



LAW opinion

Thoughts on the proposed US Terrorist Expatriation Act

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As a response to the failed car bomb attack by a Pakistani American citizen Faisal Shahzad in Times Square New York on April 28, Connecticut Senator Joe Lieberman is planning to introduce a new Bill in the Congress along with Scott Brown, Jason Altmire and Charlie Dent. Joe Lieberman is the chairman of the Senate Homeland Security Committee and a powerful member of the Senate. His proposed Terrorist Expatriation Act contains provisions which are designed to take away citizenship on the ground of reasonable belief of a persons' affiliation with foreign terrorist group. This Act, if passed may replace the current expatriation laws in the US Besides it may be in violation with the Due Process clause of the US constitution.

The expatriation laws in the US

The current law of expatriation in the US is heavily based on the 1967 Supreme Court decision in *Afroyim v Rusk*. This case established the principle that US citizens may not lose their citizenship without their consent. Subsequently in *Terrazas v. Vance* (1980) the US Supreme Court unanimously decided that the intention to renounce citizenship can not be presumed and must be proved by the government by a preponderance of the evidence. These decisions were codified by the Immigration and Nationality Act (INA), 8 USC Section 1481 (1986).

Nationality is lost only if certain acts are done voluntarily and with the intention of relinquishing US citizenship. Those acts as provided by the INA are-

1. Naturalizing in a foreign state after the age of 18.
2. Taking an oath of allegiance to foreign state after the age of 18.
3. Serving in the armed forces of foreign state as commissioned or non-commissioned officer or when those forces are engaged in hostilities against the US.
4. Under certain circumstances, working for a foreign government.
5. Formally renouncing US nationality before a US diplomatic or consular officer abroad.

6. Formally renouncing US nationality in the US with approval of the Attorney General while the US is at war, or
7. Committing an act of treason against the US.

In all these cases the party who is claiming the expatriation has the burden of proof and the burden is pretty high.

Current denaturalization laws in the US

From the reading of section 1481 it seems like Faisal Shahzad, a naturalized US citizen can be denaturalized on the ground of committing treason against the US. Article III, section (3) of the US constitution provides-

"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in the Open Court".

Faisal Shahzad has been reported to be cooperative to the authority and has been answering questions candidly in custody. Based on this, it may not be any problem to establish his guilt in an open court and subsequently take away his citizenship on the ground of being convicted for committing treason. All these can be done in accordance with the current expatriation law and within the sphere of the constitution.

The Terrorist Expatriation Act

The Terrorist Expatriation Act is not based on expediency. It is an unwise attempt to empower a government agency to determine whether any US citizen is affiliated with a terrorist organization and thereby take away their citizenship. According to Senator Lieberman, citizenship stripping would apply to any "American citizen who is found to be involved with a foreign terrorist organization as designated by the State Department."

Under the current US law, an agency is not entitled to take away citizenship. In *Gorbach v. Reno* (2000), United States Court of Appeals for the Ninth Circuit decided that administrative denaturalization in an unlawful usurpation of



authority granted solely to the federal court by Immigration and Nationalization Act, Section 340(a). Denaturalization is purely a judicial process, entertained by courts which have the jurisdiction (most of the cases a federal district court) regardless of the fact that the naturalization court was a state or federal court or an administrative agency.

Besides, the proposed law may violate the Due Process clause of the Fifth Amendment. According to the Terrorist Expatriation Act, if an American citizen is accused of terrorist association the person will lose his citizenship before conviction. It does not seem to conform to the due process clause which provides that no person shall be deprived of his life, liberty or property without due process of law. The clause provides the right of a fair hearing. The US constitution requires evidential hear-

ing even before cancellation any entitlement by the government such as welfare benefits, Social security benefits.

Conclusion

American justice system is based on the concept of due process and equal protection. Guilt by association is not the most credible way of convicting a person. The proposed Terrorist Expatriation Act is manifestly unconstitutional. The Act purports to violate the very basic rights of an accused who has the right to remain innocent unless convicted of a crime. A law which pronounces judgment of before proving the guilt has to be set aside by the free people.

