significant changes were in the latter as the use of bridging visas declined from 672 to 324 and then to 71 in three successive years with no apparent explanation. It seems clear that one of the thrusts of the IDA Parliamentary Report is to reverse this trend and enhance the use of bridging visas. During 2007, of the people in detention 29.1% (423)

October and 20 November, well down from the 9500 boat arrivals between 1999 and 2001, followed by 5860 arrivals in 2002, 4300 in 2003, 3100 in 2004 and 3970 in 2007.Cf. Ronan O'Connell, "Increase in Christmas Island detainee Numbers".

[7] To call a centre a temporary transit facility can be very misleading. For example, the notorious Lampedusa facility in Italy is called a "temporary stay and assistance centre", a "clearing station" and an "initial assistance centre" for undocumented migrants when it is, in reality, a very overcrowded centre for forcing irregular migrants to Libya. It is an identification and expulsion centre. (Andrijasevic 2006/2007.

[8] Cf. Babacan and Babacan (2008), Babacan and Briskman (2008) and Briskman (2008) for a review of detention from the angle of human rights versus a punitive approach..

[9] IDA 2008, Appendix C, 145.

arrived by boat, 9% (423) arrived by air, 27% (1232) were foreign fishers, 42% (1865) were overstayers and 21% (965) were other.[10]

7. Risks to the Migrant and the State

In the traditional role of the state to protect its citizens, a number of risks must be considered – security risks highlighted by 9/11, criminal risks, health risks and risks to the integrity of the management of the migration itself if a pattern of flaunting its requisite norms and practices develops and becomes entrenched. As we shall see, the security threat has proven to be extremely slight and the risk of criminal entry is also limited. More significant is the need to screen for health risks including: lack of immunisation; threats from new resistant as well as old strains of tuberculosis, sexually transmitted diseases, chronic conditions such as failing kidneys, and those who pose a risk to the Australian community from contact with cholera, plague, rabies, severe acute respiratory syndrome, highly pathogenic avian flue, yellow fever, smallpox and viral hemorrhagic fevers. Perhaps the greatest challenge to the system does not come from security or criminal risks or threats from communicable diseases, but from identity problems from those who arrive with fraudulent documentation or no documentation, for without being able to establish their identity, removal becomes very difficult and the whole process of entry and removal is threatened by the current bureaucratization of international migrant flows.

However, there are other risks to the state when detention is relied upon to deal with the above risks. Up until the end of 2008, the Australian Commonwealth Ombudsman and DIC identified a potential risk of legal liability for unlawful detention in 193 cases.[11] On the other hand, the greatest risk is to the irregular migrant. Information should be available and widely distributed in multiple relevant languages to warn potential migrants of the dangers of irregular migration.

8. Conceptualizing Borders

I will end Part I by conceptualizing our understanding of borders for without undertaking such a task, it is difficult to put forth an ethic of borders. First, there is the issue of what constitutes a border? I suggest we undertake the task from two different starting points, though, as we shall see, these two starting points do not exhaust the conception of a border. The first starting point is from the conception of the border as an edge, a boundary.

There are at least four versions of boundary borders.[12] The first is of a two dimensional line on a map which demarcates moving from one jurisdiction to another as in the case of a municipal border or the border between states in the USA or the Commonwealth of Australia or provinces in Canada. The borders around continental political states in the EU aspire to be two dimensional boundaries. They can be crossed at

[10] IDA 2008, Appendix C, 147

[11] "Immigration Detention in Australia [IDA]: a new beginning," Canberra, 2008, 2, 11.

[12] Cf. Acuto 2008 who offers a simpler three version typology.

will even though each side of the border is governed by a different political jurisdiction. Sometimes, as in the border between Ontario and Québec in Canada and between states in Europe, such a border will mark a difference in cultures or a difference in the way the welfare state has been constructed or a number of other subtle and not-so-subtle political differences. But the border remains two dimensional because it does not act as a barrier to the flow of humans.

A second type of boundary border is that of a wall or fence, a three dimensional border that serves as a weak or strong barrier, depending on its physical construction, to the movement of peoples across a border. In such borders, gates appear along the wall or fence to permit entry or egress. Such boundary borders need not align with the political border. There are benign versions of such borders as when the gate is placed on each side of a bridge between political states though the border division is at the centre of the bridge. The political border between Canada and the United States may be at the centre of the Peace Bridge at the eastern end of Lake Erie at the mouth of the Niagara River between Fort Erie, Ontario and Buffalo, New York, but the gates are located at each end about a kilometre from the political dividing line. The border then is more than a mile thick but since it is the first border between Canada and the United States with an E-Z Pass facility, the border has also become for some a virtual rather than a real barrier.

There are two other versions of barrier borders. In one, the thickness is placed on the land of the more powerful neighbour as in the wall being constructed between the United States and Mexico or the doubled fence between Spain and Morocco at Melilla and Cueta. Thus, in the political Spanish enclave in Northern Africa, a doubled very highly fortified and militarily guarded fence with watch towers, noise and motion sensors has been constructed around Melilla. In 2005, a third perimeter razor-wired 3 metre high 11 km. long half billion dollar fence was constructed so that if someone climbed over the outer fence, the irregular migrant entered a no-mans-land, a territory under Spanish political control but politically considered as still international territory, though regular military patrols drive over the road between the outer and the middle fence.[13]

Morocco has its own very thick barrier, the 2500 long sand wall or bern dividing Morocco from the Polisario-controlled territory between the bern and Morocco's eastern and southern political borders in the territory claimed and controlled by the Polisario National Front who have fought for decades for Western Saharan independence for their Sahrawi Arab Democratic Republic. Thus, thick borders differ in functions, the Melilla border to keep out African migrants, the Moroccan bern to keep out "rebels" or "freedom fighters". These thick barrier walls have that their historical echoes in the Great Wall of China to keep marauding nomads out of ancient China, the Antonine Wall in modern day Scotland built on the northern frontier of the Roman Empire and then Hadrian's Wall further south between Wallsend on the Tyne River running 80 km. to Bowness-on-Solway. There are many variations of such barriers: the separation barrier between South and North Korea, the 300 mile-long electric fence between Botswana and Zimbabwe, the 20 km. fence between Brunei and Limbang and the Chinese barrier started in 2006 between China and North Korea as well as the internal barriers between the mainland

[13] On 30 September 2005, five of 700 migrants were killed when they stormed the barrier at Cueta..

portions of Hong Kong and Macau and the rest of China, the barriers that India is building on the Bangladesh, Burmese and Nepal borders.

In another version of a thick barrier, the fence or wall is placed on the territory of the other side as in the Separation Barrier between Turkish and Greek Cyprus, and the one built by Israel on the West Bank. In such cases, the walls or barriers are built to keep out military incursions or terrorists, but they often are or are interpreted as aiming to establish new political borders in cases of disputed claims and where a permanent border was never established.

In addition to two dimensional and thick borders of various kinds either on one's own territory or that of an adjacent polity, there are also permeable borders. These exist even between countries that enjoy a Cold Peace as in the Sinai border between Egypt and Israel crossed by refugees and illegal migrants from Africa, drug traffickers and smugglers of people and goods. The border between Rafah and the Gaza strip with its large number of underground tunnels represents another very permeable border. There are many examples of permeable borders around the world and they are often more common than solid borders whether thin or thick. The most common permeable border is that which surrounds states where there are bodies of water. In that sense, Australia as an island continent has perhaps the most permeable of water borders, protected only from its distance from most other land masses except on its northern frontier.

However, in the modern world, the most interesting border is not the old fashioned material border , whether thin or thick, whether on one's own territory or that of another nationality, or whether porous and permeable or relatively impermeable except at controlled entry and egress points. It is the virtual border. The border does not define an edge or a frontier but nevertheless retains the political dimensions of control sand regulation, where the power of the state is exercised to control the movement of peoples and goods, ideas and modes of communication.[14] Instead of a land or water barrier, virtual borders are concerned with control of entry and egress by air and thus has an ethereal quality. The most extreme virtual border is the one that controls internet traffic and telephonic communication and the movement of ideas. However, I will focus on .airports concerned primarily with the movement of people and their goods.

The airport is not a territorial border but nevertheless international airports serve the contemporary globalized world as our most important hubs for fostering mobility. Extraterritoriality is often established in the heart of our territorial states at airports where arrivals can be sequestered and then turned back and sent home because persons do not possess the proper documents and are then considered as never having landed on the territory of the state. What makes the virtual border so notable is the degree of surveillance that permeates its geographical space, most notable not at the customs or immigration barriers set up at airports but at the security checkpoints. For the airports include multiple levels of entry via immigration and customs control and sometimes security patrols, but always the latter for egress. Airport virtual borders ironically not only have the most extensive surveillance but the most interesting varieties of

[14] Cf. Devadas and Mummery 2008.

transgression of the systems of regulation. Fishers may cross international maritime barriers and be towed out to international waters, but nowhere are the virtual controls more evident than at airports.

At airports, migrants whether as tourists, various sorts of economic migrants – students and business men, skilled or professional labour, refugee claimants are processed for entry or diversion. Though first encountered abroad and usually over the internet rather than at a foreign embassy, it is at the embarkation airport that the migrant comes into direct contact with various types of visa and the conditions attached to those visas – whether concerning time restrictions over length of stay or restrictions on accessing employment or training opportunities. However, these visas are mostly virtual in the Australian risk-based approach to permitting entry in which the profile of the prospective entrant is used to assess the degree of security, criminal or health risk posed by the person who presents him or herself at the immigration gate in accordance with a Movement Alert List (MAL).[15] It is at that point that an entrant will encounter a globalized Big Brother who knows that the applicant once took the rap for a minute amount of marihuana found on him or was once accused in his home country for assault even though the accusation was withdrawn because it was a case of mistaken identity. The virtual quality of the information is most noted because the file includes the initial charge but not the withdrawal of the charge or the reason for that withdrawal and a mechanism of juridical control is transformed into a sustaining sense of being in the clutches of others.

The airport entry is a virtual system for it extends everywhere, not only electronically where the visa application is made but at the departure airport or embarkation point where the check in clerk authenticates whether the traveler holds a valid visa, at the boarding line where a representative of the airline or of Australian immigration (an Airline Liaison Officer or ALO) may ask questions to ascertain whether the traveler is who s/he says s/he is and where passengers can be prevented from boarding an aircraft, and via the Advanced Passenger Processing System (APPS) that operates as a few second electronic feedback loop to ascertain the bona fides of the opportunity to enter a state or provides an alert to double check the prospective traveller. The traveller may be exposed to fingerprint checking or retinal eye scanning to check identity on arrival.

So the electronic tracking and surveillance system can turn the dream of a borderless globalized world into a nightmare as it did for Maher Arar[16] who ended up being sent by US authorities, when transiting the USA to return to Canada, to a Syrian prison where he was tortured for almost a year. However, contrary to the claims of some

[15] The MAL database tracks people and travel documents of concern - criminals, previous deportees or those banned entry, those who pose health risk, and those identified by the Security Referral Service (SRS) as well as details of lost, stolen and fraudulent travel documents.