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HUMAN RIGHTS advocacy

Making Kampala count



Community members in Congo watch closely the ICC trial of former Congolese militia leader.

MEMBER states of the International Criminal Court (ICC) should use the upcoming review conference in Kampala, Uganda to push forward justice for the worst international crimes, Human Rights Watch said in a report released today. Human Rights Watch called on member states to use preparations, conference discussions, and pledges of greater support for the ICC to increase the likelihood that the most serious perpetrators will be held to account.

The 102-page report, "Making Kampala Count: Advancing the Global Fight Against Impunity at the ICC Review Conference," assesses progress and recommends steps to strengthen international justice. The report addresses the four themes identified as part of the conference's "stock-taking exercise": peace and justice, strengthening national courts, the ICC's impact on affected communities, and state cooperation. "This is a moment for ICC members meeting in Kampala to send a message to perpetrators and would-be perpetrators that they will face justice," said Richard Dicker, International Justice director at Human Rights Watch. "Serious debate at the conference can make real progress for the victims of mass slaughter and the use of rape as a weapon of war."

At the conference, from May 31 to June 11, 2010, representatives of the court's 111 member states, non-member states, the United Nations, and civil society groups will reaffirm the importance of bringing to justice those accused of genocide, war crimes, and crimes against humanity, the crimes covered by the ICC. The court's treaty was adopted in Rome in 1998.

ress since it became operational in 2003 - opening five investigations and starting two trials in The Hague - more steps are needed to extend and strengthen an emerging system of international justice, Human Rights Watch said. The two-week conference will address how to position the ICC and national courts better to hold perpetrators to account in fair trials, and will review proposals to amend the ICC's treaty, including exercising authority over a newly defined crime of aggression, that is, using force that is manifestly contrary to the UN Charter.

Human Rights Watch urged the governments at the Kampala conference to promote joint efforts to improve national-level trials of ICC crimes. Because the ICC only acts where national courts are unable or unwilling to hold credible trials at home, and its reach is limited to a handful of cases, national courts are essential for holding all perpetrators of the worst international crimes to account.

"The ICC is meant to be a court of last resort," Dicker said. "Advancing the fight against impunity means not only strengthening the ICC, but also bringing justice to the national level according to internationally agreed standards."

Using the conference to improve state cooperation with the ICC is essential to its success, Human Rights Watch said. The court relies on governments to enforce its decisions and assist its investigations and prosecutions. The recent backlash over the court's arrest warrant for President Omar al-Bashir of Sudan has underscored the importance of strong public backing for the court's mandate. States are expected to pledge at the conference to take specific steps at the

national level to bolster cooperation.

"States should come to Kampala with specific pledges to increase their practical and political support for the ICC," Dicker said. "These pledges are crucial for demonstrating commitment to the court."

The conference's location in Kampala also offers a unique opportunity to forge stronger links between the ICC and those affected by egregious crimes in Africa, Human Rights Watch said. States should consider how the court's outreach and field presence can better bridge the gap between proceedings in The Hague and affected communities in eastern Congo, northern Uganda, the Central African Republic, Darfur in Sudan, and Kenya.

States will also negotiate the definition of the crime of aggression and its implementation by the court. While taking no position on the definition, Human Rights Watch is concerned about proposals to allow the UN Security Council to decide whether the ICC prosecutor can investigate alleged crimes of aggression. Human Rights Watch has opposed Security Council control of any crime within the jurisdiction of the court because control by a political body would undermine the ICC's judicial independence.

Human Rights Watch also expressed concern that the crime of aggression could link the ICC to highly politicised disputes between states that could diminish the court's role - and the perceptions of that role - as an impartial judicial arbiter of international criminal law.

Civil society organizations and activists from around the world will be in Kampala to raise their concerns. The conference's formal agenda will be complemented by a number of side meetings, including in a "People's Space" hosted by Ugandan civil society.

Background

The ICC is the world's first permanent court mandated to bring to justice perpetrators of war crimes, crimes against humanity, and genocide when national courts are unable or unwilling to do so. The ICC treaty, known as the Rome Statute, entered into force in 2002, just four years after 120 states adopted the treaty during the Rome Conference. An Assembly of States Parties was created by the Rome Statute to provide management oversight of the administration of the court. It consists of representatives of each state member and is required to meet at least once a year but can meet more often as required.

The Rome Statute mandates that seven years after the treaty enters into force, the UN secretary-general is to convene a review conference to consider any amendments to the treaty. At its seventh Assembly of States Parties, in 2008, ICC members agreed to hold this conference in Kampala. In addition to considering proposed amendments such as on the crime of aggression, the agenda of the review conference includes a general debate

in which high-level representatives of ICC member states are expected to participate and two days of debate and discussion as part of a "stocktaking exercise." At their eighth Assembly of States Parties, ICC members decided on four topics for stocktaking: cooperation; complementarity; the impact of the Rome Statute system on victims and affected communities; and peace and justice.

The court's jurisdiction may be triggered in one of three ways. States parties or the UN Security Council can refer a situation (meaning a specific set of events) to the ICC prosecutor, or the ICC prosecutor can seek on his own motion authorization by a pre-trial chamber of ICC judges to open an investigation. The ICC prosecutor has opened investigations in the Democratic Republic of Congo, northern Uganda, the Darfur region of Sudan, the Central African Republic, and Kenya. Based on those investigations, 13 arrest warrants and one summons to appear have been issued. The prosecutor is also looking at a number of other situations in countries around the world. These include Colombia, Georgia, Cote d'Ivoire, Afghanistan, and Guinea. The Palestinian National Authority has also petitioned the ICC prosecutor to accept jurisdiction over crimes committed in Gaza.

Four individuals are in ICC custody in The Hague. A fifth, Bahr Idriss Abu Garda - who was charged with war crimes in connection with an attack on African Union peacekeepers in Darfur - appeared voluntarily during pre-trial proceedings. The ICC's pre-trial chamber subsequently declined to confirm charges brought against Abu Garda. The court began its first trial, of the Congolese rebel leader Thomas Lubanga Dyilo, on January 26, 2009. Its second trial, against the Congolese rebel leaders Germain Katanga and Mathieu Ngudjolo Chui, began on November 24, 2009. In addition to al-Bashir and two other individuals sought in relation to Darfur situation, arrest warrants remain outstanding for leaders of the Lord's Resistance Army in northern Uganda and for Bosco Ntaganda, a former rebel commander now integrated into the Congolese national army.

Source: Human Rights Watch press release.

LAW quotations

Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law' because law is often but the tyrant's will, and always so when it violates the rights of the individual.

Thomas Jefferson

Court orders to arrest 12 cops over 'crossfire'

A Natore court issued arrest warrants against 12 policemen and seven others on charge of killing a youth in "crossfire" at Singra in Natore. The policemen include Abu Bakar, the then officer-in-charge of Singra Police Station, SI Liakat Ali and ASI Prodyut Kar. On August 27, 2009, Rajab Ali of Singra upazila filed a complaint with the Natore Additional Chief Magistrate's Court that Singra police picked up his son Ansar Ali from his house and killed him in the name of crossfire. After the hearing, the court instituted a judicial enquiry under Mahmudul Hasan. - *The Daily Star*, May 13, 2010.

Proceedings of 2 cases stayed by HC

The High Court directed trial courts to turn in within two weeks the records of two defamation cases involving the Bashundhara Group for examination. The court also stayed the proceedings of the cases until disposal of its ruling on Bashundhara Group. The HC directive came after Editor and Publisher of daily Prothom Alo Matur Rahman in a petition sought transfer of the cases to the HC for disposal, saying the cases involve constitutional matters. - *The Daily Star*, May 13, 2010.