[16] Maher Arar is a Canadian citizen who was travelling home from vacation and intercepted while travelling back to Canada by USA authorities and sent to Syria (the country of his birth) where he was imprisoned and tortured for almost a year before the Canadian government, largely as a result of a campaign led by his wife, Monia Mazigh, managed to obtain his release in October 2003. Cf. the O'Connor Commission Report on 18 September 2006. (www.ararcommission.ca).

anti-globalization critics, the virtual borders at airports are not intended to impede the transit of the multitudes but, using electronic data, do impede the transit of the few, whether protesters[17] or football bullyboys travelling from Britain to Germany for a match.. In fact it is at exit points that the insights of postmodernist critics, such as Foucault or Agamben[18], are most evident, for as we leave to travel from one airport to another, we are gradually stripped of our autonomy and control except over whether we want chicken or beef (on porcelain rather than plastic and with cocktails if we are travelling executive class), or which movie we will watch to distract us as we are increasingly restricted and confined from the movement we check in through security lines to the confined seat in the aircraft. With the exception of the few who are stopped and diverted, the arrival gateway is where we pass the portal to return to freedom and mobility.

Our concern in this paper is with the very few redirected into detention camps as the extreme other to the resumption of freedom. Instead this tiny minority is relegated to further confinement and restriction.

Part II - Norms Governing Detention

The First Report of the inquiry into immigration detention entitled "A New Beginning"[19] tries to establish criteria for release from immigration detention. A number of ethical criteria for a detention policy are indicated either implicitly or explicitly which I summarize below and expand upon subsequently, indicating the very few places where I take exception to the norms in the Report. In addition to clarifying those norms more precisely, expanding the dimensions applicable, such as in the use of maximax, maximin, minimax and minimin[20] second order rules for calculating "unacceptable risk", this paper is intended to more precisely state and clarify the categories of norms for determining when the use of detention is justified and how it is to be applied in a just manner. For justice for both Australian citizens and non-citizen are both required.

The Ethical Frame

1. Just Intent
2. Just Cause
3. Just Effect
4. Legitimate Authority

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[17] Cf. Luis Alberto Fernandez, *Policing Dissent: Social Control and the Anti-Globalization Movement*, New Brunswick, NJ: Rutgers University Press, 2008.

[18] For Giorgio Agamben, (*State of Exception*, 2005), the concentration camp, but detention facilities as well, are the epitome of this misuse of juridical power to reduce human existence to bare life (zoe) and life in the polis (bios). For Foucault, power was not essentially exercised within a framework of law, either legitimately or illegitimately, but biopolitically over the corporal body to incite, reinforce, monitor and optimize the forces of state control via political technology rather than juridical systems.

[19] "Immigration Detention Report: A New Beginning," Parliamentary Committee on Migration, 2 December 2008. http://www.guardian.co.uk/world/2008/dec/19/australia-immigration

[20] For example, a maximin rule seeks to maximize the minimum gain by ranking alternatives by their worst possible outcomes while a minimax rule seeks to minimize maximum loss. John Rawls employs these second order rules in his *Theory of Justice*.

The Ethics of Implementation

5. Evidence-based
6. Transparent
7. Accountable
8. Last Resort and Default Position

The Ethics of Evaluation

9. Reasonable Prospect of Resolution in a Reasonable Time Frame
10. Humane and Proportionate to risk

The Ethical Frame

1. Just Intent

There are various objectives that detention could serve. Detention could be imposed to punish people who try to use irregular modes of entry and as a mode of reinforcing and upholding standard regulations for entry. Detention can be used as a deterrent for those who want to enter Australia but are not those whom Australia wants to permit entry. Detention can also be used for domestic political purposes to advertise strength and determination and control of borders to protect the perceived national make-up of Australia and undercut the political platforms of rival parties running on a nationalist or ethno-nationalist agenda. These objectives are rooted in a realist premise that the function of the state is to serve and preserve the interests of its own citizens with variations in defining those interests.

The use or restrictions on detention can instead be directed at making a statement about the primacy of an opposite set of values – idealist ones in which the fundamental measure in the use of detention is respect for the rights and dignity of the other rather than serving the interests of Australians. Thus, when the first report of the Commission articulates its intent as ensuring a cultural change in the administration of Australia's decision- making and restoring public confidence in the justice and humanity of Australia immigration detention policy, these idealist goals become the raison d'être of the detention policy.

Any policy, including a detention policy, should both serve the interests of Australians as well as protect the rights and respect the dignity of those primarily affected by that policy, in this case, those detained. But these are boundary conditions for policy and not the objectives of the policy. When one or more of these boundary conditions are made the intent of the policy, they risk subverting the real goals of the policy. Thus, if detention is used to deter foreigners or to appease domestic ethno-nationalists, or if a restricted use is intended to advertise Australia's just and humanitarian identity abroad and/or appease the rights lobby domestically, then a distortion in serving its legitimate intent may take place.

What is the legitimate function of detention? To protect Australian citizens while respecting the rights of the detainee. Risks of spreading communicable diseases to the population must be quarantined.

What about potential security cases? One answer is to subsume migration under a security regime as the Americans have done in creating the U.S. Department of Homeland Security (DHS) at enormous cost to the government and much greater inconvenience to the average traveller to deal with a very few migrants who enter largely as tourists or on student visas to threaten the country. The cost of deterred tourism or business travel has not been accurately measured to the best of my knowledge, but there is a considerable evidence that it is high.[21] The implementation of the newly required Electronic System for Travel Authorization (ESTA) prior to traveling to the United States for all travelers from Visa Waiver Program (VWP) countries that was initiated in August of 2008 and that became effective on 12 January 2009 to facilitate business and cultural ties to improve efficiency in screening by pre-determining eligibility to travel prior to boarding a carrier was a very large step in putting out a welcome mat for international travelers.[22] However, the program has had far more serious adverse effects on countries with close relations to the US, particularly Canada. Since only one in four Americans carry a valid passport, and since passport offices in the USA and Canada were overwhelmed with expedited passport requests, Bill Connors, Executive Director of the National Business Travel Association opined that the system posed "a real threat to the ability of American business to successfully compete in international commerce."[23] Windsor across the border from Detroit lost half its American business -- visits dropped from 7.5 million in 1999 to 3.76 million in 2004. That is why it is important to contextualize security problems within the very much larger context of the huge dynamic of migration flows.

Australia has had very few national security cases in which detention was used to deal with the problem. The serious ones were the infamous unauthorised Iraqi arrivals, Mohammed Sagar and Muhammed Faisal[24], referred to in the First Commission Report ch. 2, p. 39) who were recognized as refugees but not allowed to land on security grounds by the Australian Security and Intelligence Organization (ASIO) that is charged with

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[21] The International Organization for migration estimated a 7% drop for 2003 for the United States. ILO: "Travel woes: tourism and travel jobs suffer new decline," *World of Work Magazine* 47, June 2003. http://www.ilo.org/wow/Articles/lang--en/WCMS_081307/index.htm. CNN reported that, "Travel industry leaders meeting in Washington Wednesday said they want the U.S. government to stop treating tourists like terrorists, and to take steps to reverse a steep decline in overseas travel to the United States that followed the September 11, 2001, terrorist attacks." 31 January 2007. http://www.cnn.com/2007/TRAVEL/01/31/international.travel/index.html These views were echoed by The U.S. Chamber of Commerce in its "Strategic Overview: Travel and Tourism Across America Initiative" in its efforts to facilitate travel while enhancing security. *www.immigrate**usa.us**/content/view/333/69/*

[22] In six months, the ESTA web-based system processed over 1.2 million applications, of which 99.6 percent were approved, most within seconds. Cf. Department of Homeland Security (DHS) "DHS Reminds Visa Waiver Program Travelers of ESTA Requirements Effective Today," 19 January 2009. http://www.dhs.gov/xnews/releases/pr_1231771555521.shtm

[23] Jane Levere, "Scrambling to Get Hold of a Passport," *The New York Times*, 23 January 2007. http://www.nytimes.com/2007/01/23/business/23passport.html

[24] Sagar and Faisal were two of 227, mostly Iraqis, on an Indonesian ship, the Aceng, approached Australian waters in an effort to apply for asylum, but the ship was interdicted by the Royal Australian Navy to prevent asylum seekers reaching Australia by sea under Operation Relex. The asylum seekers were transferred to the Australian warship, the Manoora, already carrying about 450 Afghani asylum seekers, and carried out to international waters where they were all denied the right to file refugee claims.

protecting Australians from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on Australia's defence system and "acts of foreign interference". Without questioning that a small but significant minority of some minority communities hold extremist views and an even smaller minority is prepared to support or even engage in "advocating violence, providing logistical or propaganda support to extremists, or travelling abroad to train with terrorist groups or participate in violent jihad activities,"[25] the threat from Australian citizens is miniscule and from foreigners even far more miniscule. When migration cases such as that of Sagar and Faisal, after being detained on Manus Island and Nauru for five years from 2001 to 2006, come to the fore, they appear more dubious still, especially when after a second security check of Muhammed Faisal in 2006 determined that he was not a security threat and Mohammed Sagar was accepted by Sweden. The enormous cost of the detention process. to Australia's moral capital as it was branded internationally as a detention country – though its subsequent record after this incident increasingly belied this inflated negative reputation – and to the liabilities possible from subsequent civil suits against the government, raise the question of the relative utility of detention without a reasonable basis in evidence for determining potential threats. The whole process raised questions about leaving it solely up to ASIO to make a determination of a security threat.

The other source of security threat is to civil society from those with criminal records held in detention, often delayed in the effort to arrange return with the country of origin or because of litigation by the individual detained. For some, there is a clear case of a serious criminal threat. For many others, the case is questionable. And for a group in between, the question is whether the risk is sufficiently great to warrant detention. Here, as I shall indicate, as with both health and security cases, the issue will become which agency has the requisite expertise and legitimate authority to make the determination re threat and risk. The suggestion has been made that it is the criminal system itself rather than the DIC that should make such a determination. I will revisit this issue under legitimate authority.

In addition to health and security (both to the state and civil society) threats, a third source of problems arise from migrants themselves who ignore the requirements and norms for entry and staying in Australia, thereby challenging the very integrity of the migration control system itself. This is an area where the DIC has the requisite expertise and the need to maintain the integrity of the system. Some issues of non-compliance are trivial and incidental to behaviour and the Standing Committee Report correctly focused on repeat offenders rather than student overstayers, students who failed to maintain a minimum academic standard or who took a side job contrary to the conditions of entry. Even for that group, the risk of absconding should be taken into consideration and alternative methods to detention – including regular reporting – might be employed. But it is also not clear why migrants who repeatedly break Australian rules should not be subjected to expeditious removal to be determined by an appropriate magistrate.

[25] Australian Government, ASIO "The Security Environment: Year in Review," 2007-08, http://www.asio.gov.au/Review/YearInReview.aspx

In sum[26], serving the interest of Australians while respecting the rights of all non-citizens provide boundary conditions for taking action against non-citizens, but detention itself should either take the form of quarantine as applicable to Australian citizens with respect to communicable diseases and should be the responsibility of the Department of Public Health. Detention for state security threats should be the responsibility of the Justice Department and the security intelligence apparatus. Determination of criminal security threats should be determined by the Parole Office of the Justice Department, but detention for those who abuse the system itself should be the responsibility of DIC subject to determination by an independent magistrate under a regime of expeditious removal for repeat offenders.

2. Just Cause

While Just Intent sets out the objectives of utilizing a specific mechanism of control for non-citizens entering Australian jurisdictional space, Just Cause is concerned with the requirement that the onus not be placed on the migrant to show why s/he should not be detained but on the state to prove why a person should be detained given the objective of detention. In putting forth the Just Cause Principle, the process of presenting the cause is as important as the substantive evidence put forth so that the non-citizen must have the right to be informed of the grounds for recommending detention, the right to representation and private consultation with that representative, and the right of due process without leading to delays. As for the substantive case, the specific authority making the determination must provide evidence in accord with published criteria for determination that it has cause to recommend and/or determine the use of detention. .Just Cause certainly insists that automatic mandatory detention in itself is an unjust provision.

3. Just Effect

While Just Intent takes into account the objectives for using detention and Just Cause for employing detention in a specific case, Just Effect considers the future risks to the system, to society and to the prospective detainee in a consequentialist risk calculus. The usual phrase employed is that a person should only be detained if there is an "unacceptable risk" to society. However, the targets of risk vary with the category of under which the non-citizen becomes a candidate for detention – society in the case of health and criminal risk, the state in the case of security risks and the system itself in the case of repeat offenders against the rules of the system itself. Further, there is the issue of risk to the mental and physical health of the potential detainee. Under Just Effect, the nature and severity of the risk must be taken into account as well as the second order rules for calculating that risk – maximax (a tolerance for high risk to both the potential detainee and to the relevant aspect of the state or society), minimax (an insistence on low

[26] CF. UNHCR Executive Committee Conclusion No. 44 that limits the use of detention for asylum seekers to verifying identity, determining the basis for an asylum claim. dealing with cases of missing, destroyed or fraudulent documents, and to protect national security or public order. There is no provision for using detention for health risks. See United Nations High Commissioner for Refugees, Executive Committee, *Conclusion No. 44 (XXXVII) - Detention of Refugees and Asylum Seekers* (13 October 1986). http://www.unhcr.org/refworld/docid/3ae68c43c0.html.

risk to the potential detainee but a tolerance of high risk to society) , maximin (an acceptance of high risk to the potential detainee and an insistence on low risk to society) or minimin (low risk to both the non-citizen and society) rules. Once suspects that minimin second order rules will be utilized but in cases of potential security cases it may be that higher risks to the non-citizen will be tolerated. Thus in using a calculation of the degree of risk to be tolerated and not tolerated, the second order rules for establishing the tolerance must be established. Then the risk itself must be weighed according to very specific criteria.

Risk entails assessing the probability of net harm to society relative to the non-citizen but in cases of health risk, the calculations are synergistic rather than polar. The point of calculating risk is to establish safety levels that generally minimize (depending on the second order rules employed) the exposure of society to the dangers posed by a non-citizen, but the criteria in cases of a potential health threat may be *absolute* minimums whereas in the case of risks to the integrity of the migration system, the criterion may be not be absolutely minimal but acceptable levels. Thus, even in accordance with a minimin rule usually applicable in environments of uncertainty where there are many unknowns, there are gradients that need to be clarified. Whether the risk is qualitative or quantified is secondary. It is more important that the evidence base be established for assessing risk in an environment of very incomplete information where the ability to quantify risk in a complex context of multi-variants will be very limited. Utilization of a prescribed algorithm will be rare. That is why the Committee is absolutely correct in insisting on clearly identifying the risk factors (number of incidents, severity, minimal critical mass, alternative recourses, modes of danger or risk, extraneous factors exacerbating risk, the particular assessment and past history of the agent) as well as establishing guidelines and regulations.

Two second order rules are applicable in requiring the risk to be "demonstrated":
(a) the onus of proof is on the government to demonstrate risk;
(b) the risk must be ongoing so that if the risk is only in the past, there are no grounds for detention, since detention is intended only as a protection tool rather than a punitive tool deterrence mechanism or public relations instrument.

What is required in addition is periodic evaluations of the criteria for assessing risk relative to actual results. Further, the individual authority for determining risk needs to be established in consultation or collaboration with an appropriate review committee (see legitimate authority). The expertise and experience required by that authority needs to be established.

One additional factor must be mentioned in assessing risk that has become so evident in the current worldwide economic crisis. Contrary to traditional risk analysis based on probabilities, small initial conditions can have a disastrous and massive effects totally out of proportion to the initial incident. This so-called "butterfly effect" requires attending to initial conditions. The principle has been applied to seeking to reduce crime by attending to graffiti in subways and to ensuring that employees do not take home paper clips and executives do not write off personal expenses as business expenses if we

want to maintain and retain the integrity of the overall system. Thus, it is insufficient to merely attend to "acceptable" risks when risks that are "under the radar" may have enormously disproportionate effects. Attending to this non-linear behaviour in all realms is crucial.

In the turbulent and uncertain world of migration movements, judgments have to be made with insufficient time for reflection. If enhanced normative behaviour is to be reinforced in determinations of non-citizen compliance with Australian norms, then the problem becomes how to blend norms with fuzzy logic and non-linear thinking in dealing with migration movements. For a determination to end interdiction at sea may indeed inspire a desperate individual in a faraway land to develop a high risk scheme to escape to Australia, a risk that is incalculable under any risk calculus either to benefit increased tolerance or to reinforce and strengthen enhanced vigilance. The latter may lead to the conclusion and a trumped up charge that "bleeding heart" norms themselves play a part in inducing irregular migrant flows, even to the extent of creating a tsunami assault of the Australian regulatory migration regime. Though it may be necessary to spot the black swan before migrants even begin to move, no predictive calculus of risk will identify such a possibility or its enormous implications for possible consequences. The point of evaluating decisions, even as norms are established and refined related to actual evidence, is to gain experience so that "deep risks" that cannot be accessed by a predictive lineal logic can be intuited. For the task of adumbration is not just a matter of a predictive calculus but, based on experience, to better foresee what DIC is facing and the conduct appropriate to a situation of hyperactivity where the usual norms guiding conduct prove ineffective.

In other words, establishing a predictive regime in dealing with irregular migration has its limits and may, at a certain point, have to give way to different frames for judgment.

4. Legitimate Authority

For health risks, quarantine to citizens as well as non-citizens. In March 2004, when an American college student returned from India to the USA, he was found to have measles linked to two other cases of importation of the measles strain. Departments of public health have a responsibility to effectively use quarantine and isolation to interrupt and halt communicable disease transmission. Since this is a problem as applicable to non-citizens as well as citizens, why should DIC involve itself in the issue? Why are these health problems not simply referred to Departments of Public Health for disposition with respect to the utility of using quarantine methods where quarantine is used to study, investigate and develop solutions as well as provide temporary protection for the public? Even though DIC may encounter such cases far more frequently as people who have lived in China for example at the time of the SARS (Severe Acute Respiratory Syndrome) outbreak had lived with SARS for a longer time than tourists when the epidemic first broke out in 2002, and persons with new strains of TB come from a limited set of countries, the central issue is one of alternatives. People from source countries with the potential to carry diseases that risk the health of Australians could be quarantined in

the country of origin or in a special facility as they once were. Today this is totally unacceptable, not only because of the relatively small risk relative to the high concomitant costs, but because it is unlikely to be applied to Australian tourists and skilled professionals returning from such areas, thus making the quarantine porous and ineffective, but also because it would interfere with the large flows of persons as tourists and economic migrants.

In the national security area, the whole process discussed above raised questions about leaving it solely up to ASIO to make a determination of a security threat for ASIO is unlikely to take into account the overall migration stream and the effects of increased security on general population flows. A complementary legitimate authority involving perhaps External Affairs to mediate between the security apparatus and DIC..

The other source of security threat is to civil society from those with criminal records held in detention, often delayed in the effort to arrange return with the country of origin or because of litigation by the individual detained. For some, there is a clear case of a serious criminal threat. For many others, the case is questionable. And for a group in between, the question is whether the risk is sufficiently great to warrant detention. Here, as with both health and security cases, the issue will become which agency has the requisite expertise and legitimate authority to make the determination re threat and risk. The suggestion has been made that it is the criminal system itself rather than the DIC that should make such a determination.

In addition to health and security (both to the state and civil society) threats, a third source of problems arise from migrants themselves who ignore the requirements and norms for entry and staying in Australia, thereby challenging the very integrity of the migration control system itself. This is an area where the DIC has the requisite expertise and the need to maintain the integrity of the system. Some issues of non-compliance are trivial and incidental to behaviour and the Standing Committee Report correctly focused on repeat offenders rather than student overstayers, students who failed to maintain a minimum academic standard or who took a side job contrary to the conditions of entry. Even for that group, the risk of absconding should be taken into consideration and alternative methods to detention – including regular reporting – might be employed. But it is also not clear why migrants who repeatedly break Australian rules should not be subjected to expeditious removal to be determined by an appropriate magistrate.

This paper has already suggested that although the DIC is the appropriate authority, subject to an independent review mechanism, for establishing the risk to the integrity of the migration regulatory regime, it is not the appropriate or legitimate authority for determining health risks, state security risks or criminal risks. Public health authorities, security services (subject to codetermination and/or review given past records of performance) and institutions in the justice system such as Parole Boards are more appropriate bodies who have the knowledge, norms and experience for assessing risks in their respective areas. In cases of great risk where the legitimate authority for assessing risk may be prone to take over defensive positions and give insufficient weight to the

risks of the non-citizen, it is critical that independent mechanisms of review be established.

The Ethics of Implementation

5. Evidence-based

The Parliamentary Committee Report and the ethical guidelines enunciated above repeatedly stress the importance of an evidence-based regime in dealing with non-citizens, particularly when resorting to detention in order to limit security threats. Evidence-based guidance is the most trustworthy source and foundation for making judgments concerning instituting obstacles to migration flows. The evidence must be qualitatively high – the best available and based on very credible sources. Not only must the quality of the evidence be appraised, but its utilization must also be ensured by actually evaluating the customary practices and the degree to which that evidence is employed in making judgments. Such evaluations must be used to establish standards or norms for both employing evidence and ensuring that the evidence is appropriately factored into judgments.

In employing evidence, three levels are relevant. The evidence must be collected by direct observation to establish a foundation for belief and, where possible, verified by independent observation. Second, those observations must be interpreted through appropriate categorization to establish what is being perceived. Third, on the level of understanding, the categorized evidence must be analyzed and constituted into generalizations, however provisional and conditional, that can be either checked and supported or falsified. Past experience is invaluable to both interpretation and understanding. Finally, though evidence on all three levels are necessary for judgments in determining outcomes for non-citizens, they are insufficient. That is why this paper sets forth other ethical criteria to assist in making such assessments.

Within the framework of evidence-based assessments, criteria need to be established setting out means of establishing a hierarchy of evidential reliability and witness credibility. Evidence from paid informants, especially those susceptible to blackmail and intimidation by intelligence services, is generally assessed as having less reliability than that which comes in from independent sources and verified by others. Evidence that is not subject to checks or means of falsifiability is suspect and accorded lower value. Since experimental evidence or blind testing is of little account, except perhaps in health risk assessments, the strength of individual pieces of evidence and the consistency of the evidence available are critical. Therefore, guidelines are important for assessing the value of different sources of evidence and the degree of relevance. In the end, in actual practice judgment based on experience may be as or more important than judgment founded on evidence.

Second order rules are thus appropriate in the process of assessing the evidence, such as ensuring due care for accuracy and a standard of reasonable prudence in interpreting the evidence and generalizing from that foundation. In establishing such

criteria, and in the temper of the times that have witnessed the growing legalized approach to such issues, given precedents in other areas and the legal suits launched against the department and the government for improper confinement, there is a good possibility that courts will establish more stringent standard than customary professional prudence of government bureaucrats by requiring that specific checks be observed for the acquisition, categorization and evaluation of evidence thus removing a great deal of flexibility in the attempt to require higher standards.