Sue Mainul for murder

A parliamentary body asked Rajdhani Unnayan Karttripakkha to file a murder case against former adviser to caretaker government Mainul Hossain for "neglect and ignoring safety measures" in demolishing Rangs Bhaban that led to death of 14 workers. The parliamentary standing committee on housing and public works ministry also asked Rajuk to demolish "illegally built" three upper floors of 15-storey Musafir Bhaban in Kakrail owned by Mainul and take legal action against him and his son Arshad Hossain. The committee also asked to take legal action against Saju Hossain, wife of Mainul, for giving "false statement and affidavit" while buying a flat in the city. - *The Daily Star*, May 12, 2010.

Pre-cleaning report must before import

The High Court in an order ruled that no ship could be imported in Bangladesh without pre-cleaning and environmental certificates from exporting countries. It said the Department of Shipping could issue no objection certificates (NOCs) to those ships only seeing such certificates and compliance of other legal obligations. The ship exporters have to ensure that their ships are not hazardous, a lawyer said. The court ordered the director general of the Department of Shipping to take departmental action against its assistant chemist Fawzia for misinterpreting its March 17, 2009 verdict on the closure of ship-breaking yards. It also asked the director general to inform this court within two months about the action against Fawzia. - *The Daily Star*, May 12, 2010.

Ensure safe fruits

The High Court gave the government a number of directives to stop the use of chemicals for ripening and preserving fruits and the sale of those contaminated fruits, a public health concern. The court, in response to a public interest writ petition, ordered Bangladesh Standards and Testing Institute (BSTI) and Rapid Action Battalion to continuously monitor fruit depots in Dhaka so that contaminated fruits cannot be stored or sold. It asked for everyday tests of fruits to be conducted at wholesale depots in the capital. - *The Daily Star*, May 11, 2010.

Benin delays their return

Further complexity is hindering the repatriation process of 28 stranded Bangladeshi seamen in Benin, as the country is now asking for some of the crew to stay back to look after the ships. "Benin authorities are now asking for five to six seamen for a few more days to take care of the ships. They said they would make arrangements for the seamen's salaries and other facilities," told a foreign ministry official. "We booked air tickets for 10 sailors and were about to book more for the rest. But by this time things got a bit complicated," he said. - *The Daily Star*, May 11, 2010.

60 criminal cases against Selim dropped in 4 months

The government has withdrawn 60 criminal cases out of 120 against former Awami League lawmaker Haji Mohammad Selim in last four months terming the charges "politically motivated and meant for harassment." Selim is an accused of highest number of criminal cases filed against an individual in Bangladesh. His counsel Pran Nath told *The Daily Star* that following Selim's instruction he had earlier filed appeals for withdrawal of the cases as the government had decided to withdraw such "politically motivated cases." - *The Daily Star*, May 10, 2010.

Helal, wife sent to jail

A Dhaka court sent lawmaker Sheikh Helaluddin, also a cousin of Sheikh Hasina, and his wife Rupa Chowdhury to jail in a graft case in which the two were tried in absentia, found guilty and sentenced. Helal was also shown arrested in an extortion case. Judge (in charge) Mohammad Mozammel Hossain of the Special Judge Court-6 passed the order after Awami League leader Helal and Rupa appeared before the court and sought bail in the corruption case. On February 24, 2008, Judge Tanjina Ismail sentenced Helal to 13 years' imprisonment for amassing wealth illegally and concealing wealth information to the Anti-Corruption Commission while Rupa was sentenced to three years' imprisonment for abetting her husband in acquiring the wealth. - *The Daily Star*, May 10, 2010.

EU insists on free anti-graft body again

The European Union reiterated that the Anti-Corruption Commission (ACC) in Bangladesh should be a financially adequate independent body, which is free from any political influence. Addressing a press conference on the eve of the Europe Day, EU Ambassador Stefan Frowein said, "ACC is an essential element and to make it meaningful it should work independently -- financially and politically. Likewise, the judiciary also needs to function independently." Europe Day is an annual celebration of peace and unity in Europe. The day is observed commemorating the historical declaration (May 9, 1950) by the then French foreign minister Robert Schuman of creating a new form of organisation of States in Europe. - *The Daily Star*, May 9, 2010.

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