In establishing guidelines for an evidence-based approach, it is important to identify habitual defects in the utilization of evidence, whether those defects be in amassing the evidence while ignoring critically relevant data, interpreting or analyzing that evidence and infusing that interpretation with bias and generalizing from the data to ensure that relying on customary prudence does not lead to ignoring relevant evidence that was available and could have been accessed and determining that other evidence was faulty. Further, whatever the guidelines provided, they should not be applied rigidly and uncritically, but should be accompanied by a warning that immigration officials are expected to take individual responsibility for their decisions appropriate to the circumstances of the non-citizen migrant and exercise sensible reasoning and customary caution and discretion with a readiness to deal with each case on its merits.

6. Transparent

In all sections of government, transparency has to be institutionalized as a key instrument of good governance. The APCR is at its best in setting forth the various applications of the general principle of transparency applicable to workplace practices and regulatory policy in the administration of norms governing non-citizen migration. It is a clear example of a targeted transparency regime.[27] For at the heart of good governance is the obligation of government to legislate transparency policies to reduce risk that, in this case, would expose NCMs to detention. Public disclosure policies are part of a trend that complements efforts to reduce risks generally and improve performance of government officials. Public disclosure would not only be of benefit to non-citizens intent on coming to Australia but would presumably also improve the performance and effectiveness of officers in the DIC charged with making decisions.

However, transparency norms are insufficient in themselves; they must also work. The information must be used to influence NCMs' decisions on travel to Australia by taking account the possibility of detention as a risk factor as well as influence the way DIC officials make their decisions. Given the current dramatic economic downturn that has been brought about in good part by the failure to understand and disclose risks related to complicated derivative instruments and the more obvious attempts of irresponsible private sector officials to get around disclosure rules that began when Enron officials in its collapse in 2001 were revealed to have utilized fraudulent mechanisms to hide huge losses, the failures of transparency regimes have not yet fully culminated even when, more recently, men like Bernard Madoff and Allen Stanford are charged with having

[27] Cf. Archon Fung, Mary Graham and David Weil, *Full Disclosure: The Perils and Promise of Transparency*, New York: Cambridge University Press, 2007.

built financial institutions based on elaborate Ponzi schemes. Whether discussing the collapse of WorldCom and Tycos at the beginning of the twenty-first century or of Lehmann Brothers near the end of its first decade, in the realm of financial disclosure of profits and losses where it would seem most required, transparency regimes have not worked. Relative to financial institutions, transparency applied to non-citizen migration would seem to be a very minor issue, but making a transparency regime effective in this arena is critical to ensuring that a sovereign government can manage entry to the territory governed by that state in the best interests of its citizens while respecting the rights and dignity of the non-citizen migrant.

The normal response to an overall guideline on transparency is that governments cannot reveal too much. The more the merrier! However, when it comes to the application of such a general overriding guideline, different interests, ideologies and priorities restrict transparency to various degrees. It is of no use legislating full disclosure or as much disclosure as possible if one does not take account of whose flesh is gored by such rules and who will be prone to subvert their application. This is especially important in a context when specific governments – the Howard government in Australia and the Bush government in Washington – made secrecy rather than openness a cornerstone of governance so that a general culture of non-transparency was cultivated that undermined even existing norms and regulations.

Further, it is one thing to hold transparency as a standard instrument to hold officials accountable for their decisions and actions. The transparency bar is raised significantly when transparency is targeted in specific operations of government such as disclosing fully the grounds of risk of detention for NCMs. This is especially important in security cases where the results of a decision that an individual poses a significant risk to the security of the state has enormous repercussions on the lives of those individuals and can lead to prolonged and, in some jurisdictions, indefinite confinement.

Therefore, it is not only important to establish and publish disclosure policies and practices but assess those policies and practices in accordance with four second order norms that require clearly enunciating the specific purposes of specific transparency requirements and then assessing the way politics can play havoc with good intentions and distort their effects and effectiveness. Thus, the effort of the Parliamentary Committee to involve NGOs and to ensure the role of counsel, in addition to adding an additional protective layer for the non-citizen migrant, offers a proven route to ensuring that transparency is also implemented in practice and that the rules are not allowed to whither in their application over time.

However, in the real world, how can as complete a disclosure of the risk of detention inform an Iraqi in flight from his homeland whether or not he should pay smugglers to get on a leaky boat headed for Australia? For information in itself is insufficient. That information must be communicated in such a way that the knowledge influences choices. This is as true of the officials making the choice as of the non-citizen heading for an Australian point of entry. Unless the information provided influences action, and becomes embedded in the decision procedures migrants and immigration

officials make, they truly will not be worth the paper or the computer screen on which they are inscribed.

This section provides a more expansive list that includes the provisions mentioned in the First Report as well as additional ones:

- published criteria defining risk re immigration, not only re health, but what would constitute criminal activity and a security threat that would bar entry should be articulated and publicized
- detainees leaving detention should receive their health records and a health discharge assessment in a language they can understand with appropriate referrals for follow-up where appropriate
- clear and open guidelines and procedures for removal should be established and publicized
- detail and scope of procedures for applying those criteria need to be established
- involvement of NGOs in creating those new guidelines and procedures for removals is helpful
- publication of standards of information disclosure to detainees, including the reasons for their placement in a particular detention facility, needs to be undertaken
- detainees should be informed about alternative accommodation arrangements available and the conditions for accessing them, including community detention, alternative detention in the community, immigration residential housing and/or immigration transit accommodation
- given the rulings of Australian courts on information in health cases, standards on what a reasonable non-citizen migrant needs to know should be established; the criterion for the type and quantity of information can be what the detainee would regard as important in assessing all risks rather than the more limited criterion of what a non-citizen migrant would want to know in the circumstances or the even more restrictive and most frequently used standard of what reasonable immigration officials normally reveal to a non-citizen migrant
- DIC should share with counsel of detainee the results of reviews of decisions on removals

However, it is critical to weigh their effects. After all, NCMs have no way to access a comparative scale that will allow them to measure which countries offer greater risk of detention than others so that they can avoid such countries. Further, and much more significantly, transparency itself may be a leading indicator of a liberal regime less prone to incarcerate NCMs so that the transparency itself becomes an indicator that the non-citizen migrant is at less risk and might be more prone to take that risk and attempt entry to Australia. Government officials aware of such a propensity will be wary of implementing transparency rules and prone to subvert them lest they become inundated with higher numbers of NCMs given the likelihood of relaxed approaches to detention. The use of detention as a deterrent – even if misplaced – will have been lost.

Thus, in contrast to product and health safety issues, transparency policies in the migration area in reinforcing non-citizens to move towards minimal risk areas act similarly to other targeted transparency programs, but the outcome of attracting more of this type of non-citizen migrant to Australia is not the intended outcome of the policy. The interests of a producer of products and a consumer are ultimately congruent, but the interests of an immigration officer and a non-citizen migrant who is at risk are ultimately incongruent. What would happen if in product safety regulation we imagined the faulty product to be an imagined agent with the ability to make a rational choice? Thus, it is possible that a transparency policy can attract more individuals for whom detention would be utilized and, at the same time, create a backlash to the use of detention as an exception and a mechanism of last resort.

The key to success of a targeted transparency regime is how it is used by the non-citizen migrant. If it is used by NCMs to develop paths of entry to get around the rules and norms and is used as well to increase the potential of many more to enter, and then, in response, are used by DIC officials to subvert the norms, we have a situation where the rules for transparency and the determination to manage the system with integrity are at odds. Further, instead of transparency norms creating a feedback loop to ensure the policies improve in acuity, utility and scope, thereby reinforcing their continuance, there will be a tendency to become dysfunctional and put at risk the prospect of their being sustained.

Does this mean that an effort to enhance transparency should be abandoned? Not at all! Instead the problem points to the need to expand transparency to include information on patterns of migrant flow that are irregular, initiating modes of interdiction before irregular NCMs enter Australian territorial waters. However, this creates another intended or unintended effect, depending on the proponent of utilizing alternative routes, the possible prevention of legitimate refugee asylum seekers reaching Canberra. Since the numbers seeking and achieving asylum are relatively low, Australia is in a position to take greater risks in this area. What this means is that the control of migration cannot and should not be the ultimate goal. That is unachievable, and even problematic. Instead, the goal of transparency should be to help both non-citizens and immigration officers make more intelligent choices by making information that is clear and comprehensible available to all parties that is compatible with the way a desperate non-citizen migrant makes a decision as well as a border officer concerned with managing the flow.

7. Accountable

The point of transparency is not only to provide an information feedback loop that is complete and properly documented but also to ensure fairness and accountability as well as ensuring that transparency is institutionalized. The Parliamentary Committee has set up a number of review and accountability mechanisms, both indirect – involving NGOs and through disclosure to non-citizen counsel – and direct. They include:

- accurate and published information on actual migration flows, their sources, character and routes should be publicly available in real time so that policy can be based on real facts instead of hysterical projections where inflated figures play on

the politics of fear at the prospect of an "invasion" by alien hordes; in the vast majority of jurisdictions, most problems in managing migration flows come from overstayers who originally enter with valid documents, contrary to the widespread perception of vast numbers of irregular migrants arriving at borders

- the current practice of reviews by the Commonwealth Ombudsman that has been so effective in much of the corrective mechanisms already in place
- the provision that the six month Ombudsman's review be tabled in Parliament
- increased oversight of national security assessments
- in cases of security assessments, after 6 months detention, the Inspector-General (IG) of Intelligence and Security will review both the substance and the procedures of ASIO (Australian Security Intelligence Organization) on the assessment and the evidence on which it is based
- the IG is required to report to the Commonwealth Ombudsman on delays
- the Ombudsman, in turn, then includes these reports in his six month reviews
- the DIC is then required to respond within 15 Parliamentary sitting days; clarify and publish details of the response to the three-month review
- this response is to be provided to both the immigration officers and the Independent Tribunal
- the opportunity for judicial review if persons are detained more than 12 months[28]
- minimum standards for conditions and treatment of persons in immigration detention should be codified and provision made for monitoring the adherence to those standards
- increased liaison with the detainee's representative
- the detainee should be fully advised of the options and rights along the way to facilitate the detainee making a reasonable choice[29]
- the detainee should be permitted to file a formal request for alternative accommodation and reasons provided if the request is rejected; such requests should be dealt with expeditiously
- the detainee counsel should receive a copy of a review when significant and unacceptable risk assessment are rendered.
- finally, there is to be a follow-up on denied asylum claimants after the non-citizens are removed

The most notable omissions from this list are requirement that rationales as well as results be included at all stages and that the public be given an opportunity for input at each stage, if only in the form of comments to a website. Why at each stage does the affected party not have the right to request and to receive information, transcripts, and other relevant records? In national security cases, where state security needs to be protected, what should be the guideline for the release of information? One suggested

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[28] According to IDA 2008, 32% of detainees as of 30 June 2008 had been held for over 12 months. Cf. Appendix C, 149.

[29] Cf. EU parliament Press Release, "Parliament adopts directive on return of illegal immigrants," 16 June 2008. The Report found that the detainees were "not systematically informed of the reasons for their detention, of their rights or of the progress with their chairs.

rule is that sufficient information must be provided to the detainee adequate to understanding the reasons for the suspicion so that a defence can be launched against the charges of the person being a significant risk while, at the same time, the security interests of the state are protected.[30]

Further, since transparency is paired with accountability, and even though there is a reference to providing NGOs with information and seeking their input, why is the complementary pair so central to good governance nevertheless largely missing, namely participation and deliberation[31] that require publicizing agendas, inviting a public presence and inclusion of concerned groups and independent experts in the process?

8. Last Resort and Default Position

The major thrust and central feature of the Parliamentary Report is a stress on making detention an exception, a last resort[32] in dealing with those who breach the norms governing non-citizen migration and to be applied in only three categories of cases: a) health risks to the community; b) unacceptable security risks; and c) repeated non-compliance cases. Last resort does not mean that the option should not be used until all other possibilities are tried. Last resort and final option are *not* equivalent, although in international ethics they are often confused and equated partially because, when possible, other options should preferably be tried. Last resort means that a mechanism, whether it be confinement or war, should be restricted when all other options have been *considered.* The mechanism should be reserved for exceptional circumstances where no other option is applicable.

This is particularly applicable to security cases. However, in the case of public health concerns, a reasonable alternative option is the utilization of quarantine mechanisms implemented by Public Health bodies with the requisite experience to determine duration and degree of quarantine warranted. Similarly in cases of those who pose a criminal risk, the Department of Justice presumably has the degree of experience to assess degrees of risk and appropriate measures to restrict movement when that is perceived to be necessary. Thus, detention is only to be used when necessary and community based alternatives related to international experience should be considered and adapted to Australia taking into consideration the cost-effectiveness of those options. Thus, detention will be utilized only for unauthorized non-citizens who pose a risk (security, criminal, health, administrative) and even then detainees should be treated humanely with dignity and justice. Administrative risk applies to those who are repeatedly non-compliant with visa conditions and administrative procedures and processes based on clear evidence and a refusal by the non-citizen to comply with

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[30] Cf. Howard Adelman, "Canada's Balancing Act: Protecting Human Rights and Countering Terrorist Threats", in Alison Brysk and Gershon Shafir, ed., *National Insecurity and Human Rights: Democracies Debate Counterterrorism*, Berkeley and Los Angeles: University of California Press, 2008, 137-156.

[31] Cf. Robert Keohane, *Power and Governance in a Partially Globalized World*, New York: Routledge, 260-267.

[32] Cf. Australian Human Rights Commission Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Immigration Detention* (April 2004), http://www.humanrights.gov.au/human_rights/children_detention_report/report/PDF/alr_complete.pdf

reasonable requests. The determination of those who are repeatedly non-compliant with visa conditions and administrative procedures and processes must be based on clear evidence and the non-citizen's refusal to comply with reasonable requests, and, even then, detention should be short term and used only when necessary for removal after prior consideration of alternatives such as visa reissue and provision of bridging visas with or without conditions such as sureties or reporting requirements.[33]

The Ethics of Evaluation

9. **Reasonable Prospect of Resolution in a Reasonable Time Frame**

The second major series of recommendations concern limiting the time of detention for reasonable periods. Limitations are set to allow for certain checks to be made of health, identity or security. The time limits are set for the convenience of those who administer the checks and not for any actions or deeds carried out by the non-citizen migrant. The Parliamentary Report allows for the following:

- 5 days for health checks
- Up to 90 days for completing security and identity checks and utilizing special bridging visas with reporting requirements to allow further checks without detention[34]
- Maximum of 12 months for detention, except those *demonstrated to be* significant and ongoing risk.[35]
- with respect to removals, 7 days notice must be given to the non-citizen to permit time for other options for voluntary removal to be utilized

10. **Humane and Proportionate to Risk**

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[33] IDA 2008 noted that most bridging visa holders abided by the conditions placed on them and only 8.2% of bridging visa holders in 2006-07 breached their conditions and became unlawful. Since 9316 were granted bridging visas, that still meant that 764 individuals became unlawful. (3:55:3.39.) Experience and the imposition of more stringent conditions could gradually reduce those numbers.

[34] On 20 February 2009, Prime Minister Silvio Berlusconi's cabinet, following rioting by Tunisian would-be immigrants protesting their repatriation from a detention center on the island in Lampedusa, 200 km south of Sicily, increased from two to six months the period in which would-be immigrants may be held in detention centers ostensibly to allow for their proper identification and for arranging their repatriation with the authorities of their countries of origin. http://www.dw-world.de/dw/article/0,,4045612,00.html. See also Andrijasevic 2005/2006. In 2004, 10,497 migrants (including 309 women and 412 minors) transited through Lampedusa. That same year, Italian authorities forcefully removed 1000 of them to Libya. Originally, detention provided for 30 day stays in temporary stay and assistance centres (CPTAs), 20 initial days with a possible 10 day extension with judicial approval and another 30 days extension with judicial approval for asylum seekers. AI Italia in January 2009 reported 1800 being held in Lampedusa when it had a capacity for only 804, the overcrowding compounded by terrible hygienic conditions

[35] Compare this to Europe where the European Parliament laid down EU wide minimal standards and procedures on the return of illegal immigrants *after* a decision has been made to deport. First there is voluntary departure period of 7-30 days. Second, a removal order is then issued. If there is a fear of flight, the person can be placed in custody for up to six months, the previous standard in the Netherlands. In contrast to the Irish limit of 8 weeks and the UK's infinite extensionalility; the UK exerted its right not to participate in the EU immigration control regime. Cf. EU parliament Press Release, "Parliament adopts directive on return of illegal immigrants," 16 June 2008.

The following guidelines are applicable for the treatment of non-citizens in detention to ensure humane treatment:

1. People in detention should be treated fairly and reasonably within the law, retain the right to request asylum without fear of reprisals and be provided the fullest information of options to facilitate rational choice by the non-citizens.[36]
2. The infrastructure utilized for detention should meet minimal standards and conditions of detention should ensure the inherent dignity of the human person and provide for the well-being and safety of detainees.[37]
3. Children and, where possible, their families, should not be detained in an immigration detention centre and should be provided with special safeguards and care, including legal protection, and to be able to be reunited with family.[38]
4. In addition to the above principle of distinction applied to children versus adults and differentiating between risk cases and those of little risk to the community or the system itself, the principle of proportionality is applicable where the use of detention should be proportionate to the objective of the action taken, whether that action be detention or any of the alternatives, such as restrictions on movement.[39]
5. Detainees should not be required to bear the cost for being detained nor should they be asked to pay disproportionately high costs for visas as a deterrent lest they resort to irregular channels and deliver themselves into the hands of people smugglers.
6. Detainees should have reasonable access to physical and mental health care, external excursions, interpreters, translated documents, the internet, recreational and educational access.
7. A pre-removal risk assessment should be undertaken for detainees.
8. Removal procedures and processes should minimize trauma.
9. Criteria should be established for the selection of escorting officers in cases of enforced removals and there should be adequate training and counselling for officers involved in removal processes.
10. Oversight of actual removals should be instituted.
11. In enforced removals, only the degree of force necessary to accomplish the task should be employed and that effort should be proportionate not only to the objective but to the risk from and to the non-citizen. Thus, if force needs to be employed that puts the non-citizen at significant risk, it should not be utilized. Further, mass removals should be forbidden if only because they violate the

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[36] The Swedish system offers the best example of the latter.

[37] Contrast the Australian policy with the conditions at Lampedusa. Italy, at the same time as Prime Minister Berlusconi declared a state of emergency to deal with a max influx of illegal migrants, allowed unsustainable overcrowding in its Lampedusa camps (UNHCR 2009) in spite of the withdrawal of MSF from the camps (31 October 2008). Lampedusa built to hold up to 762 people, held 1600. See also Martine Roure's report to the European Parliament (5 February 2009) "Detention Centres for asylum seekers are 'intolerable," from the point of view of hygiene, overcrowding and equipment failure.

[38] According to an EU parliament Press Release, "Parliament adopts directive on return of illegal immigrants," 16 June 2008, children and families can be detained, but only as a last resort.

[39] Though Switzerland has proportionality as a principle built into all its administrative law, we are not aware of any research on the application of the principle to see if guidelines can be derived from the application of the principle.

prohibition of collective expulsions in article 13 of the International Covenant on Civil and Political Rights.

With the institution of off-loaded detention facilities in countries of transit often funded by receiving states – referred to as "externalization"[40], the establishment of centres for processing migrants in the countries through which the migrants transit or even originate to gain entry to first world economies in eastern Europe, in North Africa, and in the Indian Ocean, it is important that the same standards applicable to in-state detention facilities be applied to off-shore ones before detainees are removed to such "Regional Processing Areas" (RPAs) and "Transit Processing Centres (TPCs). If a country removes irregular migrants to such facilities after observing the proper procedures, it has a responsibility for ensuring through agreements and monitoring that those facilities utilize equivalent standards and procedures. This is especially applicable where countries hosting such off-shore facilities are not signatories to the Geneva Convention and place people incommunicado, practice torture, lack western rights protections for legal due process and regularly engage in "disappearances".

Part III: Practical Alternatives to Non-Citizen Detention

If we examine the countries who do not have detention facilities, such as Ireland, even though Section 9(8) of the Irish Refugee Act 1996 makes provision for detention facilities in exceptional circumstances, such as security or criminals risks, identity problems or persistent evasion of procedures, there is little indication that Ireland has increased rates of non-compliance compared to other countries. Thus, alternatives to detention need to be considered such as visa re-issues, bridging visas, surety bonds by relatives or community organizations and release into the hands of citizen hosts. Community release can include bail guarantors, regular reporting, monitoring (electronic modes include ankle bracelets, voice recognition technology (VRT) and global positioning devices - GPS) that either restrict or monitor range of movement, but these techniques can also include positive reinforcements such as community counselling and hosting which, in the United States, appeared to decrease absconding rates from an average of about a third to less than 20%, except that when the numbers who absconded to Canada were deducted, the absconding rates appeared constant. Counselling may, in fact, have been used to divert some claimants to Canada where their counsellors believed they had a better chance of receiving asylum. Nevertheless, the US Intensive Supervision Appearance Program (ISAP) seems to have value in bonding and in making sure the non-citizens are fully informed of their options and the consequences of any choices they make.

[40] The twenty-first century began with "The Interception Program" driven and financed by the Australian government to stem the flow of migrants and refugees using Indonesia as a stepping stone to Australia that developed into "The regional Cooperation Model" and set the example for Europe where hosting these migrants was offloaded onto other institutions (IOM) and states (Indonesia) ostensibly as "alternatives to detention". The process served as a deterrent as very few asylum seekers received refugee status and the numbers declined over the decade with the significant reduction in extra-territorial arrivals.

In general, the greater the support provided, the fairer or more "liberal" the asylum process appears to be, the greater the compliance. Amnesties may foster "disappearing". On the other hand, making non-citizens who are irregularly in a country illegal and subject to prosecution may reinforce compliance. There is no evidence that detention in itself reduces or fosters non-compliance and there is a clear propensity for asylum seekers who receive negative decisions to disappear. Further, even if supported and given access to a refugee asylum procedure in a country not of their choice (Chechens forced by Germany to apply in Poland as a transit country) disappear and reapply in the Czech Republic. This is similar to asylum seekers in Romania where a significant percentage abscond from the determination procedure to get to western Europe, though low recognition rates were undoubtedly an additional factor is deserting the claims proceedings.

Clearly, other realist modes, such as criminalizing unlawful presence in a country, may be tried the more people go "underground". Thus, while making efforts to build transit accommodation and community networks and enhancing factors that facilitate compliance such as access to work, to health services, and to legal services, the pull of such initiatives will have to measured and factored into the decisions as will exogenous factors such as training immigration officials and police on migrant rights lest the process be subverted in actual practice.

Conclusion

25 February 2009-02-24

From: Howard Adelman

To: Parliament of Australia Joint Committee on Migration

Further to my testimony of yesterday, there were a number of questions that I said I would get back to you on or where the data was not at hand to provide full enough answers. I hope this follow-up will be of some help. I noted the following questions:

1. Types and effectiveness of electronic monitoring
2. Utilizing housing as in Scotland to decrease the likelihood of absconding (on the argument that we know where the people are)
3. Alternatives to Detention re Women & Children
4. Alternatives to Detention Generally
5. How to Improve Effectiveness of Removals
6. Costs of Detention

ANSWERS

1. Types and Effectiveness of Electronic Monitoring

Introduction

Electronic monitoring is used most extensively in Great Britain which also has the longest period of experience with this method of tracking irregular migrants. The UK uses different forms of monitoring depending on the seriousness of the risk of absconding:

- Voice Recognition through phoning to a station (VRS) for low risk cases
- Tracking using Global Positioning Devices for monitoring – in an experimental phase]
- Tagging restricting the perimeter which the tagged individual cannot cross

History

The UK Immigration Service began electronic monitoring starting in 1989 for asylum seekers, overstayers and illegal workers and imposed the mechanism in 2005 without requiring consent whereas "tagging" was utilized previously *with* consent as a matter of policy rather than as a legislated requirement under the 2004 Immigration and Asylum Act.

Results

- As with all alternatives to detention, they generally work as long as the individual has a chance of landing. Otherwise, the system has a degree of negative results when those electronically tagged are informed that any chance of remaining is over; they have no incentive to cooperate and they can find a way to get rid of the tag. In Canada, where

tagging and GPS tracking are both used for security cases where the person could not be removed because of risk of torture upon return, but when they could no longer be detained (some had been detained over six years), the GPS is supplemented by extensive and intrusive surveillance. Though agreed to by consent in the case of the five men in this situation, court-imposed restrictions not only include wearing GPS monitoring bracelets at all times, but phone taps, interception of mail, surveillance cameras within and outside the house, participation in family trips only with permission, visitors only with permission, and even one recorded case of unannounced searches and seizures subsequently ruled illegal.

There has been no recorded attempt to abscond in the five Canadian cases of security risks. In the overall picture in the UK for all cases where electronic surveillance is used, the non-compliance rates are very low – under 10%.- and that figure includes all incidents of non-compliance not cases of absconding. The UK uses a bureaucratic approach (effectively parole officers) to complement the electronic monitoring, but my sense is that the community connection approach used in the USA works better, but I do not have the empirical comparative studies to back up that hunch. Further, unless the case is serious, the rate of absconding in Britain when monitored electronically or, alternatively, when bail is used to ensure the individual does not abscond, would appear to be no different though the US has increasingly used electronic monitoring in spite of this empirical evidence. An older New York study of their electronic monitoring program indicated twice the rate of compliance as long as there is community support in the form of phone calls from program workers, reminders and other support measures. Evidently, this is true whether or not electronic monitors are used.[41]

I know of no systematic disinterested comparative study that indicates the effectiveness or ineffectiveness of the various electronic means of surveillance when compared to other alternatives and other jurisdictions. The 2006 Bercaw and Harris Report in the UK notes that, "there is no publicly available information on the effect of electronic surveillance on absconding rates."[42]

Rights Issues

In Canada, the Campaign to Stop Secret Trials (CSST) claimed that the close monitoring is used merely as an excuse for surveillance and intelligence gathering and, in any case, has been used to intimidate and not just survey. However, it is a better alternative to detention without trial and Canadian courts at the beginning of this year (2 January 2009) ordered the release of Hassan Almrei, originally from Syria, the last of the detainees held under a security certificate; he had been detained for 7 years. (http://cas-

[41] Eileen Sullivan, Felinda Mottino, Ajay Khashu, and Moira O'Neil, "Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program," Vera Institute, Justice Report on Community Supervision, | August 2000.

[42] Bercaw, John and Evan Harris, MPs, *Alternatives to immigration detention of families and children*, for the United Kingdom House of Commons All Party Committee on Children and Refugees, July 2006.

ncr-nter03.cas-satj.gc.ca/rss/DES-3-08%20Decision%20Jan2.pdf) Justice Richard Mosley ruled that there was no evidence that he posed a security risk or that there were reasonable grounds for using detention, but approved the usual restrictions in such cases, including GPS tracking and blocking the use of computers or a fax.

In the United States, Jorge Bustamante, special rapporteur on the human rights of migrants for the U.N. Human Rights Council in Geneva, criticized the "overuse" of detention for immigrants given the large numbers (230,000) detained, and recommended the expanded use of alternatives, such as electronic ankle bracelets.[43]

2. Utilizing Housing in Scotland to Decrease Absconding

A second question was raised concerning a purported Scottish plan to house asylum seekers in community residential housing so that could be better tracked and so that they could be located and deported more readily if their asylum claim was rejected. In 2007, Scotland had 4000 asylum cases, of which 1,100 are considered legacy cases, that is long term cases in which some of the children were born in Scotland. In 2008, the Home Office published reform plans, particularly with the aim of ensuring that minors were not kept in detention. Residential centres for families alongside centres of expertise in dealing with such situations were to be established. I did not recall this proposed residential scheme and agreed to double check. (I will also be in Glascow at the end of March and will reconfirm directly.) Certainly, Scotland has had a notorious record with respect to detaining asylum claimants and irregular in prison-like conditions (Dungavel is the most notorious example[44]) and detaining families in removal centres. The only policy I learned of that approximates the question (assuming I understood it correctly) is that in addition to providing support for those who would otherwise be destitute, the new recommended policy provides "support for non-compliant cases where appropriate, requiring some cases to live in full-board accommodation if this supports return."

This is part of an overhaul to radically alter the adversarial relationship between the United Kingdom Border Agency (UKBA) and the migrants, municipalities, and NGOs to develop a cooperative model that is based on leaving asylum seekers and their families at liberty and based on disclosing and communicating as much information as possible in a continuous way based on what is widely considered a successful pilot that ensures a stable system and clear and effective enforcement procedures combined with incentives.. The United Kingdom Border Authority (UKBA) in its recent "Consultation on Asylum Support for the Immigration and Citizenship Bill" (12 September 2008), has recommended a number of steps to ensure a higher rate of departure for those denied asylum:

- Improved sharing of information to support case conclusion
- Informed returns, assisted by integrated case management across agencies throughout the process
- Creative ways of working with communities linked to IOM

[43] Teresa Watanabe, "Report Decries US Treatment of Migrants," *Los Angeles Times*, 8 March 2008.
[44] Cf. HMIP, "An Inspection of Dungavel Immigration Removal Centre," 2002. See also Tom Allan, "Freedom from Seizure" www.variant.randomstate.org/23texts/dungavel.html

- Closer working with some countries to resolve documentation problems

The full report is well worth reading.

3. Alternatives to Detention re Women & Children

In the US, the Department of Homeland Security (DHS) has increased detention of vulnerable immigrants and detains families.[45] Detention is widely practiced in Europe. The UNHCR has recommended against detaining women and children since detention itself is inherently undesirable and this is even more true of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Detention in such cases is inefficient, ineffective and contrary to the norms and principles of international law. Even in cases of non-compliance, every effort should be made to initiate alternatives including continuing support for children and speedily locating suitable accommodation proximate to needed services with support continuing until the families are either integrated following acceptance or removed.

4. Alternatives to Detention Generally

The Liberal (conservative) government in Australia as well as the Labour party in Britain began the decade with a mandatory detention policy. In Britain, the document "Secure Borders, Safe Haven" emphasised the utilization of detention in an effort to increase removals of asylum seekers who receive negative decisions.[46] Electronic monitoring works better than detention and shows greater respect for the migrant. Bail may work at least as well as monitoring but it is difficult to assess since the bail option is generally offered to those seen as least likely to abscond. However, what is most important is full and continuous communication, social support networks that facilitate choice and that provide incentives that can begin with an offer of assisted voluntary return with insistence following through to reintegration and open to a specific date followed by non-compliant quick removal. Ability to remove should be determined well in advance so that time and effort is not wasted and such persons are quickly given alternative visas and the opportunity to work.

> There is no evidence to suggest families abscond when the threat of detention or removal looms. However, there is a growing body of evidence that more families return to their country of origin of their own accord when they can trust that the system protects those who need protection and where more support and information is available to families planning return. The experience of the Swedish model, the Canadian Failed Refugee Project and, particularly, Hotham Mission in Australia demonstrates that supporting families to make sure their protection needs are met and helping them to plan for return works.[47]

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[45] Smith-Dieng, Angela, "DWN Urges the U.S. to Improve its Treatment of Detained Immigrants," Detention Watch Network, 15 May 2008. asmith-dieng@detentionwatchnetwork.org

[46] Fourth Report of Session 2002-2003, Vol.1 Home Affairs Select Committee, 26.

[47] Bercaw, John and Evan Harris, MPs, *Alternatives to immigration detention of families and children*, for the United Kingdom House of Commons All Party Committee on Children and Refugees, July 2006. http://www.ncadc.org.uk/resources/children.html

5. How to Improve Effectiveness of Removals

No one has solved this problem to the best of my knowledge and the ability to remove seems generally to fall behind the increased caseload. For example, in Canada, Stephen Rigby, Vice-President, Strategy and Coordination in Border Control, admitted at a hearing last year that outstanding warrants to remove people from Canada for immigration infractions has risen to more than 41,000. In Britain, of 32,000 rejected claims in one recent year, there were only 10,000 removals. Even allowing for6,000 gross appeals less those whose previous appeals failed, the numbers of non-removals continues to grow. This is the rule rather than the exception virtually everywhere.

Current discussions are underway with the USA to impose common exit controls with Canada to establish a data base that will record exits as well as entry and thereby gaining a sense of how many have gone underground. There is virtually unanimous agreement that unless individuals in the migration system are identified and tracked, there will ne nop proper knowledge base to determine results and which options are effective. Efforts to arrange readmission agreements to facilitate the removal or deportation of unwanted migrants help but are easily subject to abuse of due process and not allowing non-refoulement rights to be expressed. The effort should be aimed at gradually improving compliance by the combination of information, continuous guidance and support, continuity in providing adequate information, bonds, incentive measures and getting the return process in place as soon as possible after negative decisions have been received. Though the most important factor in reducing effectiveness of removals is the improved intake system based on a definite immigration policy as in Australia and Canada, probably the second most important factor will be efforts to align the removal system with the decision-making system.

Authorities have used surprise removals in an effort to prevent increased numbers from slipping underground. However, there is a great deal of evidence (but no conclusive study) to indicate that the effort to provide a supportive environment is much more effective in enhancing cooperation.

6. Costs of Detention

Detention is very costly and Britain has shown that through the use of alternative methods, the costs have been cut in half since 2000 from just under a half billion dollars to a quarter of a million in handling even more irregulars as the rate of return improved and more humane alternatives were put in place. It is better to use the monies saved from using detention to using the savings for a package of initiatives to include:

a) conduct a better information program;
b) provide better and more continuous counselling;
c) allowing those who want to work more access to work when it is determined they cannot be returned;
d) providing financial incentives to return and to return early

e) ensure continuous contact with authorities and ensure excellent support services, assistance with legal and language training to make either integration or assisted removal easier.

Detention is certainly very costly to both the physical and mental health of the detainee and the failure to provide comprehensive health examinations to detainees, or to any immigrant for that matter, and to communicate the results in the language of the irregular or regular migrant allows serious health problems to develop as established in a study by Dr. Doug Gruner in Ottawa. Thus, studies consistently show that migrants are healthier when they first arrive than after a period of stay and, surprisingly, are on average even healthier when they first arrive that native borns, but this may be a result of their average age being much less. Thus, the current screening does not adequately protect the health of Canadians and certainly not the health of the migrants. If kept in detention, the rate of deterioration is worse.

To decrease costs to both the states and the migrants, open accommodation is clearly less costly than closed accommodation. The argument has been made that closed centres are beneficial in the end because rejected asylum seekers and others in limbo who are readily available can be available for immediate return. However, practice has not followed theory. Though there is no proper study of comparative costs, there are indications that the institution of positive not detention methods are both better and more economical. It costs about AUS$85 per day or about AUS$2500 a month to detain one irregular migrant in Belgium. With 8,000 detained n Belgium at a cost of AUS$2500 per month, assuming even only a an average of one month in detention, the total cost would be AUS$10,000,000. Denmark, which probably detains the fewest in Europe, spent almost AUS$9 million on its detention program at Sandholm. A huge increase in positive programming can be purchased with these funds.

Appendix I – Costs of Detention

Seekers and Refugees, Ophelia Field with the assistance of Alice Edwards, External Consultants, DIVISION OF INTERNATIONAL PROTECTION SERVICES, POLAS/2006/03, April 2006, Extract, page 69

BELGIUM

In 2004, one day of one person in detention centre costs (at least) 38,10 €UR This is the amount, which Belgium requires from airlines that transported irregular migrants to Belgium whom they were not supposed to transport and who were consequently detained in Belgium:

Frais de séjour
En application avec l'article 74/4 de la loi du 15/12/1980, le transporteur est solidairement tenu à payer, avec l'étranger qu'il a transporté et qui par la suite d'une décision des autorités d'immigration doit être refoulé parce qu'il ne disposait pas des documents de voyage requis à l'article 2 de la loi, les frais de séjour redevables à l'Etat suite au séjour de ce dernier dans un centre fermé situé à la frontière. Le montant journalier des frais de séjour est fixé par arrêté royal.En 2003, le coût par jour s'élevait à 37,5 euros par jour par rapport à 38,10 euros par jour en 2004. Source: Rapport d'activités de l'Office des Etrangers pour l'année 2004:
http://www.dofi.fgov.be/fr/activiteitenrapport/RapportActivité_2004.pdf, page 57

Presently there are 628 places in Belgian detention centres and an estimate that around 8.000 people are detained each year. (http://www.cire.irisnet.be/ouvrons/fr/centres-fermes.html#belgique). Thus, in 2004, if each person were detained for only one day, this costs at least 8.000 x 38,10 = 304.800,00 €UR.

In Belgium, a person can be detained for, initially, 2 months, and then this time can be extended to 4, 5 and 8 months and even longer because it is considered that every time a person opposes his/her removal, it is a complete new period of detention that begins (http://www.cire.irisnet.be/ouvrons/fr/centres-fermes.html#belgique). Thus, if one person is detained for, f. ex. 5 months (3 x 30 days + 2 x 31 days = 152 days) this costs at least 152 x 38,10 €UR = 5.791,20 €UR.

If 8.000 people were detained for 5 months, this costs at least 5.791,20 €UR x 8.000 = 46.329.600,00 €UR per year (2004) or, in other words, this is the amount of which the Belgian government thinks that it is justified.

BULGARIA

According to the information provided by the Department of International Cooperation of the Ministry of the Interior, the cost of maintaining a detained illegal migrant per day in Bulgaria amounts to 4.30 BGN (equivalent to approximately US $3), including 1.30 BGN for daily nutrition costs. No information is available on the relative costs of detention in comparison with other alternatives, but in cases where indefinite detention may occur, the authorities often find it both more humane and more affordable to release the failed asylum seeker on condition of frequent reporting requirements.
SOURCE: UNHCR LEGAL AND PROTECTION POLICY, RESEARCH SERIES, Alternatives to Detention of Asylum Seekers and Refugees, Ophelia Field with the assistance of Alice Edwards, External Consultants, DIVISION OF INTERNATIONAL PROTECTION SERVICES, POLAS/2006/03, April 2006, Extract, page 82

DENMARK

There is only one detention centre in Denmark, in Sandholm. The total budget provided to detention of asylum seekers for 2006 was close to 34 million Danish Kr. (4.560.881,00 EUR as of 6 November 2006).

SOURCE 6 November 2006: Permanent Representation of Denmark to the European Union, Brussels

GERMANY – BAVARIA, Year 2005

The total cost of pre-removal detention was 6.6 Mio EUR. Taking into account that 1.177 persons were removed and 237 persons were released, this means an average of 4.667,61 EUR per person or an average of 5.607,48 EUR per person removed. - The total cost for removal (without counting cost for persons accompanying the forcible return, such as boarder guards) was nearly 1.5 Mio EUR. Thus detention and removal together cost 8.1 Mio EUR, which amounts to an average of 6.881,90 EUR per person removed. - If an estimated 1.800,00 EUR were added for 2 persons accompanying the forcible return, such as boarder guards, the entire operation would cost approximately 8.700,00 EUR per person.
SOURCE: CONFIDENTIAL

GERMANY - BERLIN, July 2006

Year (Jahr)	2001	2002-2004	2005
daily rate (Tagessatz)	60,51	61,92	65,99
incl. guards (Wachpersonal)	37,58	38,79	37,43
incl. medical care (Medizinische Betreuung)	5,01	4,86	10,56
incl. general cost (Sachkosten)	11,70	11,70	11,70
incl. food (Verpflegung)	6,14	6,47	6,05
incl. TV (Fernseher/GEZ)	0,08	0,10	0,25

SOURCE: Abgeordnetenhaus Berlin, Drucksache 15/13 505, 14. July 2006 (http://www.parlament-berlin.de:8080/starweb/adis/citat/VT/15/KlAnfr/ka15-13505.pdf)

IRELAND – DOCHAS, June 2006

In 2005, 105 women were detained. The cost of maintaining a person per year is is approximately 219,00 €UR per day. This includes food, phone calls, health care, staffing, transport to Court, hospital etc.
SOURCE: CONFIDENTIAL

THE NETHERLANDS

A place in an open reception centre costs 13.000,00 €UR on average per person per year. The government intends to reduce this to 11.000,00 €UR. Equivalent figures for the cost of de facto detention at the application centres (ACs) are unavailable, but the deterrence effect of the accelerated procedure may be considered by some policy makers to be worth the cost.
SOURCE: UNHCR LEGAL AND PROTECTION POLICY, RESEARCH SERIES, Alternatives to Detention of Asylum Seekers and Refugees, Ophelia Field with the assistance of Alice Edwards, External Consultants, DIVISION OF INTERNATIONAL PROTECTION SERVICES, POLAS/2006/03, April 2006, Extract, page 159

POLAND 2006

The average budget for administering one pre-removal arrest with capacity for 56 persons is 414.100 PLN (1 Polish Zloty = roughly 0,25 €UR). The salaries of civil servants and technical staff are not included.
1 €UR = 4 Zloty
4 Zloty = 1 €UR
414.100 Zloty = 103.525,00 €UR per year
103.535,00 €UR per year divided by 12 months = 8.627,00 €UR per month
103.535,00 €UR per year divided by 365 days = 283,00 €UR per day

1 Vietnamese (for example) detained for 8 month: 8.627,00 €UR multiplied by 8 = 69.016,00 €UR
1 person average detained for 6 months: 8.627,00 €UR multiplied by 6 = 51.762,00 €UR
182 days = 6 months
51.762,00 €UR divided by 182 = 284,00 €UR per day
SOURCE: CONFIDENTIAL

SLOVENIA, June 2006

For detaining a person in Centre for foreigners: is 3.800 SIT per day (= approximately 15,83 €UR), an amount for only basic things; when medical care is provided, cost are higher.
SOURCE: CONFIDENTIAL

UNITED KINGDOM

Taking Haslar Removal Centre's weekly costs as the measure, the independent research by South Bank University, which monitored 98 asylum seekers, would suggest that the Home Office spent some £430,000 detaining 73 people who would have complied anyway under alternative restrictions (reporting requirements to the police, etc.). It has long been acknowledged that the UK detention regime is extremely expensive (the planned extension which would add another 44 places for single men to the Dungavel Reception Centre is expected to cost £3 million in capital costs alone), but centralized reception systems that – intentionally or incidentally – track asylum seekers' whereabouts in the community, are not cheap either. The UK government spent over £1 billion in 2002 on the National Asylum Support Service (serving over 100,000 asylum seekers). The government considers both sets of costs worthwhile, compared to cheaper community-based reception or the provision of direct benefits to asylum seekers living independently, so long as detention and dispersal are perceived by the British public to be 'managing' a threat to public order and deterring an unspecified number of future arrivals. Finally, as already mentioned, the costs of electronic monitoring may be slightly less than detention (the Home Office calculates that an average 45-day curfew under the electronic monitoring scheme for remand prisoners costs approximately £1,300) but it will not be a cost-effective measure unless it meets the test of necessity in relation to the individuals to whom it is applied.
SOURCE: UNHCR LEGAL AND PROTECTION POLICY, RESEARCH SERIES, Alternatives to Detention of Asylum Seekers and Refugees, Ophelia Field with the assistance of Alice Edwards, External Consultants, DIVISION OF INTERNATIONAL PROTECTION SERVICES, POLAS/2006/03, April 2006, Extract, page 221

Despite the fact that detention costs approx £15 million per year, the government are creating new detention centres for asylum-seekers in order to lock more people up. The Conservative party state that they would like to see all asylum-seekers imprisoned whilst their asylum claims are being determined.
SOURCE: http://www.asylumaid.org.uk/AA%20pages/detention.htm (last visit 1 March 2007)

Comparative Charts
France-Italy-Spain

Types of centers

Type	France	Italy	Spain
Closed centers	a. Waiting Centers at the border (ZAs) b. Retention centers (CRAs) c. Emergency retention centers (LRAs)	a. identification and expulsion centers at the border (CIEs ex CPTAs) b. emergency accommodation centers (CDAs or CPAs) c. identification centers for asylum seekers (CARAs ex CIDs)	a. Internment Centers for Aliens (at the border and on the islands) CIEs b. Temporary Reception Centers CATs
Open centers (only for asylum seekers)	CADAs	a. SPRARs b. CSPA of Lampedusa (open in theory)	a. CARs b. Temporary Reception Centers II (only in Ceuta and Melilla) CETIs (open in theory)

Time of detention :

France	Italy	Spain
a. in a waiting center : 4 days up to 20 days (in the 4th day – validation of prolongation by the juge de la liberté)	a. In CIEs – 60 days (in the 30 th day validation by the Jiudice di Pace	a. in closed centers : 72 hours up to 40 days if authorized by a judge.
b. In CRAs : 32 days. (in the 5/15th day validation by the judge	b. CDAs – no time limit since there are set for emergency situations only	b. in Ceuta and Melilla (open centers in theory) people stay for years
c. In LRAs there is no time limit since there are set for emergency situations only	c. in CARAs – 20 days + 15 days prolongation by the Jiudice di Pace=35	

	days	

Number of people in detention

France **No of places in "rétention" : 1.724 (La Cimade 2007)**	**Italy** **No.places in CIEs = aprox. 1200** **No.places in CDAs = aprox. 4200** **No.places in CARAs = aprox. 1100**	**Spain** **Data available only for : Gibraltar strait, Ceuta, Melilla, Canaries[48]**
5.890 foreigners detained in 2002 no. of people put in detention in 2003 = 28.155[49] no. of people put in detention in 2004 = 30.043 no. of people put in detention in 2005 = 29.257[50] versus 9.674 detained in 2005[51] versus 16.157[52] no. of people put in detention in 2006 = 21. 474 35.000 *(in OFPRA 2007 report and La Cimade 2007 Report)*	*ICS in his 2006 report* has estimated that approximately 62% the asylum seekers who have filed an application from 21 April 2005 up to 27 April 2006 have been retained either in a CARA or in a CPT. The *De Mistura 2007 Report* estimated at 25.000 the number of people detained between 2005-2006 in CPTAs/CIEs and at 35.000 the number of people who transited during the same period the CPAs (especially in Lampedusa). 15,647 in 2004 13,863 in 2003 18,625 in 2002 14,993 in 2001[53]	15.675 in 2004 11.781 in 2005 49.180 in 2006 23.691 in 2007 * 33.000 in 2007 (APDHA 2007 Report)

[48] APDHA, DROITS DE L´ HOMME À LA FRONTIÈRE SUD 2007, p.15. The source quoted is the 2007 Report of the Monistry of the Interior.

[49] RAPPORTS CICI 2005 ET 2006, « LES ORIENTATIONS DE LA POLITIQUE DE L'IMMIGRATION »

[50] RAPPORTS CICI 2005 ET 2006, « LES ORIENTATIONS DE LA POLITIQUE DE L'IMMIGRATION »

[51] la Cour des Comptes 2007 Report

CICI Report 2006 for the DOM-TOM 2003 : 28155 2004 : 30043 2005 : 29257 2006 (from Jan.to Aug.) : 21474		

Nationalities in detention

France (in OFPRA 2007 Report)	**Italy** (in De Mistura Commission 2007 Report)	**Spain**
Between 2003 and 2007 we have : Turkey : 21.102 indv China : 15.673 indv. RDC : 15.416 Haiti : 10.492 Algeria : 10.092 Mauritania : 7.783 Ex Yugoslavia : 6.995 Moldavia : 6.834 Congo : 6.394 Nigeria : 4.594	*Detainees in CPTAs in 2007* Moroccan - 2.600 : (12%), Nigerian, Palestinian, Tunisian - 4% Moldavian - 638 (2,9%) Iraqi - 625 (2,8%).	
Men[54] **:** 31.715 in 2007 / 26 558 in 2006 **Women**[55] : 2. 511 in 2007 / 2 730 in 2006 **Children : 242 in 2007**	**Children : 1554 in 2006 in the CPTAs** (De Mistura Commission 2007 Report)	

The number of asylum applications rejected

Year	**France**		**Italy**		**Spain**		
	No. of applications	No. of applications	No. of applica	No. of applications rejected	No. of applications	No. of applicati	No. of persons

[52] *RAPPORT CICI 2006*
[53] from F.Pastore, Modes of Migration Regulation and Control in Italy
[54] La Cimade Report 2007
[55] La Cimade Report 2007

		rejected (in 2007 report of OFPRA)	tions (in CIR Notizie Septem ber 2008)	(Ministerio dell'Interno)		ons rejected	intercept [56]
2008			31.097	Data only from the 7 Commissioni Territoriali : **-Asylum accepted=1.695** -subsidiary protection=7.054 -humanitarian protection=2.100 **-asylum denied=9.478**			
2007	29.937 (first applications + reexaminations minors non included)	23.569	23.211	Data only from the 7 Commissioni Territoriali : -Asylum accepted=1.408 -humanitarian protection=6.318 -asylum denied=4.908	7.662 -asylum accepted=304 -humanitarian protection=7 -subsidiary protection= 333 -asylum denied=1.570	4.127[57] persons denied enter Spain	
2006	34.853 (first applications + reexaminations minors non included)	25.662 / recognition rate = 19,5%	14.502	Data only from the 7 Commissioni Territoriali : -Asylum accepted=878 -humanitarian protection=4.338 -asylum denied=3.681	5.297 in total in 2006 / **9** (in the first semester of 2006 only in Tenerife)[58] -asylum accepted=168 -humanitarian protection=16 -subsidiary protection= 172	2.437 persons denied enter Spain[59]	6.908 (in the first semester 2006 onl in Tenerife

[56] AI *Report Spain : The Southern Border*, 2005
[57] CEAR Spain Informe 2008 p.220
[58] AI, *Los derechos de los extranjeros que llegan a las Islas Canarias siguen siendo vulnerados. Resultados de la misión de investigación de Amnistía Internacional los días 14 al 16 de junio,* 7 de julio de 2006
[59] CEAR Spain Informe 2007 p.247
[60] AI, *Los derechos de los extranjeros que llegan a las Islas Canarias siguen siendo vulnerados. Resultados de la misión de investigación de Amnistía Internacional los días 14 al 16 de junio,* 7 de julio de 2006

					-asylum denied=1.475		
2005		50.791 vs. 60.000[61] / recognition rate = 26,9%	9.346	Data only from the 7 Commissioni Territoriali : -Asylum accepted=961 -humanitarian protection=4.084 -asylum denied=1.701	5.257		11.781
2004		38.246	**9.796**	Data only from the 7 Commissioni Territoriali : -Asylum accepted=771 -humanitarian protection=2.366 -asylum denied=3.277	5,401[62]	4,648[63]	15.675
2003		33.326 29.600[64]	13.971	Data only from the 7 Commissioni Territoriali : -Asylum accepted=720 -humanitarian protection=1.829 -asylum denied=2.658	5,918	3,943	19.176 * 25.536 people were intercept at the frontier with Ceu and only 1.439 applied f asylum[65]
2002					6,309	4,029	
2001					9,490	4,905	

Expulsions

[61] RAPPORTS CICI 2005 ET 2006, « LES ORIENTATIONS DE LA POLITIQUE DE L'IMMIGRATION »

[62] AI, *Report Spain : The Southern Border*, 2005, p.36

[63] AI, *Report Spain : The Southern Border*, 2005, p.36

[64] RAPPORTS CICI 2005 ET 2006, « LES ORIENTATIONS DE LA POLITIQUE DE L'IMMIGRATION »

[65] AI, *Report Spain : The Southern Border*, 2005, p.28

Year	France	Italy (De Mistura Commission 2007 Report)	Spain[66]
2008	Over 26.000		
2007	Aprox. 25,000		55.938
2006		24.902	52.814 (111 minors)
2005	19.841 + 15.532 (from the DOM-TOM)[67]	34.660	61 minors
2004	16.850 + 15.509 from the DOM-TOM[68]	35.437	
2003	11.692 + 10.885 from the DOM-TOM[69]	40.951	

Dublin II Transfers to other countries

Year	France	Italy	Spain
2008		99 (885 people waiting for transfer)	
2007		112 (1895 people waiting for transfer)	133 (out of a total of 355)
2006		62	15 out of 135
2005		26	56 out of 266[70]
2004			
2003			
2002			

Costs

[66] APDHA, DROITS DE L´ HOMME À LA FRONTIÈRE SUD 2007, p.15. The source quoted is the 2007 Report of the Ministry of the Interior
[67] RAPPORT CICI 2006
[68] RAPPORT CICI 2006
[69] RAPPORT CICI 2006
[70] CERA Informe 2007, p.244

Financial resources allocated by the Italian state for migration policy aims, 2002-2004[71]

	2002	2003	2004
For law enforcement purposes	65,469,100	164,794,066	115,467,102
For integration purposes	63,404,004	38,617,768	29,078,933
Total	128,873,104	203,411,834	144,546,035

Source: Corte dei Conti 2005: 7-8

Funds transferred by the European Found for Refugees to Italy[72]

PROGRAM	PERIOD	FUNDS
FER I	2000/2004	€ 11.000.000
FER II	2005/2007	€ 6.500.000
TOTAL		€ 17.500.000

Spain / Frontex joint operations in 2007[73]

Operation	Period	Budget
Hera III	12 Feb.-12 Apr.	2.7 M €
Hera 2007.1	25 Apr.-15 Jun.	1.5 M €
Hera 2007.2	12 Jul.-30 Sept.	1.5 M €
Hera 2007.3	3 Oct.-31 Dec.	2.1 M €
Minerva 2007	16 Aug.-14 Sept.	450.000 €
Indalo 2007	30 Oct.-20 Nov.	1.7 M €

SIVE Program for Spain – budget[74]

Year	Budget
2000 2001	27.46 M €
2002	24.95 M €
2003	27.27 M €
2004	24.26 M €
2005	17.80 M €
2006	46.44 M €
2007	33.98 M €
2008	30.00 M €
TOTAL	232.16 M €

[71] F.Pastore, Modes of Migration Regulation and Control in Italy
[72] SPRAR Italia Rapporto Annuale 2007-2008, p. 51
[73] APDHA 2007 Report Frontera Sur, p.27
[74] Frontera Sur. Nuevas politicas de gestion y externalizacion del control de la inmigration en Europa, Virus Editorial, 2008, p.146

Costs of Removals (Spain only)

- Each deportation is estimated at 657 euros, the total budget for this activity : 10.8 M €.
- Between 2004-2006 the total cost of the transfers from the Canaries to peninsula and from peninsula to the countries of origin is estimated at 45.187.744 € [75].

Deaths at sea. Spain[76]

Year	Canaries	Gibraltar	Canal Sicily	Aegean Zone	Others	Total bodies found
2006	1.035	215	302	73	463	2.088
2007	745	131	551	257	177	1.861

[75] Frontera Sur. Nuevas politicas de gestion y externalizacion del control de la inmigration en Europa, Virus Editorial, 2008, p.231

[76] APDHA 2007 Report Frontera Sur, p.23

Main regularisation schemes in selected EU states, according to a) applications and b) permits granted, 1973-2007

Country	*Belgium*	*France*	*Germany*	*Greece*	*Italy*	*The Netherlands*	*Portugal*	*Spain*	*UK*
Permits granted according to scheme	1974: b) 7,400 1995-1999: b) 6,100 2000: b) 52,00	1973: b) 40,000 1981-1982: b) 121,000 1991: b) 15,00 1997-8: b) 77,800 2006: a) 30,000 b) 7,000	2007: a) 180	1997-1998: a) 598,000 b) 590,000 2001: a) 368,000 b) 228,000 2005: a) 142,000 2007: ongoing	1982: b) 5,000 1986: b) 105,000 1990: b) 217,600 1995: b) 244,400 1998: b) 217,100 2002: a) 700,000 b) 644,000	1975: b) 15,000 1978: b) 1,800 2004: b) 2,300* 2007: b) between 24,000 and 30,000	1992-3: a) 80,000 b) 39,200 1996: a) 35,000 b) 31,000 2001: b) 179,200 2004-2005: NA	1985-1986: a) 44,000 b) 23,000 1991: a) 135,400 b) 109,100 1996: a) 25,000 b) 21,300 2000: a) 247,600 b) 153,500 2001: a) 350,000 b) 234,600 2005: a) 690,700 b) 570,000	1974: b) 1,800 1977: b) 400
Total permits granted per country	65,500	260,800	/	818,000	1,433,100	19,100	249,400	1,111,500	2,200
Total permits granted					3,959,600				

* Provisional data.

Sources: F.Pastore, Modes of Migration Regulation and Control in Italy
De Bruycker 2000: 51; Levinson 2005; SOPEMI 2004: 71; SOPEMI 2007; for Italy: Ministry of the Interior, Ministry of Labour and Social Affairs; for Spain: Ministerio de Trabajo y Asuntós Sociales (2005)